

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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THURSDAY,
FEBRUARY 8, 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 MADAIIO, 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
BRIAN SIEGEL, Office of General Counsel
SARAH HAY, Office of Postsecondary Education
CYNTHIA HAMMOND, Office of Postsecondary
Education

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

2 MS. BUCK: So, welcome back, everyone.
3 Good morning. Again I just want to say I'm
4 impressed by the passion and interest and
5 involvement that everyone has, and the
6 thoughtfulness of your responses. We have a lot
7 to cover today, but let's first start by asking
8 if there's public comment.

9 (No response.)

10 Okay. I think there isn't then. I
11 would like to start with an agenda review. What
12 we need to do today, I think, is first we had said
13 we would come back to the data. I don't know which
14 part of the country says data and which data; it's
15 so interesting. Data questions for just -- but
16 we think we need to limit that to 30 minutes, and
17 that could include the document that was sent out
18 by Jordan.

19 Then we would need to go to Issue 5.
20 What we'd like to do is cover, I'm proposing to
21 cover Issues 5 and 6 before lunch. Then to have
22 lunch. Laura wants -- has a memo with regard to
23 Issue 8, and she may need to leave a little early,

1 so she has asked if that could be moved up. So
2 I'm proposing to put that right after lunch and
3 then Issue 7.

4 Then we could see what time we have.

5 The document, the technical changes that we didn't
6 look at at the beginning, the technical and
7 conforming changes document, and then the other
8 issues that we hope to address if there's time.
9 So that's a lot. So that's the agenda I'm
10 proposing. Are there any comments on the agenda?

11 Daniel, did you have comments on the agenda?

12 MR. ELKINS: Yes, I did. You
13 mentioned or referenced an email that Jordan sent
14 out. I don't know if I was just the only one that
15 didn't get it.

16 (Off-microphone comments.)

17 MR. ELKINS: It is?

18 MS. BUCK: It's been handed out, sorry.

19 MR. ELKINS: Copies. I will get it.

20 MS. BUCK: Very good. Yes?

21 MR. HELLER: So I know yesterday we
22 discussed beforehand that we --

23 PARTICIPANT: Neal, can you use the

1 microphone please?

2 MR. HELLER: I guess I just want to make
3 sure that we're going to address the metrics that
4 go into the -- what we did yesterday.

5 MS. BUCK: So we have that listed as
6 one of the things to cover after we cover the issues.

7 MR. HELLER: Okay, all right.

8 PARTICIPANT: Jennifer Diamond, did
9 you have a question?

10 MS. BUCK: Okay. Yes, Sandy.

11 MS. SARGE: Hi, this is Sandy. I took
12 a look through these things and I may be opening
13 a can of worms, but 7 and 8 seem like they -- well
14 at least 7 could potentially be pretty quick. If
15 I read it correctly, it's just all crossed out,
16 but maybe is there --

17 MS. BUCK: So it is the last item.

18 MS. SARGE: Okay.

19 MS. BUCK: So if we get to that and it's
20 quick, that would be great.

21 MS. SARGE: Okay. I was thinking
22 maybe first, to get it over with. Got it.

23 MS. BUCK: Any other comments on the

1 agenda?

2 (No response.)

3 MS. BUCK: Now the question I want to
4 ask is what time people need to end. Is 5:00 too
5 late for people?

6 PARTICIPANT: Yes.

7 MS. BUCK: Would anyone want to propose
8 a different -- well how many people will be able
9 to stay until five? Let's see that.

10 (Show of hands.)

11 MS. BUCK: So quite a few people could
12 stay until five. Could your alternate be here
13 until five? Okay. So it sounds like five is okay
14 then. Okay. Then I wanted to mention that, if
15 you have suggestions for the facilitation process
16 for us for next time, please feel free to write
17 those down and give them to us for our consideration
18 between now and the next time we meet.

19 We're always interested in getting
20 feedback and ideas about how the process could go
21 better. Okay. So is there -- are there any other
22 logistical issues we should discuss before we get
23 started? Yes, Daniel.

1 MR. ELKINS: I just would like to
2 request everyone who's participating in the
3 negotiation to try and observe the protocols as
4 much as we can. I understand that we all have very
5 different perspectives on some of the details.

6 But I think out of respect for the
7 process that we're all trying to, in good faith,
8 participate in, I think it would be very helpful
9 for people not to be interrupted and people to be
10 respected. I would like to, you know, just have
11 a, you know, a thumb up if we all can agree to do
12 that, and if not, you know, just let me know. Can
13 we agree to do that?

14 (Show of hands.)

15 MR. ELKINS: Todd?

16 MR. TODD JONES: Yes.

17 MR. ELKINS: Okay.

18 (Laughter.)

19 MS. BUCK: I don't see any thumbs down.
20 All right. Thanks for that question. Yes.

21 (Off-microphone comment.)

22 MS. BUCK: Okay, thank you. Traffic
23 can be a big problem in D.C. Okay. So I think

1 the first item on the agenda is Additional Questions
2 About the Data.

3 So Sarah, do you want to come up and
4 we are going to try to keep this to 30 minutes,
5 and we want to remind you that, if you do have
6 additional thoughts on this or anything, you can
7 email Scott about it. Is that right, Greg? They
8 can email Scott.

9 MR. MARTIN: Yes. Any questions you
10 have, you can always email Scott.

11 (Laughter.)

12 MR. MARTIN: I'm always quick to point
13 out that Scott's available 24-7.

14 (Laughter.)

15 PARTICIPANT: Is he not in the room?
16 Oh, he is.

17 MS. BUCK: Okay. So what additional
18 questions or comments do you have about the data
19 that was given, particularly questions?

20 MS. MILLER: Sandy.

21 MS. SARGE: Good morning, Sarah. This
22 is Sandy.

23 MS. HAY: Good morning.

1 MS. SARGE: I have a question on the
2 first paper you handed out, Debt to Earnings
3 Analysis Using College Scorecard, and it's on
4 Exhibit 1. I apologize. I feel like I should know
5 this but I don't, so I wanted to just make sure
6 I was clear.

7 It's under the Data and Methods
8 Difference. Is the Scorecard information
9 self-reported by the institutions, or is that
10 information something you guys pull in through
11 other sources?

12 MS. HAY: It is -- my understanding is
13 that it is primarily Department of Education data.

14

15 MS. MILLER: Daniel.

16 MR. ELKINS: Yes. I wanted to thank
17 you again for putting these together. Did some
18 fact-checking yesterday just to verify, and as you
19 said, you are legally unable to get the data that
20 we want due to the expiration of that MOU. So I
21 think the record should reflect that that is the
22 case. The question is, is there an intent to renew
23 that MOU at any point in time?

1 MS. HAY: That decision is above my pay
2 grade.

3 MS. MILLER: Jeff.

4 MR. ARTHUR: Just a real quick
5 observation. I think we might have
6 mischaracterized programs that were excluded
7 because of low n's. From my experience every
8 program that was, didn't meet the n was a program
9 we weren't offering anymore, and I think maybe there
10 will be a number of small programs that we think
11 are excluded, but actually they're a small n because
12 the institution is probably not offering it
13 anymore. When they're low n's, they're low demand.

14 MS. MILLER: Any other questions for
15 -- Jennifer Diamond?

16 MS. DIAMOND: It's Jennifer Diamond.
17 I just wanted to point out, since there was a
18 question yesterday on Table 6 in the second packet
19 on page seven, I know Sandy brought up the issue
20 of looking linearly across the data about this
21 point, about 97 percent of programs including that
22 failing number being at proprietary institutions.

23 But looking linearly, they make up 65.7

1 percent we can see of programs, that 5-6, 5600
2 number. So I just want to frame this discussion
3 with that note, that you know, even looking
4 linearly, that's pretty disproportional, the
5 number of failing programs in that sector, and then
6 just going across and looking at the 200,000
7 students versus 1100 that failed at private
8 institutions.

9 PARTICIPANT: Can I respond to that?

10 MS. MILLER: Sarah, do you have a
11 response first?

12 MS. HAY: Sure. So that is a good --
13 it is important when the populations are not all
14 the same size, to compare the percentages rather
15 than the counts. So to that point, it is true that
16 the proprietary programs make up about two-thirds
17 of the programs covered under GE, and of those,
18 15 percent of them fell in the failing category.

19 When you look at private, they made up
20 six percent of the programs and five percent of
21 those programs failed, and in the public they made
22 up 29 percent of the programs and when you round
23 it's zero percent, okay.

1 The findings are similar when you
2 repeat that math for enrollment counts. So the
3 public, zero percent of the enrollees were in
4 failing programs. Two percent of the enrollees
5 for private programs were in failing programs, and
6 in proprietary it was 14 percent of enrollees.

7 So if you want to figure out how to do
8 that math, for example, you would take, looking
9 at sort of the first row for public, you would look
10 at one failing program divided by 2,493 programs
11 to figure out what percent of the public programs
12 failed, okay. Does that help clarify that for
13 folks, or are there now more questions?

14 MS. MILLER: I think Jennifer, does
15 that answer -- Jennifer Diamond, does that answer
16 your question?

17 MS. DIAMOND: It wasn't really a
18 question, but yes.

19 MS. MILLER: Okay. Well, Sandy.

20 MS. SARGE: So Jennifer, with all due
21 respect and I understand what you're trying to say,
22 but the problem here is that you're not comparing
23 apples and oranges. So if you only look at what

1 all three categories reported on -- undergraduate
2 certificate, post-baccalaureate certificate and
3 graduate -- and then you look at it, the publics
4 have 2493, the privates have 476 and the
5 proprietaries have 3,288.

6 So you're looking at the total number,
7 which includes things that none of the others
8 include. So what I'm trying to do is keep the math
9 apples to apples, so that we can get to some real
10 comparisons, and not add in things that aren't
11 there.

12 MS. MILLER: Marc Jerome.

13 MR. JEROME: So actually Jennifer, I
14 think your comment frames our discussion maybe the
15 best, because we're looking at the data and we're
16 pulling which institutions failed at the highest
17 rate, and which institutions had the most students
18 at the programs that failed.

19 You know, I've been consistent since
20 the beginning. The reason it's so important for
21 the Department to go in the direction they're going
22 is I believe when the -- when they finally run the
23 data, the actual data is going to show the opposite,

1 that in fact more students attend institutions
2 outside of the proprietary sector with failing
3 programs.

4 That is why eventually the data side
5 of the Department is so important, and it's one
6 thing to make an argument with an incomplete set;
7 it's another thing to make the argument with all
8 the comparable data.

9 Just one last point. The essential
10 issue is the data only shows for degree programs
11 at proprietary, and there's no data for degree
12 programs in the other sectors.

13 MS. MILLER: Thank you, okay. So
14 Daniel, then Tony and we have about nine more
15 minutes left.

16 MR. ELKINS: Jennifer, could you
17 please just basically restate exactly what you said
18 again?

19 MS. DIAMOND: Sure. Looking at the
20 failing programs column, do you see it? So under
21 the total number of proprietary schools that
22 failed, we have 878, and the total number is 903.
23 We decided yesterday that's around 97 percent are

1 failing programs in the proprietary sector. The
2 total number of programs reported on that -- in
3 the proprietary sector is about 5600. The total
4 is 8600. That's 65.7 percent under the Programs
5 column. Do you see where I'm looking?

6 MR. ELKINS: You can deal with me
7 afterwards. I don't math well.

8 MS. DIAMOND: Sure. I can point it out
9 on the column.

10 MR. ELKINS: Thanks.

11 MS. MILLER: Tony. Tony.

12 MR. MIRANDO: Good morning. This is
13 Tony Mirando, thank you. So when we're looking
14 at the zone in the failing areas, the first thing
15 that my brain goes to -- and again it's just my
16 brain -- the same chart that everybody's been
17 chatting on. We're still using earnings that may
18 be distorted by the inability for Social Security
19 to take into effect the non-wages that an individual
20 may not claim, correct?

21 MS. HAY: We are using the data
22 reported by Social Security Administration.

23 MR. MIRANDO: Okay, you answered my

1 question. Okay, great. Thank you. So I just --
2 just because, you know, again I think it's not a
3 fair analysis if you're missing a huge piece of
4 the data.

5 MS. HAY: I hear you. Yeah, I hear
6 your point.

7 MR. MIRANDO: Thank you.

8 MS. MILLER: Jennifer Blum.

9 MS. BLUM: I'm actually switching to
10 the shorter document, and just had a question on
11 Table, I'm sorry Exhibit 3, and there was -- just
12 before it in the narrative piece just above it that
13 describes, I guess, Exhibit 3, it talks about the
14 fact that -- and I just want to -- I guess that's
15 a question.

16 It looks like you've narrowed the
17 universe to just -- on Exhibit 3, you're using data
18 just of, quote-unquote, open enrollment
19 institutions. Is that -- or what do the references
20 -- I guess I'll do it in the real form of it. Can
21 you explain to me what you mean in the paragraph
22 just preceding Exhibit 3, where you talk about open
23 enrollment?

1 And then assuming that you are relying
2 on, quote-unquote, open enrollment institutions,
3 I assume that that was something that was taken
4 from the Scorecard. You've heard me talk a lot
5 about Scorecard flaws. But a lot of institutions
6 -- I think some institutions are a mix of open
7 enrollment, not open enrollment depending on their
8 program level. The definition of open enrollment
9 is a little bit squishy.

10 So just curious as to what, what's going
11 on there in terms of what schools were included.

12 MS. HAY: Right. So the data that was
13 presented to you were all of the schools that were
14 contained in Scorecard. We did make an attempt
15 to see if there were differences at open enrollment
16 schools as they're defined in Scorecard, and we
17 did not include them here because we didn't see
18 hugely meaningful differences. Does that help
19 clarify that sentence for you?

20 MS. BLUM: So Exhibit 3 is all
21 institutions, not just, quote-unquote --

22 MS. HAY: Correct.

23 MS. BLUM: Okay, good. It just wasn't

1 clear from the narrative and the chart. Thank you.

2 MS. HAY: Okay, sure, yes. Thanks for
3 clarifying. Okay. So I know we're running short
4 on time. I do want to let folks know I'll be here
5 today, so if you still have a question about what
6 the numbers mean, you're welcome to try and catch
7 me during a break or something like that.

8 I did want to sort of walkthrough -- I
9 didn't have my page with me yesterday of all of
10 the data requests, and I wanted to just sort of
11 walk through them quickly and let you know where
12 we're at with them, okay.

13 So we got a request to parse the
14 Scorecard at the program level which, as you know,
15 we can't do. So we gave you the best we could,
16 which is at the institution level.

17 We got a request to see all wage and
18 loan data by institution and program for all
19 institutions and all programs. It's kind of the
20 same situation. We gave it to you at the program
21 level when we had the data, which was for the GE
22 programs, and we gave it to you at the institution
23 level using Scorecard data for the entire United

1 States, okay.

2 We had a request from negotiators to
3 be provided all data Ed has pertinent to gainful
4 employment. That's a really large request, so if
5 there are more specific requests, we encourage you
6 to make them in a way that we can try and solidify
7 a bit more, okay.

8 So I don't actually have the names of
9 the people who made the requests on my little cheat
10 sheet here, but if you have a more specific request,
11 you can send them to Scott Filter. That's
12 scott.filter@ed.gov.

13 So for each program in GE and non-GE
14 school programs, what is debt to earnings? And
15 again, that's sort of the same response. We got
16 a lot of questions that are sort of multiple ways
17 of asking the same thing.

18 Can the Department of Education provide
19 the debt to earnings rates using NSLDS so that it
20 can be compared to the school-reported information?

21 I wasn't entirely sure what that meant, so for
22 the person who made that request, if you could
23 clarify to us more specifically what you were

1 looking for, we can try and look into that one a
2 little bit more.

3 We got a request for sort of what's the
4 total enrollment after each GE year, over time,
5 to sort of get a sense of what the effect of
6 publishing GE rates was. We did not have time to
7 get to that. If we have time, we will try and work
8 on it. I can't make any promises, okay.

9 For those of you who maybe are not
10 aware, we have been under a hiring freeze for more
11 than a year, and we have lost a lot of really good
12 people. So we are doing our due diligence and our
13 best to get to the most information we can but we're
14 very short-handed, okay. But that is one that
15 we're going to try and work on.

16 But don't, no one get mad at me at
17 Session 3 if we don't find a way to get it done,
18 okay. All right. We'll do our best. The next
19 one was sort of -- let me read it. Some of these
20 are kind of wordy. Questions about what are debt
21 to earnings, what are repayment rates and what are
22 average total debt at repayment, so sort of at the
23 point of completion.

1 We've given you what we can for debt
2 to earnings, and we did repayment rate using
3 Scorecard data. We could look at trying to get
4 some debt values if that's of interest to sort of
5 the larger group, and you can get back to me on
6 that later. But again, a lot of it is sort of
7 resource-based on our end of what we can get done
8 in a short amount of time.

9 We got questions about loan status and
10 defaults for every single institution and every
11 single program from a negotiating -- this is talking
12 about both negotiating rulemaking processes going
13 on right now. We're not really seeing data at the
14 institution level and certainly not at the specific
15 program level at a specific institution. We're
16 just not going to do that.

17 Oh geez, now I lost my spot. Sorry.
18 I still only got four hours of sleep last night.
19 I blame my son. Okay. We got a question about
20 loan type and balance repayment rate and default
21 rate, and that information was wanted again at the
22 institution and program, specifically single data
23 rows and we're not going to be giving out

1 information at the institution level.

2 We got questions about the thresholds
3 and whether they were appropriate or not. If the
4 group wants to know more information about that,
5 put another request in. This is one that I think
6 we may have data in the GE data where we could look
7 at that at the program level or the SIP level.
8 We have not done it yet, okay.

9 And then we got a request and actually
10 this is a good one, and I'll turn it back to you
11 guys. We got a request for, can Ed share any
12 credible estimates of administrative burden it has
13 access to, especially information that separately
14 estimates fixed costs of initially adapting IT
15 systems to track information necessary for
16 reporting, and the yearly cost of complying with
17 reporting requirements once these systems are in
18 place?

19 So we have to write a regulatory impact
20 analysis, and we would love to have this
21 information. So if you have pieces of this
22 information, we welcome your submission of that
23 data. We don't currently have anything right now,

1 okay, because we don't keep -- we don't have any
2 way to go and open your books and know that kind
3 of stuff.

4 But if you are willing to share, we
5 would love to have that information.

6 MS. MILLER: Marc Jerome, did you want
7 to provide some -- okay.

8 MS. HAY: All right. And then the last
9 one is a question about earnings parsed by a bunch
10 of different variables, and because we only have
11 earnings, we have mean earnings and median earnings
12 at the program level, and not at the individual
13 person level. So we're unable to parse by whether
14 they completed or didn't complete, or whether they
15 are under 24 or over 24 or those sorts of variables,
16 because we just don't have the data at that level.

17 Okay, all right.

18 MR. JEROME: So it's Marc Jerome. I
19 have a question for Sarah and for my fellow
20 negotiators. I have run data that I think would
21 be very helpful to all of us on what it would look
22 like at 8 percent and 12 percent, running at 6.8
23 percent interest rate and 8 percent and 12 percent

1 DE by sector, based on the Scorecard.

2 My question is I've held it for two
3 reasons. Number one, it has the identifiers in
4 it, and number two, I didn't want to get involved
5 with fighting over is the -- are the methodologies
6 of a negotiator proper. I'm asking the group would
7 it be helpful to submit it to the Department without
8 identifiers, or is it just, you know, or is it better
9 to ask the Department to run the same report?

10 No, I have it right here. I have the
11 numbers, but I don't want to bog down the
12 negotiation and the debate over whether the
13 methodology was right.

14 MS. HAY: So how about this as a
15 proposal: why don't you send it over to us, and
16 we'll take some time and look at it and see if we
17 can figure out what the differences are between
18 the methods we used and the methods you used, and
19 try and get back to you guys on that.

20 MR. JEROME: So just back on the
21 institutional, on the issue of not naming
22 institutions.

23 MS. HAY: Oh, you can give us our own

1 identifiers. That would be fine. Sorry, I'm
2 teasing you.

3 MR. JEROME: Okay. I'll speak to you
4 offline about that.

5 MS. HAY: Sounds good, okay. Okay.
6 Other questions?

7 MS. MILLER: Daniel, and then Jennifer
8 Blum.

9 MR. ELKINS: I wanted to find out if
10 you were able to get the numbers on the charts.
11 I believe I had asked for that yesterday but --

12 MS. HAY: Yes. So --

13 MR. ELKINS: If it's not possible,
14 that's fine. I was just curious.

15 MS. HAY: Right. So we did it a little
16 bit differently, and this is mostly just because
17 we didn't have much time to do it. But we ended
18 up counting failing institutions, okay. So if you
19 go on the Scorecard paper to page four, if you look
20 at the bachelor row, there were two institutions
21 that failed.

22 At the associate row, there were nine
23 institutions that failed, and in the certificate

1 row -- all right. I'm making sure I'm reading it
2 correctly upside down, there were 31 that failed.
3 Yes. So that the bottom row, the certificate row.
4 There were 31 that failed.

5 When you look at the public
6 institutions, so I wrote it down here just by my
7 little orange box, there was one public institution
8 that failed. There were three private
9 institutions that failed, and there were 38
10 proprietary institutions that failed. I do want
11 to remind you that the sort of the number of
12 institutions that fall in each of these categories
13 is different, okay.

14 And so the public being one and the
15 private being three and the proprietary being 38
16 -- I haven't computed those percentages, but I would
17 assume that the proprietary is larger because
18 there's a whole bunch more of them. So just keep
19 that in mind as you're thinking about what these
20 mean. We did not do sort of the cross-tabulation
21 across the two, but if you have more questions,
22 I am going to be available today.

23 MS. MILLER: Jennifer Blum.

1 MS. BLUM: It's not a question. I just
2 wanted to, and sorry you and I spoke last night,
3 and I did send Scott an additional request on --

4 MS. HAY: Thank you, okay.

5 MS. BLUM: So it's on your list now,
6 but it is in Scott's email.

7 MS. HAY: Okay, thank you, and I will
8 do my best to prioritize the requests that we get
9 in. So feel free to reach out to us.

10 MS. MILLER: Okay, so I see Laura and
11 Kirsten, I think, is going to be the last word on
12 -- Johnson, okay, the last word on this and then
13 we'll move to Jordan's document.

14 MS. HAY: Right, good.

15 MS. MILLER: So Laura.

16 MS. METUNE: Thank you Sarah for your
17 work on this, and just your openness to the
18 challenges that the Department faces in trying to
19 produce these reports. So I just want to say thank
20 you, and I also just want to say to Marc, I saw
21 the Wall Street Journal story. We've talked about
22 this data that's available. Frankly, I promise
23 not to debate the metrics of this table. But I

1 would like to see it, so that instead of sort of
2 just making these broad categorizations, we could
3 actually know what you're looking at and that would
4 inform us internally.

5 MR. JEROME: So I'm going to -- I'll
6 send it to the Department, so the Department can
7 confirm the percentages were right and the formula
8 is right. I'll leave it to them to take out the
9 identifiers. But again, you know, we just
10 double-checked it last night and we're seeing many,
11 many more institutions above 12 percent.

12 And for those of you in the room, I just
13 invite you to go to the Scorecard and look at the
14 data that's public-facing. It's hard to imagine
15 institutions, there's plenty with 20,000 of
16 earnings and \$40,000 of debt are not over 12
17 percent. And I especially ask the consumer groups
18 about that.

19 MS. METUNE: No, no, Marc. You're
20 totally doing exactly what I want to stop have
21 happening. I wanted all of us to see the data.

22 MR. JEROME: Sorry.

23 MS. METUNE: Yeah, and how long will

1 it take the Department maybe to do that for us,
2 so we can all see what he's talking about?

3 MS. HAY: Sure. So I will do a methods
4 comparison. I'm not opposed to you guys sending
5 each other publicly available data. But the
6 Department's not going to give out information at
7 the institution level. Does that help clarify?

8 PARTICIPANT: Sure. So Marc, I mean
9 it's fine and I'm happy to hear what the Department
10 has to say about the methodology, but I mean you've
11 talked about it. It's in the Wall Street Journal.

12 I really think it should be out for everyone to
13 see. If you need to take out the identifiers,
14 that's fine. But you know, you've talked about
15 it a lot so --

16 MS. MILLER: Okay. So Johnson, can
17 you take us --

18 MR. TYLER: So I wanted to follow up
19 on Daniel's question to you about the numbers on
20 Exhibit 3 of the Scorecard data, where you said
21 there were 38 proprietary schools, three private,
22 one public. Is there some way to figure out how
23 many students this is affecting, because when you

1 did the gainful employment we actually see, you
2 know, that there are 214,000 students who are in
3 programs that are failing.

4 And I'm just trying to get a sense of
5 the quantity here, too. I'm just not sure whether
6 Exhibit 2 or something else might help me with that.

7 MS. HAY: So you ask a good question
8 and it has to do with the amount of information
9 we have relative to enrollment data. We have
10 started collecting that in 2014.

11 The data were not high quality in 2014
12 and they're getting better. It's not an answer
13 I could probably get you today, but if it's an
14 important one for sort of making your decisions,
15 follow up with an email so we don't forget about
16 it, okay.

17 MS. MILLER: Okay. Thank you, Sarah.

18 So I want to move now to the document that Jordan
19 passed out. Does anyone not have a copy of it at
20 the table or an alternate? So one, two, three,
21 four.

22 Okay. I don't have any more. So we
23 might have to share, and then we'll make sure that

1 we'll get extras.

2 MS. BUCK: So Jordan, do you want to
3 comment on the document first, because we're just
4 going to have five more minutes on this before we
5 move on.

6 MR. MATSUDAIRA: Yeah, and I don't want
7 to take up people's time too much with this. I
8 just wanted to try to illustrate one of the concerns
9 that I had with looking at the Scorecard data as
10 a way of inferring where or how many low-performing
11 programs there are.

12 So I just pulled data from the gainful
13 employment rates just for one institution that has
14 a lot of programs, and just what I was trying to
15 illustrate here is, you know, the dots
16 are -- there's one dot per program that this one
17 institution has.

18 Overall the institution, if you average
19 all the debt to earning rates kind of weighted by
20 the enrollment in each one of the different
21 programs, the institution overall has a debt to
22 earnings rate of about six, six percent. And so
23 if you're just looking at institution-level

1 averages, this institution would look like, you
2 know, it passing the annual debt to earnings rate
3 overall.

4 But that would mask the fact that there
5 are still about 30 of the 97 programs that are
6 actually failing. So you know, I just wanted to
7 make the simple point that in institutions where
8 there are failing programs, there also tend to be
9 a lot of programs that aren't failing.

10 When we just look at institution-level
11 data, we really mask all that variation below and
12 miss like a lot of the programs that the rule is
13 really trying to target. So I just wanted to
14 illustrate that point if it wasn't clear yesterday.

15 MS. MILLER: Any questions? Todd.

16 MR. TODD JONES: I don't want go down
17 this rabbit hole as well, but I mean one of the
18 things that bothers me about going to programmatic
19 data in this way is variability between years, and
20 as all the variabilities we've talked about, for
21 example, choices of career and debt as measured
22 by cost of living expenses that are self-selected
23 by individuals within it.

1 So as you know, one of the advantages
2 of having larger data sets or groupings of data,
3 regardless of the structure is you're able to take
4 out some of those anomalies. To the extent that
5 we can say this is either too many or too few if
6 we're just taking a slice of one year, programs
7 that should -- that are failing or not failing,
8 you know, for me getting this specific doesn't
9 necessarily indicate it's better or worse than the
10 institutional level data we're talking about, for
11 the reasons of data variability. I mean is that,
12 is that a fair analysis?

13 MR. MATSUDAIRA: Yes, it is. I think
14 it's absolutely true. I would think about the two
15 things as slightly separate, although they're
16 related in the way that you've described. So when
17 you go to the program level, the fact that there
18 are fewer people in each program, and because of
19 that we might worry about, you know, it's a very
20 noisy signal of whatever it is we're trying to
21 measure. I absolutely agree with that.

22 But what I was trying to say is just
23 if we're trying to learn about how a program-level

1 rule would impact the sector or how many programs
2 it would identify and where they would identify
3 them, then looking at institution-level aggregates
4 is misleading.

5 So on the second point, I think, you
6 know, the kind of data that we've asked for in the
7 past, which is to see year on year changes in these
8 kinds of measures as a function of the size of
9 programs which is, you know, again hopefully
10 something that the Department will be able to
11 provide, would inform that question.

12 I think it's solvable, you know, as
13 we've talked about, by kind of rolling up cohorts
14 to try to prevent the cohort size of any given
15 program-level metric of being too small.

16 MS. MILLER: Jennifer and Daniel.

17 MS. BUCK: And then we will be moving
18 on. The facilitators are going to be very
19 hard-nosed today. So just, you can get mad at us
20 but we are really going to try to keep on schedule.

21

22 MS. BLUM: So Jordan, I actually find
23 this slide interesting and helpful actually as it

1 relates to the framework that we discussed, the
2 potential framework that we discussed yesterday
3 as it relates to, you know, having a first tier
4 of the programmatic level.

5 But then I think actually Steve Finley,
6 you know, I think brought back up that on the second
7 tier, institutional could be interesting. I do
8 want to take issue with one thing that you said.

9 At a university level, if you had let's call it
10 five programs that were low -- and I'm going to
11 call it low-performing, because we haven't even
12 discussed whether we're going back to fail or not.

13 So I'm going to call it low-performing,
14 but if you have five programs that were
15 low-performing at a university -- I want to
16 recognize and we've talked a lot about whether the
17 fact that low-performing might not be an indicator
18 of poor quality. It might be because of the
19 profession involved.

20 So I want to actually use an example.

21 If you have a major university that offers, that
22 has an architecture school, and then it also has
23 a business school and whatever other money-making,

1 IT, you know, bachelor's degrees, and we'll stick
2 with undergrad. We'll even say bachelors in
3 architecture, because actually that's a very good
4 example.

5 Architects right out of school do not
6 make a lot of money. So it is quite possible at
7 the university level that you could have situation,
8 right, and I want to point out that the masking
9 that you talk about, actually what it's really
10 revealing and will reveal, I think, in a lot of
11 situations, and actually this across higher ed,
12 is that universities in effect economically
13 subsidize a college off of another college.

14 That's just the way they do -- and I'm
15 going to call it business. That's how we do
16 business. We don't ever want to get rid of an
17 architecture school, but it's very hard to operate
18 an architecture school by itself. So it's much
19 easier to have it with a university structure with
20 other colleges that might help subsidize it.

21 So I just want to like keep in mind real
22 life of what a university structure looks like,
23 and those decisions that universities make when

1 they're deciding what programs to offer and what
2 -- they might very well know that there might be
3 an earnings issue on the back end. But it's still
4 a very important field to teach in.

5 So I just want to -- so the
6 institutional level piece is helpful on that
7 overall analysis. I'm not saying it's a
8 replacement; I'm just saying it's helpful to get
9 to the understanding of what it means to be
10 low-performing. So thank you, because I think this
11 is a helpful piece of paper.

12 MS. MILLER: Thank you, Jennifer, and
13 finally Daniel.

14 MR. ELKINS: This question would be
15 addressed to either Jordan or potentially the Texas
16 AG, or anyone else around the table that could
17 possibly answer this question. We've been trying
18 to get an understanding of data at the programmatic
19 level for public and private institutions: is it
20 available.

21 I was curious if anyone can confirm or
22 deny. I've been told that the state of Texas
23 collects this data, and I haven't been able to find

1 it. But if we're looking for a true apples to
2 apples comparison, it would be great if we could
3 look at that data and find out if the private and
4 public universities were doing well or not.

5 MS. BUCK: Let's just have one answer
6 to that question and then other people maybe can
7 talk to you afterwards with answers. Would that
8 be okay?

9 MS. HAY: So we'll go with Ryan, since
10 it looks like you're AG.

11 MR. FISHER: Yeah, this is Ryan. I
12 just want to say we do collect that data. We have
13 for several years. We do it for transparency, and,
14 you know, I think everybody agrees that Texas has
15 great schools, especially when compared to
16 Oklahoma.

17 (Laughter.)

18 MR. FISHER: But you know, some of our
19 schools do not pass the DE metrics, some of the
20 programs. I don't think that says they're bad
21 programs. I think it speaks to the efficacy of
22 using that as a sole indicator.

23 (Off-microphone comments.)

1 MR. FISHER: Yeah, there's a -- I can
2 send you guys. It's a study that the Higher
3 Education Coordinating Board puts out.

4 MS. BUCK: So if there's other
5 information for Daniel on this topic, please do
6 let him know. Okay, thank you. Thank you for that
7 discussion, those questions. I think what we want
8 to do now is shift to Issue Number 5. Tony, did
9 you have a question about that?

10 MR. MIRANDO: Yeah. So we're not
11 going to finish number four?

12 MS. BUCK: We will come back to number
13 four at the end, but we do need to keep on going.
14 Otherwise, we would be discussing Issue 4, I mean,
15 conceivably all day. But we will come back. We
16 will come back at the end.

17 MR. MARTIN: Yeah. Re Issue 4, I know
18 that there's still things people want to discuss
19 about that. But if -- I don't want to finish the
20 day just having done Issue 4 and nothing else.
21 So we'll try to get back to that. That might give
22 everybody incentive to move through Issues 5, 6,
23 7 and 8 in an efficacious manner.

1 So this is Issue Paper 5, Alternative
2 Earnings Appeals. I also want to point out that
3 I'm joined by our counsel for this morning is Brian
4 Siegel. Steve Finley is not able to be with us
5 this morning. He'll be back this afternoon. So
6 I want to thank Mr. Siegel for joining us.

7 Issue Paper 5 is DE Alternate Earnings
8 Appeals. I'll read this and then I have some
9 comments about it. We proposed to change the
10 minimum threshold from 30 to 10 students with
11 respect to the number of students. SSA data is
12 needed for the Secretary to calculate DE rates.

13 We propose to eliminate alternate
14 earnings appeals in favor of appending
15 notification language found in 668.401(b)(1), to
16 include a disclaimer informing potential students
17 that the DE rates measure could be affected if a
18 significant number of program graduates
19 under-reported earnings such as tip income, or were
20 self-employed, and had business expenses that
21 reduced the earnings being reported.

22 What you see here, and you know, we can
23 -- the first part of it we don't have very many

1 changes at all, just again striking GE for
2 educational program, and then on page three talking
3 the SSA earnings, the changing from 30 to 10. But
4 the big part of this obviously is, if you look at,
5 and again after admonishing all of you to number
6 your pages, what didn't I do, number my pages.

7 On page five, where you see 668.406 has
8 been reserved, and that reflects what we said in
9 the -- what I just said in the comments, that we
10 are -- we had proposed striking appeals language
11 in favor of the appended notification language.

12 However, I think that, given what we
13 said yesterday, where I think we got to yesterday
14 with -- what should I say, not consensus obviously
15 but some general agreement in moving in the
16 direction of what's called an administrative
17 sanction, where we would look at debt to earnings
18 and then repayment rights. So one thing that does
19 is when we did these, this paper here, it was based
20 on the -- predicated on the assumption that there
21 would be no -- that we would not have any -- there
22 would be no sanctions. There would be a
23 disclosure-only environment.

1 opportunity to appeal the way we currently have
2 the appeals in place, to appeal the SSA earnings
3 using alternative earnings based on a survey? You
4 might recall that in the first issue paper we did
5 going back to December, we had proposed -- at that
6 point we had proposed retaining the, I think, the
7 appeals.

8 We'd come up with an idea of -- because
9 let's be honest, and I think anybody around here
10 who did any of the appeals would agree with me,
11 that was not an easy process. It was not clean,
12 it was expensive, it was convoluted and no matter
13 what we did with these rules, I think we want to
14 move away from that.

15 So we had proposed the idea of, rather
16 than us putting out the much loved Regis survey
17 tool, that we would -- we would allow -- we would
18 have institutions conduct the survey and then,
19 rather than under the current rule, send it to us
20 and we would evaluate the survey, we would have
21 institutions conduct the survey, come up with the
22 results. The survey would have to be -- still have
23 to be attested to by -- in your annual audit. So

1 there's no way to get away from the attestation.

2 The way I look at our rules, and Brian can correct
3 me if I'm wrong or maybe our IG people.

4 But whenever we're having -- whenever
5 we're having an auditor look at something you've
6 done to confirm that you complied with a federal
7 rule, it's got to be at the attestation level.
8 So it can't just be a review. It's got to be an
9 attestation. So there would be no way around that.

10 You'd have to have an attestation of your survey,
11 but it wouldn't be sent to us for review.

12 We would in a sense be accepting that
13 it was done correctly, and then once it was --
14 once the non-federal auditor had looked at it as
15 part of your annual audit, then it would
16 become -- then it would be final. So that's just
17 something we proposed before.

18 I just want everybody to keep that kind
19 of in mind, that system for doing it. Should you
20 want to insist that we go back to having appeals
21 for Social Security earnings, or would you be --
22 since we're talking about this system yesterday,
23 where if you didn't meet the debt to earnings

1 threshold and then the repayment rate was also not
2 good enough to make you pass, but we went into that
3 second look the Department would take, you know,
4 second tier, thank you, based on other elements.

5 Would that be adequate for an appeal?

6 So I just throw -- I'm not saying I have an opinion
7 or we have a position. I just want to throw all
8 those things out there and then hear what you have
9 to say about that. So I'll shut up and let you
10 do that.

11 MS. MILLER: Okay, Jennifer Blum.

12 MS. BLUM: So I thought a lot about this
13 last night too, and actually on that second piece,
14 Greg, that you just said, that's what I was going
15 to propose, which by the way, without going into
16 too much detail on Issue 5 now, I would actually
17 suggest that Issue 5 and Issue 4 are pretty closely
18 linked.

19 So I'm not sure how -- it's a little
20 heard to do that. So what I would propose or what
21 I would have thought of last night is that the
22 appeals, and we can still -- I think we should still
23 have the conversation about earnings appeals,

1 because we actually had some success with it in
2 the last rulemaking.

3 So I don't want to take it entirely off
4 the table, but I do think of the second tier
5 metrics as, in effect, it's an appeal. So when
6 you think about what we're doing in terms of the
7 issue papers and the regulatory framework, I sort
8 of envision a section of the regs which is really
9 in Issue Paper 4, of the debt to earnings and the
10 loan repayment piece, and then Issue Paper 5 becomes
11 the second tier review, which is really an appeal.

12 And then that's where we would outline
13 what those possible other metrics for
14 consideration, you know, by the Department would
15 be. I would also encourage, and I know Chris
16 brought this up, that in this same section new Issue
17 Paper 5 language, we put some time frames and due
18 process around it.

19 So I would also add that in this,
20 because we talked about that yesterday and this
21 is where I would add that piece as well. So I didn't
22 write anything up, but mentally in my mind, I was
23 thinking about the next issue paper, and that's

1 how I would approach this.

2 I would just say that if others agree
3 with that, then I would propose, which I know might
4 screw things up for the facilitators, I think it
5 is really difficult to then get into a detailed
6 discussion about what those metrics are, without
7 first establishing a little bit what the debt to
8 earnings and LRRs are.

9 And so especially if we do an
10 institutional DTE. So I would -- in thinking about
11 if we agree on that framework, I would then propose
12 that the continued conversation of Issue 4 and Issue
13 5 are a little bit blended. So I would say that
14 we jump to 6, 7 and 8 and come back to 4 and 5,
15 because I think that they kind of live together.

16 MS. MILLER: Sandy.

17 MS. SARGE: This is Sandy. I had a
18 question on -- I had a question and then a comment.

19 On page four, at the bottom of page four, you have
20 underlined based on the program information
21 provided to SSA. I'm not, I don't think I know
22 what that means. Could you elaborate on that, and
23 then I have a comment after that.

1 MR. MARTIN: Okay. This has to do with
2 -- this is the challenge. This is just challenging
3 the accuracy of the loan debt information, right.
4 The Secretary used to calculate the median loan
5 debt. The same challenge. The Secretary does not
6 consider any objection to the mean or median annual
7 earnings that SSA provides the Secretary.

8 Just clarifying, based on the program
9 information provided, if it's based on the program
10 information that we provided to SSA. So it's just
11 saying that we're not --

12 MS. SARGE: What program information
13 is provided to SSA, I guess is what I'm asking,
14 because isn't it -- what's provided are the numbers,
15 the Social Security numbers in the folks in the
16 cohort and then here's this cohort is one, give
17 us that. Do they get any program information at
18 SSA?

19 MR. MARTIN: No, they get the list that
20 we provide -- that we provide to them.

21 MS. SARGE: Right, okay.

22 MR. MARTIN: So it's just clarifying,
23 I think it's a clarifying statement there. I can

1 -- you know, I'll check with my people just to make
2 certain exactly why we clarified that.

3 MS. SARGE: Okay.

4 MR. MARTIN: So I want to make that
5 clear.

6 MS. SARGE: And then with regard to the
7 -- I appreciate -- I really do appreciate the effort
8 that the Department made in the qualifying
9 statement you added regarding tips and
10 self-employment.

11 However, I think we miss a point about
12 Social Security data that I still feel very strongly
13 about, which is that we have no guarantee that it
14 represents actual 12 months' worth of work, and
15 those -- and a student or a borrower choosing, or
16 for whatever reason may be not a choice, who could
17 not work or did not work for 12 months, make the
18 denominator and the numerator two different units
19 of measure potentially.

20 So I just want to throw that back out
21 there, that we don't lose sight of it, that the
22 qualification is not just about under-reporting
23 tips and stuff. There may be legitimate reasons

1 why people don't work for a whole year in the periods
2 in which we are measuring. And then is that --
3 so if you're in that situation, does the DE ratio
4 really tell you whether or not that person has the
5 ability to repay that debt if they're not working
6 for the whole year? So that's another big issue
7 on the denominator. Thank you.

8 Oh, and I agree with Jennifer's points
9 completely.

10 MS. MILLER: Okay. So we're going to
11 go through the queue and then we'll go back to the
12 temperature check on Jennifer's proposal. So
13 Tony.

14 MR. MIRANDO: Tony Mirando, thank you.
15 So based on some of what my colleagues mentioned
16 today and over the week and even some of the
17 statements I have made, what I'm concerned about
18 and I'm not an attorney, but I would think that
19 even without -- even with this disclosure, that
20 this would potentially bring up a due process issue,
21 that if a school is being mandated to put something
22 as a disclosure that's insinuating or referencing
23 that they're failing something, and the data that's

1 used in order to determine that is flawed data,
2 couldn't that potentially be an issue for whatever
3 the reason may be.

4 Even with a disclosure, one could still
5 say that that could be a detrimental disclosure
6 that isn't, you know, for lack of a better word,
7 fair to the institution because their program is
8 a good program. And whether or not we come up with
9 a second tier of metrics that could potentially
10 get them out of having to have that disclosure,
11 one could say well, you know, what happens if I
12 don't meet those other metrics compared to another
13 institution who may not also meet that metric.
14 But because they have programs that are all W-2
15 programs, they're being more fairly measured when
16 you look at oranges to oranges or apples to apples
17 on this.

18 So that's one of my concerns that I
19 think we should at least consider here.

20 MS. MILLER: Thank you. Johnson.

21 MR. TYLER: Thank you, Johnson Tyler.

22 I have a clarifying question really is, if you
23 don't -- under the matrix we created yesterday,

1 there was a two-step thing. There was debt to
2 earnings and then repayment rate. If you failed
3 the debt to earnings but passed repayment rate,
4 there would be no consequences. There's no
5 publication or anything like that, is that right?

6 MR. MARTIN: Yeah. I think that's,
7 that's on the table. I mean you know, certainly
8 we would have the -- we would have the debt to
9 earnings rates. We publish those now. If it would
10 be -- I think it certainly would -- it would probably
11 make a difference to schools if we published those
12 rates irrespective of whether somebody, quote,
13 fails ultimately or, you know, I'll say that, or
14 gets to the point where there could be program
15 sanctions. Let's put it that way.

16 So let's just say that the -- because
17 the debt to earnings could still be failed. That
18 portion could still be failed, but then they pass
19 repayment rates, fine. But the debt to earnings
20 is still what it is and would be published.

21 So that's one of the questions I have,
22 how the, you know, potentially how would a school
23 feel about a program where we're not saying we have

1 any problem with the program because of the way
2 we're looking at the rates, but that rate would
3 still -- would still be out there and I guess
4 somebody might think it could be perceived as
5 pejorative therefore, and say well but if I don't
6 feel that those earnings used to determine that
7 DE rate represent the true earnings of my students.

8 Would I still want the right, even though it's
9 not going to affect, it's not going to have any
10 programmatic effect, would I still want the right
11 to appeal that, if for no other reason than to have
12 that -- to have that debt to earnings figure
13 changed. That's the question.

14 MR. TYLER: If I can just follow up,
15 I think maybe one of the follow-up questions to
16 think about is if someone were to appeal that and
17 you're using Social Security data, and they're
18 saying well look at all the licensing, look at all
19 the whatever, all this other criteria, what gets
20 published after that appeal?

21 Is it going to be left as N/A because
22 no one can agree on what it is? Because that's,
23 that could be equally pejorative and perhaps maybe,

1 you know, this is not something that's worth having
2 that sort of appeal rate on. Maybe it should go
3 through the other -- there has to be some
4 consequence other than disclosure.

5 Disclosure is a different right than
6 taking away your Title IV money. It's just a
7 condition perhaps.

8 MR. MARTIN: I think that's what we're
9 here to discuss. Given the framework we came up
10 with yesterday, is it necessary -- to what extent
11 do any of you here feel it's necessary to put that
12 language back in, allowing for an appeal of an
13 alternate earnings appeal, to say that you know,
14 that the Social Security earnings are not
15 reflective of the students in this program's
16 earnings. Therefore, I want to do the appeal, put
17 the appeal back in.

18 Understanding that, you know, if you
19 go back to the appeal, there's really no way around
20 doing the survey. All the statistical things we
21 talked about yesterday would be applicable, and
22 for those institutions who have done them, there
23 is some cost involved in the attestation and getting

1 a CPA to attest.

2 So all those things are there. So I
3 don't think anybody would want to do it frivolously.

4 But do schools still want the option? That's the
5 question we're asking.

6 MS. MILLER: Okay. Tony.

7 MR. MIRANDO: Yeah. So I can see, I
8 can see both sides of this being an issue, and then
9 just again trying to neutralize real concerns, real
10 problems. This is obviously not for the bad
11 apples. I mean obviously they're never going to
12 be able to provide adequate information to the
13 Department that's going to make them feel, okay
14 we get it. I'm talking about real programs that
15 are good and yet because of the disclosure piece
16 here, that their graduates may be self-employed
17 or they're getting tips or whatever, part-time,
18 whatever the issue is.

19 Can we, you know, at least put on the
20 table that the disclosure piece would have a
21 non-detrimental, you know, verbiage, you know.
22 Maybe instead of saying failing, which again has
23 a negative connotation to it, we could say, you

1 know, something like this metrics could not be
2 determined for whatever this reason.

3 So it has a neutral effect, not
4 necessarily a negative effect, not necessarily
5 getting a pat on the back that you're meeting it,
6 but some neutral effect which would limit or
7 minimize a negative connotation to an institution
8 that's doing an amazing job.

9 MS. MILLER: Laura?

10 MS. METUNE: I think I need -- I have
11 a different comment, but I wanted to ask about this.

12 So what you're saying Tony is if a school fails
13 debt to earnings potentially because they have this
14 high, students have high level of tip income but
15 they've passed the other metric, they should have
16 a neutral disclosure because we're just going to
17 believe that the students have the tip earnings
18 or --

19 MR. MIRANDO: No, I wasn't even saying
20 that. I'm saying let's make believe it's me. I
21 have a good school. I'm doing a great job.
22 Students are coming in and getting them educated
23 and getting them a license to go prepare them for

1 gainful employment, which was what my job was.
2 But because of the type of work that they do, their
3 earnings, you can't control what they do, it's not
4 necessarily a clear reflection of what they're
5 actually making.

6 The Department comes up with this
7 disclosure I've got to put on my website, which
8 has a negative connotation to it. Regardless of
9 whether or not, and this is just me personally.
10 Regardless of whether or not I may meet one of these
11 other pieces to the puzzle, just again from my point
12 of view why should that institution have that
13 negative stripe against them?

14 And so is there a way that we could then
15 say well based on the fact that you're in one of
16 those zip codes that a majority of your individuals
17 are in this group? Everybody would come to a
18 conclusion that their -- what they're reporting
19 has a potential not to be accurate. And again,
20 I'm being very careful how I say that, you know,
21 because I don't want to make any
22 mischaracterizations of people.

23 MS. METUNE: Right.

1 MR. MIRANDO: But these are real
2 issues.

3 MS. METUNE: I hear what you're saying,
4 and I totally understand the institutional
5 perspective on that. I also though think as a
6 taxpayer I might want to know if an institution
7 or a program is leading to a whole group of people
8 not correctly filing taxes. As a student I might
9 want to know that this might lead to a job where
10 I don't file my taxes legally.

11 So I'm just, you know. But my actual
12 comment was about --

13 MR. MIRANDO: Oh that one, okay.

14 MS. METUNE: -- was about this -- it's
15 a little bit hard to comment on this piece with
16 so many other things left unresolved. But one of
17 the things that continues to come up from the
18 Department is this issue around capacity and the
19 Department's ability to conduct all of these
20 activities. The more levels we make in this
21 process, it seems like the harder it's going to
22 be for the Department to actually do this.

23 And so I just, I'm not sure if you've

1 thought through a little bit, like what kind of
2 a process would be something the Department could
3 actually accomplish, and maybe it's just a comment
4 to say I hope that when we come back for the third
5 week that's reflected in what we look at.

6 MR. MARTIN: A couple of things here.

7 I want to clarify something about -- it's true
8 that what we used to call warnings now are called
9 notifications. It's kind of a disclosure but it's
10 kind of different, right? You never disclose in
11 your disclosure template we failed, you know.
12 That's not what's on the --

13 Remember that currently if you are --
14 what's the warning? The warning, which you have
15 to include on the disclosure template the way it
16 is now, the way it's worked, but it's a warning
17 that the program is in danger of all those things.

18 So think about this. If you pass, you didn't pass
19 the DE measure but you did pass the repayment rate,
20 if that's where we go.

21 So then you wouldn't be posting a
22 warning because your program would not be in that
23 level, right? And then turn around to the

1 disclosures, you would be disclosing median
2 earnings, and that might be something you want,
3 you know. There would be no context around that
4 in median earnings, but you might want to say well
5 I don't, these don't reflect what I feel. So that
6 would be maybe why you want to appeal.

7 Now going to your question, what has
8 the Department done about our capacity? Well, we
9 are reviewing the current -- currently reviewing
10 appeals. What we kind of had thought of was taking
11 the Department out of the business of reviewing
12 all these appeals. That's what I talked about
13 before.

14 So let's just say, Tony wants to say
15 well, you know, these earnings are not reflective
16 of my student earnings. I want to do the survey,
17 and I want to survey students and show that the
18 earnings are different. So then conduct that
19 survey, right. He has to conduct that survey
20 according to maybe the standards we put out or
21 generally recognized statistical standards for
22 conducting surveys.

23 Then that would have to be attested to

1 as part of his non-federal audit. So the auditor
2 would be required to look at that and attest to
3 it. He would be required to pay for that, and then
4 we could look at what the Department would do in
5 response to that survey. But that's kind of what
6 we -- where we saw that going if we were going to
7 retain the appeal.

8 MS. MILLER: Jeff.

9 MR. ARTHUR: Yeah. I think this
10 highlights the importance of a really sound metric
11 base for this, that if we use really sound logic
12 to set the metrics, debt to earnings, repayment
13 rate, whatever by program across higher ed, that
14 this will really minimize then. If we're truly
15 identifying outliers, we will minimize the need
16 to have this burdensome appeals process.

17 Otherwise, if we don't do that, then
18 you're going to have certain programs, certain --
19 if we get to the graduate level there are certain
20 programs where people earn very little at the start.

21 We're going to have programs where half the
22 institutions or many institutions are going to need
23 to initiate appeals if we use a one-size-fits-all.

1 MS. MILLER: Daniel.

2 MR. ELKINS: So a couple of things.
3 I think that transparency of labeling, you know,
4 high debt, low debt, high earnings, low earnings
5 is not necessarily pejorative, although people
6 might think that it is. I think it's just honest,
7 and I think that students and taxpayers and people
8 have a right to know.

9 That being said, within the two-step
10 process we're talking about or whether we call that
11 an appeals or not, I do think that there's a lot
12 of people here who would also say that this one
13 size metrics to fit all, it doesn't allow for the
14 idea of an exception to policy, if you will, so
15 compelling needs.

16 For example, if this were to be applied
17 to public institutions with, you know, teaching
18 programs, that it might be honest to say that at
19 first it's going to be a, you know, high debt low
20 earnings. But there might be a compelling need
21 in the state, let's say the state needs teachers.

22 So for that program to then have sanctions, which
23 is I think what we would like if these programs

1 don't meet that metrics, they fail the two things.

2 It goes to an appeal.

3 An institution should have the right
4 to fight to say that those metrics are incorrect.

5 But in some cases they will be correct. But that
6 doesn't mean that there should be sanctions. So
7 there should still be a way to have some sort of
8 exception to policy on a case-by-case basis from
9 the Department.

10 MS. MILLER: Christopher Gannon.

11 MR. GANNON: I have some issues with
12 talking about yesterday's discussion as reaching
13 consensus or agreement. I think that we heard some
14 ideas and took some temperature checks on those
15 ideas, but we did not reach any kind of agreement
16 or consensus on those ideas.

17 MR. MARTIN: This is Greg. I didn't
18 mean to characterize that as consensus. I just
19 was trying to find the words, some sense of where
20 we might go, because that -- is that acceptable
21 to everybody? To the extent that I intimated
22 consensus, I heartily apologize for that. I didn't
23 mean to do so.

1 MS. MILLER: Thank you. Jordan.

2 MR. MATSUDAIRA: I think my comments
3 echo what Laura was saying about just crafting a
4 rule that the Department can actually administer
5 and, you know, one of the reasons that I thought
6 that having this two part metric for establishing
7 which programs would be, you know, potentially
8 triggered into sanctions or whatever the next step
9 would be, of having both debt to earnings and
10 repayment rate is that in a sense the repayment
11 rate would be kind of a presumptive appeal if you
12 want to put it that way.

13 But you know, to the extent that debt
14 to earnings doesn't measure your sector well, then
15 repayment rate is the kind of backstop against those
16 sorts of problems. So I guess, you know, I was
17 hoping that having a repayment rate as that kind
18 of backstop might avoid some of the complications
19 of this kind of appeals process that we're talking
20 about now and doing all the kind of earnings surveys
21 and that sort of thing.

22 So I guess I'd favor an appeals process
23 that was a little bit more limited to kind of

1 technical issues that might make both of those
2 metrics problematic.

3 MS. MILLER: Thank you. So we have
4 Mark McKenzie, Christina, David, Steve Chema, Jen
5 Diamond and then Neal, and then I would like to
6 get back to the proposal that Jennifer Blum put
7 up. So let's go with Mark McKenzie.

8 MR. MCKENZIE: Great. This is Mark
9 McKenzie. I'll try and make it short. Concern
10 I guess. I'd just bring it back to using any metric
11 that's not an accurate measure. So the debt to
12 earnings, what I understand I think from Sarah the
13 other day is that by moving from 30 to 10 is going
14 to significantly increase the potential negative
15 impact to schools, and there's not a statistical
16 reliable way to measure that.

17 So when you increase your -- the number
18 of schools that may be impacted by this, what's
19 that actually going to -- what's that number going
20 to look like? So the risk is that you're actually
21 putting out false information about good schools,
22 which damages not only schools but the students
23 at those schools.

1 So it's a real challenge and clearly
2 you want to reduce burden, but you also want to
3 make sure you're using accurate information.

4 The other thing that I kind of picked
5 up on, I think Sandy said this earlier, is that
6 the disclaimer starts out almost with the negative
7 by implicating that in certain areas, program
8 graduates are under-reporting earnings. You also
9 have probably as much impact by the self, those
10 that choose to be self-employed. But those that
11 are making choices, either personal choices by
12 family, circumstance or to not work full-time.

13 So I think the disclaimer language
14 would need to be worked on a little bit if there's
15 going to be disclaimer language that intimates that
16 there's also personal choice that could be
17 impacting this. Clearly, we don't want to -- we
18 don't want to hide the fact that there are
19 under-performing institutions that this is a
20 problem. That's not it at all, but we also don't
21 want to penalize, you know, create a penalty where
22 we can avoid it.

23 So you know, when it exists, I think

1 what Chris was saying the other day of actually
2 having an institution come back. It's like okay,
3 if you don't meet these metrics, you have to
4 actually explain in the disclosure how you, you
5 know, how your students are dealing with that.
6 I don't know whether that's through the appeal
7 process or not. So I'll stop there.

8 MS. MILLER: Thank you. Greg, did you
9 want to respond to that? It's okay if you don't.

10 MR. MARTIN: No. The point's taken.

11 I don't think there's anything I need to say about
12 that.

13 MS. MILLER: Okay. Christina, then
14 David.

15 MR. MARTIN: Sorry I had my thing up.

16 That's why you asked me that question. I'm an
17 idiot. Thank you.

18 MS. MILLER: Thank you.

19 MS. WHITFIELD: This is Christina.
20 This question may be premature, but I'm wondering
21 Greg if you can give us a sense of what proportion
22 of the failing programs of those that were eligible
23 to conduct the survey did, and how many of them

1 were successful?

2 MR. MARTIN: We have that information,
3 but while I can't tell you how many were successful
4 because we haven't adjudicated the appeals yet,
5 under the current -- under the current system, the
6 appeals come to us and they have to be -- it has
7 to be an attestation from the CPA. We're in the
8 process of adjudicating them now.

9 I cannot tell you what the rate of
10 approvals will be. At the break, I can check with
11 some of my people from FSA, my colleagues there.
12 Cynthia can tell me probably how many -- remind
13 me of how many appeals we've had or what those
14 percentages are. So I think I can get that
15 information. What I cannot give you is what the
16 rate of approvals or denials are.

17 MS. WHITFIELD: I just think that would
18 help us. If we have that information, it would
19 be helpful to sort of put a scope or scale on how
20 many of these -- to what extent is this really the
21 case, that they're able to document this tip income.

22 MR. MARTIN: Right. Well again, we
23 don't know how many formal -- it will be awhile

1 before we have that, you know. It's not going to
2 happen either during this session I can tell you,
3 or during the next.

4 PARTICIPANT: Do you have an
5 expectation on when it would be completed?

6 MR. MARTIN: I hesitate to give a time
7 frame for that. Part of the problem with that is
8 that we in some cases can just say that this is
9 good and we can prove it. In many cases where we
10 have some issues, it's we need more information
11 from the schools. We have to go back and sort of
12 get more from them. So that process could take
13 longer than you might think.

14 I don't know any other way of getting
15 that. I mean you could ask people who have
16 submitted them anecdotally what they found in their
17 surveys, but that would just be coming from them,
18 and we would not have approved those yet.

19 MS. MILLER: David.

20 MR. SILVERMAN: I have a question
21 regarding the earnings. I think we offended some
22 people last time by saying people are fudging their
23 taxes. The earnings is what's reported by the

1 employers to SSA; correct?

2 MR. MARTIN: No, not always. The
3 earnings would -- it goes on IRS data from what
4 people report, what people report to the IRS. So
5 if -- so if an individual is not reporting, you
6 know, a significant amount of income that is tips,
7 then those figures would obviously not reflect the
8 total amount of earnings somebody had.

9 It's true that they're technically
10 violating the law by not reporting those earnings,
11 but then it's also true that their earnings as
12 reported don't reflect the total amount that they
13 made.

14 MR. SILVERMAN: So if you made \$500
15 from some employer as a 1099 and they didn't report
16 it to Social Security, but you reported on -- but
17 they did report that \$500 on their tax return, would
18 that be counted?

19 MR. MARTIN: I would have to check.
20 I believe so. I think it's based upon what
21 individuals reported. Obviously if you 1099
22 somebody, you know, the IRS wants that to check
23 to see that what you -- what you have indicated

1 on the tax returns matches what, you know, what
2 you were paid.

3 I don't know all the IRS protocols for
4 all that, but I am fairly sure that what we're
5 looking at here has to do with what people reported
6 on their income taxes.

7 MR. SILVERMAN: Under 600, you're not
8 required to report for 1099s.

9 MR. MARTIN: Yeah.

10 MR. SILVERMAN: The employer's not,
11 the employer of the employee --

12 MR. MARTIN: I think that's correct,
13 but I think all this is predicated on -- is
14 predicated on what people report on their income
15 taxes.

16 MS. MILLER: Okay, so Jordan did you
17 want to help out with this?

18 MR. MATSUDAIRA: Yeah, I just want to
19 clarify. I imagine somebody can confirm, but Greg
20 I don't think that's right. I think the earnings
21 that are on both gainful employment and the College
22 Scorecard are coming from W-2 reports from the
23 employer. So they also add in Schedule SE

1 self-employment earnings which are self-reported
2 to the extent --

3 (Simultaneous speaking.)

4 MR. MARTIN: Okay. Well I'll make
5 sure. I'll make sure I get that correct.

6 MS. MILLER: Tony, one last point on
7 this?

8 MR. MIRANDO: Yeah. Just again for
9 somebody who's been in private practice, I can say
10 when you're starting up a business which again is
11 reflected here, and again in the schools that we
12 predominantly accredit, a good majority of the
13 people are kind of going out on their own, and for
14 your first year or two, you're buying all kinds
15 of equipment. You're buying, you know, to get
16 yourself into business can substantially reduce
17 your net income reported to the government.

18 And so again, it's not an accurate
19 reflection of how much income they actually earned,
20 but it more reflects them being an entrepreneur
21 and wanting to go into their own business.

22 And as anybody who's started their own
23 business, that may not be pretty high for the first

1 couple of years, as you're kind of establishing
2 your own practice. So again, it's important to
3 understand those pieces to the puzzle.

4 MS. MILLER: Thank you, Tony. Okay,
5 so David wasn't quite done, and then we'll go to
6 Greg.

7 MR. SILVERMAN: So Tony, so the -- if
8 you had a Schedule C, which is self-employed income,
9 the income that is getting reported to SSA for this
10 is after expenses?

11 MR. MIRANDO: Again, if you're --
12 again, I'm not an accountant here, but I would
13 assume the number that's being reported is your
14 income, is the end -- the end number.

15 MR. SILVERMAN: Does the Department
16 know that? It really should be gross income,
17 because someone on a W-2 is all on gross income.

18 They don't get any of their expenses. But if
19 you're Schedule C, you made \$1,000 and you have
20 500 of --

21 (Simultaneous speaking.)

22 MR. SILVERMAN: Then they'd only be
23 showing 500.

1 MR. MIRANDO: I'm assuming you're
2 paying taxes, and again I'm not --

3 MR. SILVERMAN: You're paying taxes on
4 the net, correct.

5 MR. MIRANDO: You're paying -- that's
6 exactly right.

7 MR. SILVERMAN: But what's being
8 counted for -- I'm asking, I'm sorry. I'm not
9 asking you. I'm asking the Department. So if
10 you've got a 1099 for \$100,000 but you wrote off
11 50, is the 100 being counted or is the 50?

12 MR. MARTIN: I was -- we're using --
13 it uses both W-2s and self-reported income. So --

14 MR. SILVERMAN: But is it gross or is
15 it net, because people are writing off cars and -- as
16 they should --

17 MR. MARTIN: I'm not -- I am not a tax
18 expert. So what I'll do is I'll take this back.

19 To the extent that I can get those questions
20 answered for you, I'll come back and make certain
21 that what we say here is correct.

22 (Simultaneous speaking.)

23 MS. BUCK: Okay. So that question can

1 be answered later.

2 MR. SILVERMAN: So you know, bottom
3 line is then schools that not only have tip income,
4 that have -- that have a lot of students that become
5 private businesses or 1099 or Schedule C, we're
6 going -- and performing arts has both, of course,
7 we're going to need earnings appeals, because --
8 and I found, because we did the appeal and we were
9 successful in moving the needle.

10 For reasons like this, you know,
11 especially if there's going to be sanctions or even
12 disclosures which will make us lose students, we
13 are going to need some kind of earnings appeals,
14 because I've already found as a fact that there's
15 more income there that -- not that people aren't
16 reporting, but they're being able to write off and
17 there's more money being made than what's being
18 counted.

19 And that hurt my school, and when we're
20 at 8.01 and a 7.99 is passing or failing or telling
21 students we're failing or something like that, it's
22 extremely important.

23 So I'd ask a lot of these people to make

1 sure we leave the appeals on the table, as well
2 as until we know what the metrics are and what's
3 an 8.0 and what's passing and what's failing and
4 what's unperforming, especially we have to tell
5 people please leave their earnings on the table.

6 Thank you.

7 MS. MILLER: Okay. Steve Chema.

8 MR. CHEMA: Like David, I have some
9 familiarity with the challenges of putting together
10 an effective earnings appeal, and as Greg said all
11 the work, time and expense that goes into it. So
12 in spite of all that, I find it a little ironic
13 that I'm not ready to let go of that process.

14 I mean I think what Jennifer proposed
15 earlier is reasonable as a concept, but you know,
16 part of what gives me some hesitation is going back
17 to the N size, you know. Greg, when we introduced
18 the concept initially, your comments on the scope
19 paper were that in a sanctions or in the absence
20 of sanctions or in a disclosure-only world, N equals
21 10 is understandable.

22 Is your thinking still that way, given
23 the potential framework we've talked about?

1 MR. MARTIN: I think it's on the table.

2 I don't think, you know, that was what we proposed,
3 is on the -- whether or not to stick with that and
4 30 is something we would -- we'd entertain comments
5 about.

6 MR. CHEMA: Yeah. I would just say
7 that, you know, to the extent that we eschew an
8 earnings appeal structure in favor of, you know,
9 other factors at a Tier 2 approach, you know, the
10 potential for swing that we saw year to year with
11 those small cell sizes worries me. I think we'd
12 be going through a lot of iterative processes
13 potentially when, you know, you might not need to
14 at that sample size.

15 MS. MILLER: Jen Diamond.

16 MS. DIAMOND: Yeah. I just wanted to
17 echo what Jordan said about the repayment rates
18 maybe solving some of these concerns as a backstop,
19 but also just to build on Laura's question from
20 earlier about capacity. In terms of the appeals
21 you were discussing before Greg, just a clarifying
22 question.

23 Is there then capacity to review that

1 survey work, etcetera, to ensure that it's not just
2 taking the institution at their word for what
3 they're reporting on?

4 MR. MARTIN: Well okay. We're talking
5 about what's currently, right? The structure is
6 such that the appeal that gets submitted to us.
7 It's attested to by a CPA, so they're looking at
8 did the -- was the appeal conducted according to
9 NCES standards, right? So the auditor attests to
10 that. We get it. But still have to -- we still
11 have to approve the appeal currently.

12 You don't see this language there
13 because we took the appeals out, but we had this
14 thinking that to move to a smoother system that
15 you're talking about the Department's capacity,
16 and I just jokingly say we were thinking of taking
17 ourselves out of the game regarding capacity.

18 Which would mean that the auditor
19 attests to it, right, under the audit, and that
20 we would -- we're thinking, just thinking that there
21 could be a tentative acceptance of those revised
22 figures until such time as the audit becomes final,
23 and then accepting the CPAs attested to, you know,

1 figures and not having it, not having a system
2 whereby a school submit these to us and we
3 adjudicate them, which is really where the capacity
4 comes in and the time, and the length of time it
5 takes to adjudicate all these.

6 So that's what we were thinking of.
7 I agree with you. Under the current way we do it,
8 if you expanded this to all institutions and all
9 programs and you had a huge increase in the number
10 of appeals, it probably could stress our capacity
11 to look at all of them, yes.

12 MS. MILLER: Neal.

13 MR. HELLER: Good morning. This is
14 Neal. Well, the Department has in the past put
15 language in the preamble to the original gainful
16 employment rule which spoke specifically to the
17 cosmetology and beauty-related sector and those
18 zip code programs, in that they accepted the fact
19 that there was under-reported or unreported income.

20 And yet when the rule came out, there
21 was nothing that allowed these schools to have some
22 sort of exception, and it was just you're going
23 to be treated like everybody else, even though we

1 know you're not like everybody else. So today or
2 in this session, the Department has graciously
3 provided us with a disclaimer, which again alludes
4 to the fact that we pretty much know it's an accepted
5 practice that in these particular programs, there's
6 going to be under-reported or unreported income.

7 So I guess what I would ask is why can't
8 we instead of using that language, just come up
9 with specific zip codes, where we know it's an
10 accepted practice, whether or not the state of
11 California likes that or not. It just is, and then
12 put some sort of a factor in which increases those
13 earnings. So let's say it's a factor of 25 percent
14 or 30 percent, whatever the factor may be.

15 Now you may think that's a high number,
16 but if you just look at a tip, a \$20 haircut, a
17 20 percent tip is \$4. But that \$4 is against \$10
18 of reported income, because typically it's a 50
19 percent split. So that's a 40 percent increase
20 in that person's reported income. It's very
21 significant.

22 But again, instead of language, why not
23 be specific and offer some sort of factor so that

1 we don't have to worry about having an appeals
2 process? Which is a very difficult process, as
3 everybody is very much aware.

4 Secondly, in terms of repayment rate
5 being the, you know, the alternative if you will,
6 you know again, our student predominantly is a low
7 income student. They have the option of choosing
8 an income-based repayment rate.

9 And yet you're going to hold that
10 income-based repayment rate against us. That's
11 not fair. I mean we know the students we serve.

12 You know the students we serve, and there has to
13 be something put in there as some sort of an
14 exception or something that at least takes into
15 consideration that there's nothing wrong with an
16 income-based repayment rate if that is what the
17 federal government is providing.

18 It shouldn't be held against the
19 school. Anybody who again is under-reporting
20 their income and now is eligible for an income-based
21 repayment rate is going to choose the income-based
22 repayment rate, and we are the ones who suffer.
23 Thank you.

1 MS. MILLER: Okay, thank you. So I
2 have Jen Blum and then Ahmad, and then I do want
3 to get back to the proposal that Jen Blum had put
4 on the table. So Jen.

5 MS. BLUM: Well, it's a good segue from
6 what Neal just said, because I actually wanted to
7 say with regard to Jordan that I support definitely
8 the pursuit of looking at loan repayment. But I
9 just want to be really clear that it's not a
10 backstop. It's an alternative metric to measure
11 how the program's doing.

12 But as you yourself said when you
13 discussed the data yesterday, they're actually
14 complementary. They're not measuring the same
15 thing at all. So it doesn't resolve -- I mean just
16 to be clear, I agree with a lot of people here that
17 it doesn't really resolve the debt to earnings
18 question.

19 So I also want to clarify, because
20 Steve, you know, I know what you meant. But I just
21 want to be clear. I did start my proposal by saying
22 I still think we should keep the earnings appeals
23 discussion on the table, and so I'm not taking it

1 off the table by the proposal of having all the
2 other metrics, you know, in the mix in the appeals
3 process.

4 So I support actually this conversation
5 on appeal, on earnings appeals. So I just wanted
6 to clarify, just so everybody was clear on that.

7 MS. MILLER: Ahmad.

8 MR. SHAWWAL: Ahmad here. I just want
9 to re-center this, the conversation on the
10 framework that we're potentially exploring. So
11 it seems like we use DE. If that doesn't work,
12 they get a second chance. We use the repayment
13 rate. If that doesn't work, we give them a third
14 chance. They have a second step process in which
15 maybe it's an appeal, maybe we'll call it something
16 else.

17 Whether or not that might include a
18 policy exceptions to that, I'm not entirely sure
19 how I feel about that, but that's something I'll
20 think about.

21 But generally I do want to say that that
22 in itself is a very -- it seems like we're giving
23 institutions a lot of chances there to prove that

1 they are indeed capable and that they are indeed
2 worthy of, you know, or that they indeed have good
3 outcomes.

4 The student delegation, me and Gannon,
5 have been very generous and very patient in this
6 entire process. I'm not entirely sure if I'd be
7 willing accept anything that pushes that bar
8 further off the cliff from what we had discussed
9 yesterday. I assure you the student delegation
10 is not as generous, as you heard from Jocelyn
11 yesterday.

12 MS. MILLER: Okay. So Jen, can you
13 indicate again your proposal?

14 MS. BLUM: Yeah. So my proposal, I
15 mean it's pretty -- so the proposal for now actually
16 is to consider Issue Paper 5 on appeals something
17 that would include, and for continued
18 conversations, the earnings appeal. But that also
19 the second tier of metric analysis would in effect
20 be an appeal process by the institution to the
21 Department on whatever metrics it is that we come
22 up with.

23 With time parameters and Ahmad to your

1 point, with time parameters and due process, you
2 know, notice and comment type due process in the
3 mix, and that that proposal or concept, because
4 it is so really closely tied to what we are
5 discussing in Issue Paper 4, that we move this to
6 a framework conversation together, you know, that
7 the two get joined in a conversation.

8 In the interest of time, we go to six
9 and seven and come back to four and five in a
10 framework that's joint. And can I just make --
11 so on that proposal just Ahmad to your point, but
12 just to clarify, the loan repayment rate in my mind,
13 so just so I'm putting the proposals so everybody
14 understands what I'm proposing, that it's not three
15 stages.

16 So the way it worked in Gainful 1, for
17 example, is the two metrics were produced at the
18 same time. So debt to earnings and loan repayment
19 were produced at the exact same time.

20 So just when you're concerned, and I
21 hear you on the time piece, those were done at the
22 same time. So it's not like an if then, then that.

23 It's -- it is that the loan repayment might help

1 in the process, but there's not a time variable
2 between debt to earnings and loan repayment.

3 So that's -- DTE and loan repayment
4 would be in Issue Paper 4 as or in 1 through 4 I
5 guess in fact. Those would be the metrics, and
6 then the appeals would include potentially an
7 earnings appeal, but also the other Tier 2 metrics
8 and the list of potential steps that the Department
9 could take if they've had findings.

10 MS. BUCK: So Jennifer, I think you're
11 proposing that proposals be made about Issue 4,
12 Issue Paper 4 and Issue Paper 5 together because
13 they're connected. But could we go through 6, 7
14 and 8 before we do that?

15 MS. BLUM: That's what I'm proposing.
16 That's exactly what I'm proposing.

17 MS. BUCK: Okay.

18 MS. BLUM: I'm proposing that we now
19 stop on 5. It's been a really good conversation,
20 but that we stop on 5, move along to 6, 7 and 8
21 and come back, you know, to spend the afternoon,
22 whatever we can on 4 and 5 together.

23 MS. BUCK: And we had originally felt

1 we would go through all the issues before we got
2 to proposals, and I think what you're saying is
3 maybe we can go through them even more quickly,
4 to allow you more time for specific proposals.
5 Would that be okay with people?

6 PARTICIPANT: Yes.

7 MS. BUCK: Okay.

8 MS. MILLER: Let's see a show of thumbs
9 then for Jennifer's proposal.

10 MS. BUCK: To go -- to quickly go
11 through 6, 7 and 8 and then to come back --

12 (Simultaneous speaking.)

13 MS. BUCK: Well, I pray we're going to
14 need to go through relatively quickly in order to
15 leave the time for what you're proposing.

16 (Show of hands.)

17 MS. BUCK: Okay, all right. So I think
18 maybe at this point it is time for a break. Why
19 don't we take a 12 minute break. Ten's a little
20 too tight, and come back at 10:50.

21 PARTICIPANT: Can I just before we --
22 can I propose a consideration? I know this is a
23 pain for the public, but could I propose a

1 consideration of a working lunch?

2 MS. BUCK: So why don't you think about
3 that over the break and we'll come back to that?

4 (Whereupon, the above-entitled matter
5 went off the record and resumed following a brief
6 recess.)

7 MS. BUCK: So let me ask a logistics
8 question. If we're going to quickly go through
9 6, 7 and 8, what about this? What about 40 minutes
10 for 6, 40 minutes for 7, lunch, and then 8, and
11 we could decide at the point at which it's lunchtime
12 if you wanted to do a working lunch or not? You
13 don't want to do a working lunch, okay.

14 But in terms of the time frames I'm
15 proposing, 40 -- doing 6 and 7 before lunch and
16 8 after, how does that sound to people? Let's see
17 thumbs.

18 (Show of hands.)

19 MS. BUCK: And one down thumb. Do you
20 want to comment?

21 PARTICIPANT: Yeah. I don't think
22 we'll need 40 -- I mean I just like we'll do the
23 two of them, but you said 40 and 40 and that's not

1 realistic. Issue 6 is definitely going to take
2 longer than 40 minutes.

3 MS. BUCK: But what would you propose?

4 PARTICIPANT: Well, you said 6 and 7
5 together. I'm not sure 7's going to take much time,
6 because it's reporting and I think there's less
7 of that. So I'm okay. I just want to clarify,
8 I don't think it's 40 and 40. Can we not divide
9 up how we're -- what the rationale of that is?

10 MS. BUCK: You're okay with doing 6 and
11 7 before lunch; you're not okay with saying only
12 40 for 6; is that correct?

13 PARTICIPANT: That's correct, and then
14 I would just --

15 PARTICIPANT: Can we do 7 and 8?

16 MS. BUCK: All right. So well let's
17 go forward with 6 then, and we'll see where we are
18 after 45 minutes, and assess how much more time
19 you think you need. How about that? Okay, very
20 good. Let's go to Issue 6.

21 MR. MARTIN: Thank you. A couple of
22 introductory things here. Social Security
23 reported wages. We are going to be passing around

1 an information page based on that. So I just want
2 to -- you know, what I was trying to say poorly
3 was that yeah, the employer does report W-2s to
4 the IRS. Some are self-employed, some are Schedule
5 C.

6 But that, you know it is -- I guess my
7 point is that it is possible for the employer to
8 report a certain amount of money and for wages not
9 to be -- for that person who's in a tipped industry,
10 but for that individual's -- they look at both,
11 the self-reported and the W-2. So it's still
12 possible for those wages Social Security has to
13 not reflect what the student, what the borrower
14 actually earned in his or her field.

15 But we'll get that information paper
16 out to everybody to clarify that. Regarding lunch,
17 I understand the desire to take a working lunch.
18 I kind of like lunch to decompress a little bit.
19 I don't know what other people think.

20 MS. BUCK: So we're going to address
21 that issue when it gets to lunch time --

22 MR. MARTIN: I'll go with the consensus
23 of the group there, with my preliminary vote against

1 up front. That's no offense to -- no offense to
2 Jennifer. I love you all.

3 MS. BUCK: Okay, very good.

4 MR. MARTIN: Okay. Those who know me
5 and work here know how I'm kind of a fanatic about
6 lunch, it's like, you know. That and iced tea.
7 Those are the only two things in my life that I
8 insist on. Okay. So let's get to -- let's get
9 to Issue Paper 6, Program Information Disclosures.

10 We propose to remove 668.413 and allow,
11 instead allow for the method of calculating loan
12 repayment rates for students' mean and median
13 earnings to be specified through a notice in the
14 *Federal Register*. We propose to eliminate program
15 cohort default rate as a specified disclosure, as
16 well as Subpart R, which describes the methodology
17 for calculating program cohort default rate.

18 We propose to add a disclosure item for
19 a link to any web page containing the state's
20 mandatory qualifications for licensure if a program
21 prepares students for fields requiring licensure,
22 and a link to the institution's page on the College
23 Scorecard. Again, we propose to delete language

1 related to direct distribution to prospective
2 students.

3 So we can go through this briefly. The
4 first part, you'll note again striking GE. We
5 struck any reference to the Secretary, obligating
6 the Secretary to conduct consumer testing. We have
7 taken out references to 413 because we've proposed
8 to remove and reserve 413. I can spend a lot of
9 time walking through all of this, but again, I
10 didn't number my pages.

11 So I'm not going to walk through all
12 of this, but you'll see on page four where we added
13 for programs preparing students for fields
14 requiring licensure, a URL link to any web page
15 containing the state's mandatory qualifications
16 for licensure. We also are requiring a link to
17 the institution's page on the U.S. Department of
18 Education's College Scorecard, or its successor
19 site should that occur or other similar federal
20 resource.

21 You'll see on page five at the bottom
22 under (e), direct distribution to prospective
23 students. The direct distribution is struck, and

1 then a simplification of the disclosure protocols.

2 And at the bottom of page six, seven, you can see
3 where 413 has been removed and reserved. Let's
4 stop there. I'd rather leave more time for
5 discussion than my tedious overview of the paper
6 so --

7 MS. MILLER: Chris Madaio.

8 MR. MADAIIO: Thank you. Chris Madaio.

9 Greg, if I could just ask first why the Department
10 would remove the direct distribution to prospective
11 students?

12 MR. MARTIN: This is Greg for the
13 record. The removal of direct distribution in
14 considering the -- again, part of the effort here
15 with these regulations is to simplify the
16 regulation, reduce the burden on institutions
17 related to disclosures, and in that vein we took
18 out the direct distribution requirements.

19 MR. MADAIIO: Okay, thank you. So my
20 comment, a little bit of, you know, incorporate
21 everything I said yesterday when we were talking
22 about the notifications. But basically this is
23 important information. Obviously, this is why we

1 have this issue paper.

2 That's why we debate what information
3 should go out and just putting it on a website
4 somewhere where a student may or may not see it,
5 or having it in a promotional material again, which
6 may be very early on in a process or may be at a
7 time when a student may or may not ever get that
8 promotional material.

9 I think it is very important that a
10 student actually receives this before they enroll,
11 with the acknowledgments and all the language that
12 also goes along with it, to ensure that it is
13 actually received and it is the only thing in an
14 email, so that it is clear when a student is getting
15 it. We talked a lot about that yesterday, about
16 pre-enrollment disclosures, why they're important.

17 So I just think that ensuring that
18 students get this information is important and
19 should be included.

20 MS. MILLER: Okay. Ahmad, your tent
21 is up. Did you have --

22 PARTICIPANT: No.

23 MS. MILLER: Okay. So Johnson, then

1 Whitney.

2 (Simultaneous speaking.)

3 MS. MILLER: Okay, Whitney.

4 MS. BARKLEY-DENNEY: I second
5 everything that Chris just said about, you know,
6 the direct distribution. I think that's a really
7 important way of reaching borrowers. Again,
8 particularly when we're talking about certificate
9 and associate degree borrowers at certain schools.

10 You know, you might be going to a school
11 because it's what's in your neighborhood or it's
12 where somebody went and were not necessarily again
13 shopping around in a way that bachelor's degree
14 students do or students who have the options of
15 private or public schools. I also wanted to ask
16 why the PCDR was eliminated? Was it a calculation
17 issue, or was it also a simplification issue?

18 MR. MARTIN: Yeah. Again, in looking
19 at streamlining the disclosures and the myriad
20 things in here which were calculations that we had,
21 many of which we hadn't, we didn't do this last
22 time, we can't remember the disclosures, the way
23 the disclosures are set up. It doesn't obligate

1 the Department to -- we're talking about the current
2 rule, to request, to require any particular
3 disclosure.

4 It's a list of what we can disclose and
5 what we can require to be disclosed rather, and
6 we can also request something or require something
7 additional to that list. It was just the
8 streamlining of those -- of those possible items
9 and an acknowledgment of where PCDR stands now,
10 and we didn't see it as something we wanted to carry
11 forward.

12 MS. MILLER: Excuse me, Greg. I have
13 a request. What is PCDR?

14 MR. MARTIN: PCDR is Program Cohort
15 Default Rates.

16 MS. MILLER: Okay.

17 MR. MARTIN: That would be as opposed
18 to when we talk about CDR cohort default rate for
19 institutions, this is a similar calculation but
20 only for programs, individual programs.

21 MS. MILLER: Okay. Thank you for that
22 I know in D.C. we love our alphabet soup, but for
23 some people they don't understand the acronym.

1 MR. MARTIN: That's true. I testified
2 in a court case once in front of a federal judge,
3 and I used the -- they used the acronym FSCOG, and
4 she glared at me and said Mr. Martin, we do not
5 use alphabet soup in this court and I was -- I was
6 duly admonished.

7 MS. MILLER: Thank you. Whitney.

8 MS. BARKLEY-DENNEY: So you know, I can
9 let others weigh in on PCDRs. I do think we're
10 sort in a different place with CDRs than we were,
11 given the myriad of repayment options for borrowers
12 and that repayment at a program level might be more
13 illuminating.

14 But I just want to stress, and I think
15 that this table has in some ways done a better job
16 than others, you know. We're not just talking
17 about streamlining regulations for institutions,
18 but also doing that in a way that protects students
19 and borrowers and taxpayers. I think that having
20 that first disclosure, and that direct disclosure
21 is an important piece of that.

22 MS. MILLER: Jennifer Blum.

23 MS. BLUM: I don't know where to begin.

1 So I didn't know whether to go in order of the
2 regs, and this is a very complicated conversation
3 to have on this issue paper without people having
4 the benefit of seeing the template. So I'm going
5 to try and I'll just start with a couple of examples,
6 and then we can try to get through.

7 So on the disclosure even of the
8 occupational codes that are used for the disclosure
9 of where graduates are employed, I just wanted
10 everybody to know the template pops up and says
11 "program graduates are employed in the following
12 fields."

13 Well actually what the Department is
14 asking for are the zip codes, I mean are -- yeah,
15 zip codes that tied to -- I'm sorry, the SOC codes
16 that tie to the zip codes that are being used for
17 the metric. So it's not an exhaustive, exclusive
18 list of every field that gets -- that a student
19 might get employed in, and if we're extending this
20 and I know I'm probably speaking now for the
21 non-profits too, it's problematic enough at our
22 level. It's really problematic if you extend this
23 to all programs, where the statements, and again

1 that's why it's hard to have this conversation.

2 I don't want anybody to have the
3 impression that I'm not very supportive of the
4 disclosures. It's just that when you then post
5 a statement that says "program graduates are,"
6 which is a very affirmative statement, "are
7 employed in the following fields," and you only
8 fill in, you know, a few zip codes or SOC codes
9 and the list could be endless of the potential
10 fields.

11 And again, this was all developed
12 around gainful, but now we're taking this into a
13 whole different level. So I just wanted to flag
14 those types of issues, where you know, can there
15 be a more expansive list of SOC codes that can be
16 provided, that aren't just tied to the zip codes,
17 or how -- or yeah. It could say "could be
18 employed," but I don't know how the consumer groups
19 feel about that.

20 So I'm just, I'm flagging issues for
21 the Department. I don't have -- I'm sorry that
22 I don't have solutions, but I do feel like it's
23 important to flag these in conjunction with what

1 will actually appear on the websites. And so I
2 don't know. I have -- I mean should I keep going?

3 I'll stop there for a few minutes if anybody else
4 has something.

5 But I then obviously there are going
6 to be some other issues like these.

7 MS. MILLER: Daniel or Greg, go ahead.

8 MR. MARTIN: Yeah. To respond to
9 that, you made some excellent points about the way
10 the template works, and what I can do, I don't have
11 it in front of me now, but the template's published,
12 and actually it's very -- since the way the template
13 works is we give you this template where you enter
14 the -- We don't collect the
15 information. You enter it in and it creates an
16 output that becomes your template. Anybody can
17 go in and play around with it. So as long as you
18 use any kind of -- just put it in your school's
19 OPID, and you can go through the template. Just
20 you could enter dummy information and see how it
21 works. So for those of you that like to see how
22 it would potentially work, I can tell you how to
23 get in there and just -- and do it.

1 MS. BLUM: That's actually a really
2 excellent idea between now and third session. For
3 programs that haven't had to face this, I think
4 -- I would encourage you to spend some time between
5 now and the third session to see, because while
6 you can play around, you actually can't play around
7 too much. So in terms of -- and we'll get to that
8 issue too. It's very limiting.

9 MS. MILLER: Daniel, then Andrew.

10 MR. ELKINS: This is Daniel for the
11 record. When it comes to state licensures and
12 requiring links and whether or not the program and
13 discussion will allow a person to sit for the
14 license, we think it's imperative that the
15 Department disclose that. Many veterans have been
16 recruited to institutions, telling them that they
17 will qualify for a specific program, and be able
18 to sit for that licensure, and then they have been
19 unable to do so.

20 So I do appreciate and understand that
21 that is potentially burdensome to some institutions
22 and/or the Department. However, I think that it's
23 kind of a non-starter for us. Like if you're going

1 to get a nursing degree and you can't become a nurse,
2 I don't think that you should be able to use your
3 eligibility for that program.

4 MR. MARTIN: Yeah, I thank you for that
5 comment. We did add it to the disclosures here,
6 and we also have a discussion of that in
7 certifications as well.

8 MS. MILLER: Andrew.

9 MR. HAMMONTREE: Okay, this is Andrew.
10 I wanted to respond to Chris and Whitney's concern
11 about the direct distribution of the disclosure
12 to prospective students. I think across all
13 sectors, we would agree that students need to have
14 all the information. We want to be transparent
15 and provide students with that information.

16 But I know that this -- the rule that's
17 being struck out here was in the current rules and
18 across all sectors we all went into panic mood when
19 we realized, because included in that is this active
20 confirmation piece, that we just did not know how
21 we could comply with. I heard from a lot of the
22 community colleges, public vocational schools, we
23 don't know how we're going to be able to do this

1 because the way it's written is that we needed to
2 get some type of a piece of paper or an email from
3 every single student.

4 I think Chris or Chad referred to this
5 as like that's a small city. You're going to get
6 thousands of pieces of paper from students before
7 you can actually enroll them. We didn't -- so we
8 know that they're getting the disclosure. We want
9 to go over that with them, but to get that active
10 confirmation piece we just didn't know how we could
11 possibly comply with that realistically, because
12 there's so many varieties in how we enroll students
13 and that was going to create a tremendous burden.

14 I don't have a problem with getting
15 active confirmation on a program that's determined
16 as low performing. I think that might be more
17 important. That might be a good compromise. But
18 to require -- to require that for every single
19 program at every institution, I just don't think
20 that we're -- we're setting schools up to fail on
21 that piece.

22 PARTICIPANT: Could I ask you a
23 question on that? Are you opposed to

1 pre-enrollment disclosures then totally, or are
2 you only opposed to an acknowledgment for the
3 pre-enrollment disclosures?

4 MR. HAMMONTREE: The acknowledgment.

5 I think -- I think for the most part the students
6 are getting them. I don't know that they read them,
7 but I know that they're provided them. That
8 acknowledgment piece, that's where I didn't feel
9 like we could realistically comply with that.

10 MS. MILLER: Kirsten.

11 MS. BARKLEY-DENNEY: Follow-up.

12 MS. MILLER: Well Kirsten was next, if
13 she's okay with you following up.

14 PARTICIPANT: Go ahead.

15 MS. BARKLEY-DENNEY: Thank you Andrew
16 for that concern. I mean it's certainly
17 interesting to hear your perspective. I was
18 wondering if -- I guess I wonder if it would be
19 easier for institutions to ensure that people using
20 Title IV do this? I mean I'm guessing that you
21 have a lot of cash pay students or --

22 MR. HAMMONTREE: Yes.

23 MS. BARKLEY-DENNEY: Would that make

1 a difference?

2 MR. HAMMONTREE: At my institution
3 yes. I don't know holistically if that would work
4 for a lot of people. So I'm looking around the
5 table to see if people are -- apparently not.

6 MS. BARKLEY-DENNEY: Okay.

7 (Simultaneous speaking.)

8 MS. MILLER: Sandy.

9 MR. HAMMONTREE: Right.

10 MS. SARGE: Sorry. It does say -- well
11 I guess it says makes a financial commitment. So
12 I mean there could be a different. I'm just
13 wondering if there's a different point in time when
14 we could require it that would make it easier.

15 MR. HAMMONTREE: At my institution,
16 the problem is is I couldn't control this process.

17 It became an admissions process, and I have a lot
18 of concerns about my admissions department being
19 able to comply with that. The financial aid office
20 is the compliance office, okay. So this is going
21 to happen long before they ever came to the
22 financial aid office.

23 I don't even know what they're

1 enrolling in at the time that they do the
2 application, which is when most schools I think
3 wanted to do this. It was going to take a lot of
4 staff, and my concern was that if we hire more people
5 tuition has to go up, and we want to keep our costs
6 as low as possible.

7 The other concern is if you don't hire
8 more people to handle something that takes up this
9 much time, is you're taking away that one on one
10 counseling that is so important. This is gainful
11 employment or whatever we call this. This is only
12 one piece of the Higher Education Act.

13 That's one piece of the whole financial
14 aid landscape, and there's just so much complexity.

15 We're getting a lot of first generation students
16 coming in that are very, very confused, just getting
17 the FAFSA filled out. The more time that we spend
18 making sure that we have this piece of paper before
19 we enroll a student, that's less time that we're
20 able to spend one on one with those students,
21 counseling them through a very complicated process.

22 So while I understand getting the
23 active confirmation maybe for programs that are

1 low performing, where it's -- they're at risk of
2 losing Title IV eligibility if we went down that
3 path, I just don't think you can do it for the tens
4 of thousands of students that don't fall into that
5 category.

6 MS. MILLER: Kirsten.

7 MS. KEEFE: So actually my first
8 comments were related to that and I hear what you're
9 saying, and I don't know what the solution is.
10 I will just add though, I think that this disclosure
11 being provided at the point of somebody actually
12 signing an enrollment and coming up is a really
13 critical time, right?

14 It's one thing to provide information
15 to folks that are looking at a bunch of different
16 schools and what they might go to. But it's really
17 that next step that's a really critical time for
18 them to get this information. Maybe not all
19 students need it. I hear what you're saying, but
20 it is a critical time for the people who need this
21 information to get that information.

22 I will also just add, and I again hear
23 what you're saying Andy about the logistical issues

1 with the acknowledgment. I think the
2 acknowledgment is really important though, again
3 for the students for whom this information is most
4 critical.

5 Because, you know, we're all reading
6 a million disclosures, especially if you're getting
7 them on your iPhones. You just hit terms of
8 whatever so you can get onto the next page. But
9 if you actually have to acknowledge and sign, to
10 me that's a huge red flag that oh, this is a
11 disclosure that you really need to read Kirsten,
12 you know, versus all the other disclosures in life.

13 So I think it is a critical component, you know.
14 Again, I appreciate your issues.

15 Let's see. The second thing that I
16 just wanted -- oh, I wanted to ask the Department
17 about the elimination of the consumer testing on
18 the template. I assume that that's because -- so
19 this is on I think page one of the proposal, in
20 the first paragraph. I assume that's because it's
21 already been done; is that correct?

22 MR. MARTIN: Yeah. Yes, we did
23 conduct -- we did conduct consumer testing

1 previously. In these regulations, we didn't want
2 to obligate ourselves to do that every year. There
3 are budget considerations with that, and we don't
4 -- it doesn't preclude that we would ever do
5 consumer testing, but these rules don't obligate
6 us to do that.

7 MS. KEEFE: So then is there a
8 commitment from the Department that the template
9 will not change at all, or that if it were to change,
10 there would be additional consumer testing or is
11 the template what it is?

12 MR. MARTIN: The template. There's
13 two things here, and I think Jennifer was pointing
14 that out. There's the disclosure rules and then
15 how it manifests itself in the template.
16 Currently, the way it works is we have in here what
17 the Department may require you to disclose. But
18 we don't require -- if you looked at the template,
19 we absolutely don't require anywhere near all of
20 these things, right.

21 So we -- each year we determine what
22 will be required to be disclosed. We issue, we
23 put out an electronic announcement with that

1 information in it, and we issue -- we put that in
2 the *Federal Register*. So the template itself is
3 not -- the way it looks is not dictated by these
4 regulations now, nor would it be.

5 So I couldn't make any guarantees that
6 the look of the template would change. We didn't
7 change the template much this year over last year.

8 We did change some items. So what could change
9 would be what we would require you to disclose,
10 and again since in the old rule and in this rule,
11 the Department has discretion to use what's here
12 or additional things, that could change from year
13 to year.

14 MS. KEEFE: But the pieces that you did
15 the consumer testing on wouldn't change? That
16 would be more on the wording and -- I mean if we're
17 going to be relying heavily on disclosures now in
18 this new construct, you know, I just really want
19 to make sure that the disclosures are clear and
20 readable and, you know, readable to somebody at
21 a low education level, etcetera.

22 MR. MARTIN: And we make -- and we make
23 every effort to do that, and I think when I give

1 you -- I'll give you later on today the link how
2 to get in there and look at the template, so you
3 can all get an idea of what that looks like. So
4 when you come back, if you have comments about that
5 you can let us know.

6 MS. KEEFE: Okay, and then my final
7 question is just -- so if a template, if an
8 institution puts a template out that's incorrect,
9 is there oversight of that and are there any
10 ramifications for that or repercussions?

11 MR. MARTIN: Yeah. I mean a template
12 that's incorrect -- if like anything else a school
13 does is incorrect, that would be something that
14 would be looked at in a program review or
15 potentially an audit. So yes, there would -- it
16 would be a compliance issue if somebody put a
17 template out that was -- we don't have something
18 in place where we automatically check each template
19 all the time.

20 But as with anything, as with any of
21 the other disclosures, consumer disclosure that
22 schools are required to make, if it's incorrect
23 that could be a compliance issue, yes.

1 MS. KEEFE: Okay, and one last final
2 compliment. I'm glad to see a link provided to
3 the state certification. I think that's a good
4 addition.

5 MS. MILLER: Laura, Jeff and then
6 Jessica.

7 MS. METUNE: I similarly wanted to
8 appreciate the addition of the link of the state
9 licensure requirement. I think that's a good
10 addition. I wanted to agree with Daniel's comments
11 about the importance that students can sit for
12 licensure. I just -- I want to make sure I
13 understand the current structure of what you're
14 proposing.

15 So in the certification requirements,
16 the state where the institution is located, there's
17 a strict requirement that the institution's program
18 meet that state's licensure and accreditation
19 requirements.

20 But then an institution might have a
21 service area that includes another state, and in
22 those instances, the institution is not required
23 to meet the licensure or accreditation

1 requirements, but must disclose to the student what
2 those are. Is that the way this works?

3 MR. MARTIN: Before I characterize
4 that, I'd like -- give me a chance to talk to my,
5 some of my people before I --

6 MS. METUNE: Okay, and then just a
7 comment that I think it does seem to -- if I'm
8 correct, which you can correct me later if I'm not,
9 but if I'm correct I do like the appreciation that
10 there's this recognition that students will enroll
11 in institutions that may not ultimately meet their
12 accreditation or licensure requirements.

13 I think it's really important that we
14 make sure that those students do have an assurance
15 that they will ultimately be able to sit for
16 licensure in the state where they are located.

17 MR. MARTIN: Thank you.

18 MS. MILLER: Cynthia's here.

19 (Pause.)

20 MR. MARTIN: You characterized that
21 correctly. I just wanted to make sure that we were
22 in on it.

23 MS. MILLER: Jeff, Jessica and then

1 Sandy.

2 MR. ARTHUR: Yeah. When you take a
3 look at that template, you're going to see currently
4 there's a requirement to disclose the completion
5 rate based on 100 percent completion time. I would
6 assume that this -- that as we do this, the
7 disclosure would probably evolve to a more
8 standard, 150 percent or 200 percent graduation
9 rate, which is fine.

10 But we're also disclosing the length
11 of the program and then the total cost of the program
12 based on that. But I would suggest, based on a
13 couple of stats that we're aware of, I thought it
14 was 5.8 years that is the median completion time
15 for a bachelor degree. Roberts had indicated to
16 me it's 6.1 I believe. But we know it's well over
17 five.

18 And we also there was a survey, and the
19 *Chronicle* and *Inside Higher Ed*, others I think
20 referenced it at some point that was fairly recent
21 that showed that families spent on average 40
22 percent more than they calculated they were going
23 to spend when they were starting a program. And

1 so there's a real misunderstanding of the cost of
2 higher ed and this, the way the disclosure's done
3 here may propagate that.

4 So I would suggest that we also include
5 in the disclosure a median completion time for the
6 program, so that people can understand at that
7 institution what the normal time that a student
8 took to complete the program.

9 MS. MILLER: Jessica.

10 MS. BARRY: Thank you, Jessica Barry.

11 I just want to echo Andrew's comments about
12 acknowledgment. It would be extremely difficult,
13 and one of the pieces that makes it even more
14 difficult that I think was mentioned earlier in
15 the week is that young people aren't checking their
16 email and they're not responding to email, and that
17 makes it even more difficult.

18 One of the suggestions that if
19 acknowledgment is something that we want to work
20 in in some form or fashion, in the state of Ohio
21 we're required to disclose certain rates. So how
22 we handle this is when a student is accepted to
23 our college, we send them their acceptance letter

1 with their enrollment agreement, explaining what
2 those next steps are, and we also put the
3 acknowledgment piece in there.

4 So there's a form that says "I have
5 received completion rates and placement rates."

6 And it says if I have not received them, here is
7 where they're located or here's who I can contact
8 to get those rates. And we don't accept that
9 enrollment agreement until we have that signed
10 acknowledgment.

11 I think that's the only time that I
12 could see it really working and us being able to
13 collect that data. So I just wanted to share that
14 example and ask the group to consider that.

15 MS. MILLER: Sandy, then Pamela.

16 MS. SARGE: Thank you, this is Sandy.

17 I had a couple of thoughts. One is, and maybe
18 Greg can help me. I guess I'm getting a little
19 bit lost in the weeds between what a disclosure
20 is versus a notification. I think that yesterday
21 or the day before we had a lot of very good points
22 made, and I think we had all sort of come to a place
23 where we felt that a student should have

1 notification before signing a financial obligation
2 to a school or entering into a contract.

3 We again not consensus, but certainly
4 felt like the crowd was sort of getting there on
5 that one. So what's the difference then between
6 what we were talking about that day and this? I'm
7 a little confused there, and then I have some
8 thoughts, other thoughts.

9 MR. MARTIN: Greg for the record.
10 Yeah, well they are different. The current, let's
11 talk about now, what we have now as a warning or
12 we talked about notification. So at the point
13 at which the program could potentially lose
14 eligibility, in the next year you're required to
15 provide a warning.

16 Now that's separate from disclosures.
17 It's a separate thing. You're warning a
18 prospective students and students that the program
19 faces loss of eligibility and there are certain
20 things attached to that you have to inform them
21 of.

22 It's kind of linked to disclosure
23 currently because going back to Jennifer's point

1 about how it helps to distinguish disclosure,
2 because what happens is with a disclosure template,
3 currently if your program is in that situation where
4 you have to use a warning, there's a different --
5 two different templates. One's a warning, one's
6 a non-warning template.

7 So you have to -- you'd have to use the
8 template that contains the warning language at the
9 top of it. It's in red. It's pretty bold. So
10 it is kind of amalgamated in that way, in that the
11 template itself sort of forces you to put the
12 language on there.

13 But that's sort of separate from the
14 requirement. You still have to have -- there's
15 still the requirement that you issue the warning.

16 Schools can use the template as a way of issuing
17 the warning, but they're kind of separate things.

18 Does that -- does that describe?

19 And I invite anybody at the table who
20 has done the process to say no great, that's
21 convoluted. Here's a better way of describing it.

22 But I think I described it accurately.

23 MS. SARGE: Okay, yeah. That makes a

1 little bit more sense, and I think that I definitely
2 thought about, because Pamela gave an excellent
3 example, and I'm not sure I certainly got to hear
4 it, which was great. She gets 100,000 inquiries,
5 if you will. Right, 125,000 FASAs, 60,000 of which
6 then --

7 (Off-microphone comment.)

8 MS. FOWLER: 60,000 apps for
9 admission.

10 MS. SARGE: Apps for admission, 6,000
11 are admitted and 1,000 ultimately get Title IV or
12 something like that. So I mean you look at that.

13 So what I'm hearing is based on prospective
14 student, then she would be sending out notification
15 or disclosures on to 125,000 FASAs?

16 (Off-microphone comment.)

17 MS. SARGE: You send it to 60 now, okay.

18 So is that -- so trying to get acknowledgment,
19 is that what Andrew you guys are concerned about
20 is that type of thing? I could see that definitely.

21 I do agree that it is important that there
22 is -- there is almost a looking in the whites of
23 their eyes, making sure that students clearly

1 understand information before they get into a legal
2 contract with the school or along those lines.

3 So my question I think would be to the
4 groups that represent students. Has there been
5 any type of research done about what, like focus
6 groups or surveys about what students, what is
7 effective to students when it comes to all of this
8 disclosure that colleges are giving? Because I
9 think that the concern, and the one example I have
10 had for many of my financial aid peers has been
11 I didn't get a loan. I got financial aid.

12 And yet they had to sign a master
13 promissory note; they had to do entrance counseling
14 only if they get loans, not if they get Pell. They
15 then had to acknowledge the receipt of each
16 disbursement, you know. So but at the end of it,
17 they're like why did I get something from a servicer
18 about a loan?

19 So all of this disclosure, I know that
20 sometimes it's hindsight. Like I go back and go
21 oh, now I understand what that meant. So have you
22 guys done any research on that, because I'd be
23 interested to know what the student masses that

1 you represent think about what's already out there.

2 Thank you.

3 MS. MILLER: Okay. Pamela, then Chris
4 Gannon.

5 MS. FOWLER: Pamela. There are
6 certain consumer information requirements right
7 now that have to go to enrolled and prospective
8 students. So I consider a prospective student
9 anyone who completes an application for admission.

10 So I send an email to over 60,000 students who
11 I know 90 percent of them will not be admitted,
12 giving them this information. If that comes back,
13 if that email comes back, they get it in paper.

14 That's the best I can do. Now what
15 we're talking about here has nothing to do with
16 anything in my office. We're talking about program
17 and institutional stuff. But I guarantee you it
18 will fall to the financial aid office to do this.

19 I have a staff of 53 down from 55, and
20 two of those people know nothing about financial
21 aid. They do consumer information day in and day
22 out. Now if I have to go back and tell Casey she
23 has to add every program at the University of

1 Michigan to what she's already doing, she'll quit.

2 (Laughter.)

3 MS. FOWLER: And if I go to my boss and
4 say I need -- she needs help, because one of those
5 people is an editor. She formally wrote for the
6 *Ann Arbor News*. The other person is a graphic
7 designer. She's going to say I need help, and I
8 can't disagree with that. But I go to my boss who's
9 more interested in what color the carpet is and
10 the walls. She's not going to give me more money
11 to hire someone else.

12 VOICE: That's reality.

13 MS. FOWLER: And so, you know --
14 absolutely reality.

15 VOICE: That's reality.

16 MS. MILLER: Okay. Chris Gannon,
17 Whitney, Kelly, then Jennifer Blum.

18 MR. GANNON: Yeah. I have some
19 concerns on -- as far as knowing how the repayment
20 rate is calculated. I think it says in here that
21 you're going to publish that in the *Federal Register*
22 at a later date.

23 I think that maybe that's something

1 that the negotiators here should decide, so we know
2 what that is. I just want to know what the
3 department's justification is for doing it this
4 way.

5 (Off-microphone comment.)

6 MR. GANNON: I think it's very first
7 top of page one, first paragraph.

8 (Pause.)

9 MR. MARTIN: Yeah. Well part of this,
10 Greg for the record, part of this comes from the
11 -- when we were looking at this, the recognition
12 that -- I think I'm not saying anything that we
13 don't already know. The department has had a few
14 different recalculation rates, repayment rates out
15 there, so of which this was one in here.

16 We didn't want to be obligated to the
17 one that was in these -- and this was just for
18 disclosure purposes, right? So as far as repayment
19 rate goes moving forward, you know, yesterday we
20 discussed here the idea of using a repayment rate
21 as a -- as part of an evaluation of whether or not
22 there would be administrative sanctions against
23 a program, right?

1 So I think moving forward, I think
2 repayment rate, given what we talked about
3 yesterday, repayment rate takes on more of an
4 importance than it does simply as a disclosure.
5 So I agree with you, especially in the context of
6 that, then what that repayment rate would be becomes
7 -- becomes a matter for discussion with this group
8 that takes on a higher degree of importance than
9 it would as simply a disclosure, because now you're
10 looking at it as a possible program measure.

11 So we certainly would be willing to hear
12 anybody's thoughts about what repayment rate would
13 look like. We have some ideas. I think certainly
14 we'll come back the next round with some language
15 on what that might be. But we would welcome any
16 of you to -- I think, I don't know who made the
17 point that it's something which is being considered
18 in legislation that of course we have no control
19 over.

20 But just keeping that in the back of
21 our minds, that we, you know, whatever we do we'd
22 want to stand. So I throw that out to anybody,
23 you know, that we're not committed, right,

1 especially with regard to how it affects program
2 eligibility. We're not going to be committed to
3 a certain rate. We want to hear from you what you
4 think.

5 But in any case we wouldn't -- I don't
6 think we want to obligate ourselves to the rate
7 here which is struck out. Thank you.

8 MS. MILLER: Whitney.

9 MS. BARKLEY-DENNEY: So I think it
10 would be helpful, and we were talking about this
11 sort of offline yesterday, you know, for any of
12 these rates to be included in the issue papers,
13 at least what you're considering so that we can
14 think about them and talk about them. I don't think
15 as negotiators most of us, possibly Jordan
16 exempted, have access to the data, you know, that
17 would allow us to sit around this table and come
18 up with a rate.

19 We might -- if you hand that to us, then
20 we may be able to say this makes sense or this
21 doesn't make sense based on these policy decisions.

22

23 MR. MARTIN: I agree with that, and

1 that's obviously not going to happen today before
2 the end of the day. But we can -- we will have
3 something for you next round, and I invite any of
4 you that have ideas about that to send it to
5 scott.filter. He also has an advice column he's
6 thinking about doing.

7 MS. BARKLEY-DENNEY: And I do have one
8 more follow-up for Marc on what Sandy was saying.

9 I think actually Sandy your point really
10 highlights Kirsten's point and the need for
11 consumer testing with the way these disclosures
12 work. You know, sometimes what we consider as
13 people who are professionals to one degree or the
14 other in this realm, you know, as being obvious
15 isn't obvious to the average consumer.

16 Even more importantly, even if you're
17 going into, you know, the great -- if you're going
18 to Harvard, it doesn't mean that your parents have
19 a Harvard level education when they're reading it
20 and trying to understand. So I think that that's
21 why the consumer testing is really important.

22 Just from my own standpoint, you know,
23 my first time I encountered a loan because my

1 parents were able to pay, thank God, for undergrad
2 and the first year of law school. But I had no
3 idea that I was getting into, you know, the former
4 loan program that allowed you to take out private
5 loans for grad debt.

6 And I didn't know that I couldn't
7 consolidate it with my federal loans, and I didn't
8 know that, you know, I wasn't going to be able to
9 get an income-based repayment program on that.
10 And now ten years later, I still have the same amount
11 of debt as I had when I took it out. I was smart
12 enough to get into the University of Michigan law
13 school, which as Pamela said has a very low
14 admissions rate. I hope we all notice.

15 (Laughter.)

16 MS. BARKLEY-DENNEY: So you know, I --
17 right. But yeah. So you know, I just want to
18 qualify that as, you know, even if I as someone
19 who now works in this didn't understand it as a
20 22 year-old or 23 year-old, it's probably hard for
21 somebody as an 18 year-old to understand it.

22 MS. SARGE: So that's kind of the
23 point, right. I'm sorry. I'm going to directly

1 respond. Whitney, that's exactly it, and I'm
2 wondering -- I think it's somewhat imperative for
3 all groups that are at the table. I can certainly
4 speak that some of my clients have gone out and
5 done focus groups. They've paid for that, they've
6 done that and all that, to find out what works for
7 the student on a variety of issues.

8 Now if this is important, we need to
9 get to what's going to work, because no matter how
10 hard we try to come up with something and put it
11 in the front of a 22 year-old, sometimes it just
12 means you have to go through the process before
13 you even know you had questions about it at the
14 beginning, right? I mean it's like driving a car
15 or anything.

16 But the more experienced you are in a
17 scenario, then oftentimes the more questions you
18 end up coming up with that we can't think of or
19 know of. So I'm -- I think one school has
20 done -- one anecdotal way they've done a great job
21 is they have required their students to go to
22 financial literacy every quarter. It's mandatory
23 for every student in the school, and they go through

1 all these disclosures again.

2 They talk about their debt as they
3 become more experienced. Through their journey
4 of accumulating debt, they make it mandatory for
5 the student to go. So in essence their associate
6 students, two year, they've gone eight times and
7 that's after they had all the disclosures.

8 So I think my point is we've got to know
9 from you guys. I want to hear what's out there,
10 not just anecdotally the exceptions, but what would
11 work so that we could do it and figure it out.
12 So we need that information from you guys, not the
13 department. I don't think they're the right
14 people.

15 MS. MILLER: Sandy, thank you. Okay,
16 Kelly, then Jen Blum, then Daniel.

17 MS. MORRISSEY: This is Kelly. I have
18 concerns about the template in general if we are
19 now expanding our universe to all educational
20 programs, because this was designed for a view of
21 gainful employment programs. So now what is
22 relevant to a student entering a short-term
23 certificate program designed for them to obtain

1 gainful employment is not relevant, does not have
2 the same relevancy as that of a bachelor's degree
3 student or an associate degree student in a liberal
4 arts program.

5 For example, a typical liberal arts
6 student in a two-year program is perhaps not looking
7 at the types of occupations that they're being
8 trained for. They're looking for what types of
9 programs they can then transfer into at the bachelor
10 degree level.

11 I also wonder if we could examine the
12 fact that the students graduating on time really
13 is not reality in terms of in a one-year program
14 why are we reporting how many students graduate
15 within a 12 month period, where the typical student
16 never graduates within one year for many different
17 reasons.

18 So I think that many of these different
19 elements really require further examination if
20 we're now applying these disclosures to all types
21 of programs. Furthermore, I really want to
22 emphasize the fact that I agree with my colleague
23 Andrew in terms of the overwhelming job it would

1 be for all of us to obtain active confirmation of
2 the fact that students have read these disclosures.

3 However, I am very, very concerned
4 about how can we amplify what is in these
5 disclosures, so that students are using this
6 information to make enrollment decisions. I
7 listened very carefully to the public comments that
8 were made particularly yesterday, and the
9 information that students are making enrollment
10 decisions about are advertisements that they see
11 on TV or a few other types of media that are making
12 claims about earnings potential of their graduates,
13 and they're not based on any reality.

14 How can we ensure that instead,
15 students are using the earnings data that is in
16 these disclosures? Why can't we get at the fact
17 that these schools are making these false
18 advertising claims that are not related to any type
19 of fact in terms of the graduates' earning
20 potential?

21 MS. MILLER: Thank you. Jen Blum.

22 MS. BLUM: So I think I said I have a
23 list. I'm going to try to be really thoughtful

1 about this. So first of all on consumer testing,
2 I would really urge the Department that on the items
3 that they're adding, so anything that's being
4 changed, that they do consumer testing around and
5 that segues me to licensure.

6 But actually first Kelly, I just want
7 you to -- I just want to clarify something. Gainful
8 employment programs today include university level
9 programs, and so we've been shoe-horning for years.

10 So I just want to -- so it is -- I hate to say,
11 but it is doable. It's just magnified obviously
12 exponentially now, but I do want to say that it
13 is.

14 Okay now I'll go to licensure. I
15 actually want to put on the table right away two
16 things. One is that I totally understand the need
17 for disclosure in this area, but we need to get
18 a little bit of a reality check about how we do
19 it, and how best to do it.

20 And so I am going to list out some of
21 my concerns, but right off the bat I want to suggest,
22 and this is going to be very hard for me
23 logistically, but I want to suggest a subcommittee

1 during the time between session 2 and 3, of Laura,
2 me, non-profit representation and I think that
3 actually could be it, although I welcome others.

4 But I'm just -- those are the ones that I absolutely
5 need to have, to get to a better place on what's
6 being proposed.

7 Let me just quickly, and I'm going to
8 do it quickly and I purposefully came up with the
9 subcommittee idea, because we could spend hours
10 on licensure and I want to respect the time. So
11 I would urge us to consider, and it needs to be
12 frankly a smaller group to really get at how to
13 solve this.

14 So let me just say really quickly, I
15 just want to give you another example from the
16 template and this is current. So obviously the
17 department's making changes, but the current
18 template requires you to select when there's not
19 -- so when there's a state where your program does
20 not lead to licensure, the pop-up, right. So you
21 have to sort of flag those states where there's
22 an issue.

23 The pop-up is the following state does

1 not have licensure requirements for this
2 profession. What? That's not -- so I'm just.
3 I'm pleading that we get this right on the template,
4 and that we have a reality check. So the other
5 thing I want to say is this ties to program
6 disclosures. But for any one program, there could
7 be multiple potential licenses that are possible
8 in each state by profession.

9 I love the fact that the department
10 keeps using the word "any state" or "the state,"
11 as if there's one license in each state. There
12 are hundreds of licenses and licensure boards in
13 each state. So your drop-down can't be by state.

14 It's got to be every single licensure board, every
15 single license, and I'm not saying it's not doable.

16 So I just want to be on -- we understand
17 the need for students to understand something about
18 licensure. We also need for them to be
19 responsible, to then get educated themselves on
20 what those licensure requirements are to some
21 degree, because they fluctuate and change while
22 the students are enrolled, and we work -- we have
23 talked about resources.

1 We have a whole cadre for each of our
2 licensure programs to work through this. But it
3 is time burdensome, and so, you know, that example
4 is a pretty stark one that I just gave. But there
5 needs to be -- there has to be a serious drop-down
6 list that's not just by program, because it's by
7 license and that's very complex to get to. So I
8 urge us to sort of spend more time on this one.

9 MS. BUCK: I want to interrupt just a
10 minute, to tell you that it has been 45 minutes.

11 I told you I would let you know when that had
12 passed. I think from seeing the cards up that you
13 probably would like to continue this until
14 probably 12:00 and stop for lunch at that point.

15 Does that sound okay with people?

16 Okay. Now there was also a proposal
17 of a subcommittee that was just made. Are the
18 people that proposed -- sorry, and the department
19 probably should be included, sorry.

20 MR. MARTIN: Can I make a comment about
21 that? I just want to say, and I'm not saying we
22 can't have a subcommittee, anything like that.
23 If we're talking about the structure of the

1 template, remember what the regulations say, is
2 that we require you to use the template. Nothing
3 in regulation currently or proposed -- we're not
4 putting the structure of the template in
5 regulations.

6 So every year we issue the template.

7 We will soon have our *Federal Register* out, which
8 will give everybody the opportunity to comment on
9 the template and what might be improved in the
10 future. I wholeheartedly agree that there are
11 things that could be improved with the way that
12 the template captures information.

13 But I just want to be certain that we
14 don't have a structure here that, you know, we're
15 not going to regulate how the department structures
16 the template. Is that -- I just want to -- I just
17 want to make that clear. We certainly -- we
18 certainly put out the Register and we get comments
19 from the community on how the template is structure,
20 take those back.

21 But I just want to be certain that we're
22 not talking about, you know, a whole new regulatory
23 section here which would lay out how not what will

1 be required of the template, but how we'll structure
2 the template. I'm not sure that's appropriate --

3 MS. BLUM: Understood, except that the
4 following. I totally understand that, don't want
5 to create a whole new regulatory framework around
6 the template. But because the regulatory language
7 leads to what the template includes and how it's
8 structured, the regulations have to be much more
9 clearly written than they are with regard to
10 licensure. It makes assumptions. In the regs,
11 it makes it look like each state has one license,
12 you know, there are hundreds in each state.

13 And so the regulations need to reflect
14 what ultimately is going to be on the template.
15 Then I will say how the department then this is
16 a huge problem for institutions, and if it spreads
17 to all institutions, it's going to be a huge problem
18 for all institutions, where students are being
19 misinformed.

20 So let me give you one other example
21 that's not licensure, completion. You have on
22 completion, because we have graduate programs, you
23 have an N/A with an asterisk that says N size less

1 than ten. That's not why our completion rate's
2 not there. Our completion rate's not there because
3 we don't -- it's a completion time at the doctoral
4 level of more than 54 months.

5 So you don't allow for that ability.

6 So completion, so here's another one. Completion
7 and withdrawal, which you have here and this is
8 what leads to the template, you don't allow for
9 true completion and withdrawal rate, which causes
10 huge confusion at the graduate level, huge
11 confusion at the doctoral level in particular.
12 So that's another area where I don't have time right
13 now to give you a proposal.

14 But we would have proposals around what
15 the completion and withdrawal rates should look
16 like, because the result of having these vague
17 regulations is that you don't have good templates,
18 and then there's a problem on the student end.

19 MS. MILLER: Thank you Jennifer, okay.

20 So before we take a vote or a temperature check
21 on the subcommittee, we still -- I do want to say
22 that it is 11:46 and we have six tents still up
23 who still need to make a point, okay. So let's

1 take a temperature check on the subcommittee for
2 licensure as Jennifer Blum has proposed, and that
3 includes the people who would be on it.

4 (Show of hands.)

5 MS. BLUM: And there could be others
6 on it.

7 MS. MILLER: It's a subcommittee for
8 the licensures.

9 PARTICIPANT: Is it limited?

10 MS. MILLER: The people, one is Laura,
11 some other.

12 PARTICIPANT: Could we add? I mean I
13 would like to include a consumer representative
14 and a student maybe.

15 MS. MILLER: Right. We can figure out
16 who would be on it.

17 MS. BLUM: Yeah. I was just saying the
18 people who I felt like are involved in the issue,
19 who needed to be on it and then I don't -- it can
20 be others.

21 MS. MILLER: And if you want to be on
22 it, you can see Jennifer or Laura to ask if you
23 want to be on it.

1 MS. BUCK: So it sounds like that it
2 is positive, so talk to her about it.

3 MS. MILLER: So no thumbs down on that.
4 Daniel.

5 MR. ELKINS: Just had some, a
6 clarifying question from the department. I'm
7 going to piece together some of the code, so I will
8 start on page one. Then we'll go to page 2 and
9 then 3, starting in "Disclosure Template," line
10 1, 2, 3. I'll just read it out and you can just
11 follow and let me know if I'm hearing this
12 correctly.

13 "An institution must disclose template
14 provided by the Secretary to programs, to enroll
15 perspective students. That information may
16 include, but is not limited to." Then breaking
17 to page 3, item 13(i). "Whether the program does
18 or not satisfy." A, B and C all talk about
19 licensure.

20 Then 16 "For programs preparing
21 students in the field requiring licensure, a URL
22 link to the state's mandatory qualification for
23 licensure." So can you just provide clarity? When

1 you piece all those together, basically what I read
2 it is we're not requiring an institution to disclose
3 specifically that it will not prepare a student.

4 Is that -- is that how we should interpret that
5 currently?

6 MS. BUCK: Don't forget to turn your
7 speaker on.

8 MR. MARTIN: I'm sorry, yeah. So
9 you're talking about -- well I'll start with your
10 first one there, where you talk about the template
11 itself, where it says "The information may include,
12 but is not limited to." That is the way the current
13 rule is written, that allows the department
14 flexibility is what we require.

15 I think that was written originally
16 with the intent in mind that the department would
17 not be limited to what is here. If there's
18 something else we thought we should -- we wanted
19 to require to be disclosed, we could do that and
20 not be limited by the regulation. So that remains
21 as is. The next one you went to was on page 3,
22 is that correct?

23 PARTICIPANT: Yes.

1 MR. MARTIN: At the bottom where it
2 says what the --

3 MR. ELKINS: 13.

4 MR. MARTIN: 13, whether the program
5 does or does not satisfy. So it's either one,
6 whether it does or does not as written here. So
7 the template does collect that. As Jennifer
8 pointed out, there are some operational things with
9 it. It's really hard to -- you have to think
10 about -- it helps to have seen the template, to
11 see how that works. But currently, that is what
12 we do, we have required, about licensure.

13 MR. ELKINS: What I would then propose
14 then is a change in the statute to -- that "the
15 information may include but is not limited to,"
16 to "the information must include" and then you would
17 carve that out to the licensure pieces.

18 MR. MARTIN: Can't change the statute,
19 but yeah. As far as like including --

20 MR. ELKINS: Right, yeah. I got it.

21 MR. MARTIN: Are you suggesting that
22 -- were you suggesting that we say must, that we
23 obligate ourselves to that?

1 MR. ELKINS: Yes.

2 MS. MILLER: Okay. So Todd, then
3 Steve Chema, then Johnston.

4 MR. JONES: Well, the licensure
5 discussion greatly limited what I'm going to need
6 to say about this. But I think there is a serious
7 misunderstanding on the department's part about
8 the unified nature of licensing, and also an issue
9 I'll get to is the variability of kinds of licenses
10 that are available under an educational program
11 that may or may not be linked to what is perceived
12 to be the student's goal.

13 You look at different types of
14 educational and assistance aid programs that some
15 do, some don't. You look at the division between
16 teaching programs, where is your elementary
17 education program something that permits you
18 licensure for fifth graders or fourth graders?
19 Well there are states where you have -- like mine
20 at one point, a four to seven licensure, which is
21 elementary school but it's for the middle grade
22 bands.

23 The differences in licensure there are

1 putting, we keep using this description, it's
2 putting the department down a rabbit hole and it's
3 taking the schools with them, that is simply not
4 going to be possible for anyone to verify if
5 thousands of schools in tens of thousands of
6 programs, in thousands and thousands of different
7 licenses are going to be applicable here.

8 I guess that's my greatest concern is,
9 and hopefully we can come up with some language
10 that limits that. But I hope everyone who's
11 discussing this in the interest of students is
12 thinking about how do we modestly understand to
13 make this workable. Because if it's unworkable,
14 it's going to be like the piles of notices that
15 we've been throwing at people for the last 40 years
16 in the interest of consumer protection.

17 At a certain point, it just becomes
18 things to use as doorstops, and nobody pays
19 attention. I think if we're going to make this
20 one around licensure a useful one, and it should
21 be, that we need to do it in a way that's not going
22 to be one that is requiring a degree of universal
23 precision to every conceivable license. It's just

1 not going to be viable.

2 MS. MILLER: Steve Chema.

3 MR. CHEMA: Steve Chema. Sort of
4 glomming onto Todd's concept of piles of notices,
5 I wanted to turn the discussion to the treatment
6 of promotional materials on page 5 . You know,
7 I want to at least suggest based on, you know, what
8 we've been hearing that we consider, you know, the
9 balance between burden on the institution and the
10 efficacy of this.

11 I know Kirsten, when she was discussing
12 the direct distribution of the template, you know,
13 mentioned that one time, and I think Johnson has
14 said this similarly throughout the session, that
15 you know, at the time a student is making a financial
16 commitment or making a decision to apply or become
17 admitted is, you know, a useful time for this
18 information to be in front of them.

19 But when we're talking about
20 promotional materials, we're not there yet. We
21 may be very far from ever getting to that point,
22 and yet there's a whole lot that you have to do
23 in order to comply with the current rule and, you

1 know, that would all continue in this proposal.
2 So you know, I want to consider whether we really
3 feel like it's necessary to try to reproduce this
4 disclosure on every piece of promotional material
5 that, you know, mentions a program by name or
6 otherwise promotes the program.

7 I mean that's a lot of things, you know.

8 We're discussing catalogues, invitations, flyers,
9 billboards, advertising on broadcast, print,
10 digital media and so forth. Some of those things,
11 it's fairly easy to pop these disclosures in the
12 back of a catalogue. That's probably appropriate
13 frankly. But you know, how do you do it on, you
14 know, broadcast media or through social media?

15 The department with the current rule
16 has said through guidance for a long time that,
17 you know, where it's impractical, you know, to
18 reproduce this information that's on your template,
19 you can go ahead and indicate through a phrase and
20 a link back to your website, you know, a way for
21 the interested party to get to those disclosures,
22 and that phrase says something like important
23 information about educational debt, earnings and

1 completion rates of students who attended this
2 program, you know, four more important and then
3 the link.

4 Even that creates in practice some real
5 problems and challenges with ways that schools
6 attempt to promote their programs in their
7 institutions. Specifically, if you're engaging
8 with any number of vendors that do social media
9 campaigns or digital media campaigns, oftentimes
10 the way that these things work is that you craft
11 your message, and there's only one --

12 You can embed a link, but just one.
13 And so you're defeating the purpose of your
14 promotional campaign if you're going to say
15 something about your school or something about your
16 program, and then all they can go back to is the
17 page for your disclosures. They don't get to see
18 the landing page for your school, the information
19 that you also wanted to show them, really what the
20 whole point of the exercise was.

21 So there's some -- there's some
22 disconnect between, you know, how we can actually
23 do this in a way that still allows for channels

1 to reach students, prospective students, and
2 whether it's the appropriate time to do it.

3 So I'd ask that we consider whether
4 promotional materials, as they're defined here,
5 need to be defined so broadly, and whether we can
6 have a more informed approach about how we can
7 provide that information when it's not practical.

8 Getting back to the idea of giving a
9 "for more information" phrase with a link. Why
10 can't we have at least a two click solution, you
11 know. Have a link to a landing page that also
12 contains on it information about, you know, with
13 one click that can get to a disclosure.

14 I mean, you know, these are ideas that
15 at least allow institutions to continue to do the
16 kind of marketing that they want to be able to do
17 without, you know, running afoul of the rules here,
18 assuming we feel like we still need that, you know,
19 to have this treatment.

20 MS. BUCK: I think there are two more
21 people, and then after they speak, I'm proposing
22 that we stop for lunch.

23 MS. MILLER: Yeah, so Johnson and then

1 Whitney.

2 MR. TYLER: Oh, I do have -- I really
3 think disclosures are not a useful way to achieve
4 what we're trying to do here. I'll just say that.

5 If we really want to get the bad apples out, we
6 have to create sanctions that will get them out
7 of the field or improve their game, not try to inform
8 people that this is a bad place to go. So I really
9 feel strongly about that.

10 Having said that, almost everyone has
11 the experience of someone saying you need to read
12 this before you're committed to this contract, to
13 see this doctor, to come to legal services, all
14 this stuff. We all have to do that.

15 So at the very least, I think when
16 you're signing up for school, you've got to have
17 some statement that you're looking at that gets
18 unloaded in the system, that shows that you are
19 aware of what you're getting into, or what the
20 program is about. So those are my two thoughts.

21 MS. MILLER: Whitney.

22 MS. BARKLEY-DENNEY: Just to echo what
23 Johnson said, I think that this is incredibly

1 important, and I hear the concerns that we get it
2 right around the table, though I will say that,
3 you know, I just think we need to remember that
4 we are here not only to reduce the burden on
5 institutions, but find a way to balance that with
6 protecting students and taxpayers.

7 I want to make sure that that is at the
8 forefront of our mind. Frankly, you know, I think
9 that -- never mind. I'm not going to say that.
10 So you know, I just want that to be the last thing
11 on our mind as we go to lunch, is that that's what
12 we're here to do.

13 As Daniel pointed out so eloquently,
14 this is one of the biggest complaints that we hear,
15 is that people didn't know that either the licensure
16 that was being pushed by the school was not actually
17 a relevant licensure for employment. So we all
18 know that there are thousands of licensures or
19 tests, certification tests that are floating around
20 that employers don't care about.

21 And we need to make sure that what we
22 are telling students when we are, as the person
23 spoke to about yesterday, advertising to them,

1 promoting things to them, that the licensures are
2 contained in that and that they are the relevant
3 licensures for what they're going to need in order
4 to actually work in their field, because that's
5 what we are getting at, right, gainful employment
6 in a recognized occupation.

7 If you don't have the right licensure,
8 you cannot be gainfully employed in the occupation
9 that you studied for. So that's all I have to say.

10 MS. BUCK: Thank you. Now there was
11 a proposal that we have a working lunch, but I saw
12 some objections to that. So I'm thinking that we
13 should go ahead and have a break for lunch, and
14 come back and try to do 7 and 8 pretty quickly.
15 So is an hour the right amount of time? I think
16 I heard yesterday 45 minutes is not long enough.

17 Is that correct?

18 (Off-microphone comments.)

19 MS. BUCK: So we'll come back promptly
20 at one o'clock. See you then.

21 (Whereupon, the above-entitled matter
22 went off the record and resumed following a brief
23 recess.)

1 MS. BUCK: I hope you had a good lunch,
2 a good rest, and we're now in the last half day
3 for this session. I again appreciate all your
4 work. I think what we want to do now is to quickly
5 go through 7 and 8.

6 Not that we've thoroughly covered any
7 of them, but quickly go through 7 and 8, and then
8 allow time for the proposals that many of you have
9 really been wanting to focus on. So let's start
10 with 7.

11 MR. MARTIN: We're going to start with
12 7? While we're doing that, I'm going to be passing
13 around something we have that explains the Social
14 Security Administration's master earnings file.
15 So Steve will be passing it to one side and I'll
16 pass it to the other. Thanks a lot. I appreciate
17 it.

18 Okay, thanks. We'll get started with
19 Issue Paper 7. This is reporting requirements,
20 and this one's pretty simple actually, because you
21 can see the consistency of nothing but strikeouts.

22 So it goes back to what we talked about in the
23 beginning with scope and purpose, where we had

1 proposed to eliminate reporting requirements in
2 favor of an administrative calculation of debt to
3 earnings, based on information that is currently
4 in NSLDS.

5 Our reasons for doing or currently
6 being reported to NSLDS by institutions under
7 enrollment reporting. So I think we've gone over
8 the basics of this already, obviously the huge plus
9 for this is that it eliminates a lot of burden on
10 the part of institutions.

11 I think any institutions here who had
12 -- who have programs that had to do the reporting,
13 especially if they had a lot of programs and a lot
14 of students, can tell you that they had at least
15 some modicum of burden associated with that
16 process, and so the option would be that we had
17 in front of us was to try to seeing as we were
18 expanding this to all institutions, all programs,
19 would be to expand that DE reporting under NSLDS,
20 which is separate than enrollment reporting, a
21 separate process. Expand that to include all
22 schools, all programs, or to find a way to do it
23 administratively without having to make schools

1 report.

2 This obviously reduces a great deal of
3 burden, takes off the table a great deal of burden,
4 and we already know that the potential other side
5 of this, which consider it a give or a take,
6 whatever, would be that in looking at what
7 information we have being reported to NSLDS, what
8 that doesn't include.

9 So it doesn't include tuition and fees,
10 books and supplies, which would allow us to do the
11 capping of debt at that level. It also on the other
12 side of that equation does not take -- does not
13 capture either institutional or private debt.

14 Which means that DE calculation could
15 not include any of those items. So I just before
16 -- everything's on the table, throwing it out there
17 for discussion. Just want to say a couple of things
18 that are absolutely in stone, which is that the
19 only options for us to go, direction for us to go
20 in if we're going to continue to calculate DE rates
21 going forward without a huge amount of lag time
22 is to either use the information we have or require
23 all schools to do what is under the current DE

1 reporting. So go forward from there.

2 MS. MILLER: Okay. Does every --
3 first of all, does every negotiator have the paper
4 that Greg is talking about, that he just handed
5 around?

6 MR. MARTIN: Oh, that's the Social
7 Security master file. Hopefully you'll have --

8 MS. MILLER: Does everyone have it?
9 So Jennifer, Whitney and then Laura.

10 MS. BLUM: So on that last point, so
11 just I mean this again, this issue paper is relevant
12 to what we end up working on in terms of the debt
13 to earnings metrics, because it goes back to this
14 all debt issue. And so if -- you know obviously
15 I'm fine with this issue paper as with all the
16 strikeouts if the metric accommodates the notion
17 that we're talking about all debt, which it
18 currently doesn't really contemplate.

19 So that's a metrics conversation. But
20 what I would say is is that, and you've said this
21 a couple of times now Greg. In my mind there is
22 a third option, which is the ability of institutions
23 to report, which they can, the amount of loan that

1 they keep versus the amount of loan that goes to
2 the student.

3 So I'm just flagging that. I don't
4 want to get into a huge conversation because I think
5 we need to move on, because I also think that's
6 a metrics conversations. But sort of reserving
7 the right that that -- this is going to come back
8 up and that would be one place where there would
9 be a reporting.

10 MR. MARTIN: Could I just ask what
11 mechanism you would foresee that being reported
12 through?

13 MS. BLUM: Well I mean that's a good
14 question, but there wasn't really -- I mean was
15 there a peer mechanism before we started Gainful
16 1 on tuition and fees? We created that.

17 MR. MARTIN: We created the whole
18 gainful employment, DE reporting process for that,
19 that whole file you have to submit. So I mean
20 there's not -- what I'm saying is there's not --
21 we don't have a way to build in either getting
22 tuition and fees or what you propose, getting the
23 amount that was credited to the student's account,

1 as opposed to the amount that --

2 All those require modifications to
3 current DE reporting, I mean current NSLDS
4 enrollment reporting, if we weren't going to use
5 the DE reporting.

6 MS. BLUM: So I'm just going to say
7 something along the lines of what Whitney has said
8 before, in terms of like oversimplifying to the
9 point of bad policy. So I hear you on the
10 constructing, but I mean we're creating a
11 regulation, and so creating -- It's hard to just
12 think about the fact that we're confining ourselves
13 to the limited abilities of the department, and
14 so we're going to deal with --

15 I mean so I'm just bringing it home
16 that's just going to definitely affect how the
17 metric looks if you're including all debt, which
18 I don't think is good for students because I think
19 you're burying the lead for students, by the way,
20 by doing all debt, because the lead for the students
21 should be like what is a tuition that I'm paying
22 at the school.

23 I'm not saying that the living expenses

1 isn't also relevant, but you're burying -- you're
2 putting all the story into one piece of information
3 conglomerated, you know, instead of broken apart.

4 And so I hear you, but it's a little disappointing
5 for you to say we're moving away for gainful, but
6 if we're going to do a reporting it has to be using
7 the gainful framework technology.

8 I mean so that piece seems a little
9 twisted to me but -- or we're not doing reporting
10 at all, which is also an extreme in terms of the
11 all debt issue. So I'm just flagging it. It's
12 going to come up again when we talk about the metric
13 so --

14 MS. MILLER: Whitney.

15 MS. BARKLEY-DENNEY: So I want to
16 reiterate something that we talked about, another
17 issue paper which I don't remember which one it
18 was. But the elimination of institutional and
19 private loan debt is a real issue here. I think
20 most people around this table would agree that for
21 the vast majority of borrowers, federal loans are
22 a better option given their repayment rates, the
23 repayment options that private and institutional

1 loans don't have.

2 What we don't want to do is set up an
3 incentive for bad actors to push borrowers into
4 private and federal loans in order to mask the
5 overall loan debt that people are taking out in
6 order to go to their institutions. So however we
7 need to figure it out, I think that institutional
8 and private loan debt is incredibly important to
9 really understand the financial health of a
10 borrower, particularly if they've borrowed that
11 obviously for the tuition.

12 MS. MILLER: Laura.

13 MS. METUNE: Second to Whitney's
14 comments, and maybe just a question to the
15 department about, I mean we know with Corinthian
16 what happened in regards to those loans, and I'm
17 wondering if you've thought through what the other
18 mechanisms to identify that kind of a problem early
19 on might be and how the department could address
20 it outside of this metric. I'm certainly open to
21 those ideas as well.

22 MR. MARTIN: I'm not sure I can 100
23 percent speak to what -- what happened at Corinthian

1 and to what extent other mechanisms were used or
2 could have been used to catch what was going on
3 at an institution like that. You know, as far as
4 -- with respect to reporting, I don't know -- you
5 know, and I acknowledge that if we go this route
6 with getting rid of this, that there are certain
7 things we just -- we just can't use.

8 And that that's -- that it's correct
9 to say that we're looking at that from a
10 practicality level first and foremost. Again,
11 other mechanisms we can use other than this? We
12 certainly are aware of institutions' financial
13 difficulties. We look at that. We have letters
14 of credit we can require of schools and we have
15 done that.

16 We've done some very large ones. So
17 there are a lot of other things we have in our,
18 I hate to say arsenal; that sounds a little bit
19 military. But at our disposal, let's put it that
20 way, that we can use to go after those players that
21 are chiefly responsible for abusing the programs.

22

23 And you know, but probably at varying

1 levels of success with that. But with this
2 particular thing, again there is a certain level
3 of practicality involved with it. I mean you have
4 to understand if you're going to say that we're
5 going to include all these other things in this
6 calculation and we're including other programs,
7 other schools, not just GE programs that going
8 forward --

9 PARTICIPANT: It's good to be useful.

10 MR. MARTIN: I should point out, I mean
11 people think I have this group of people probably
12 who are required to bring me things. By and large,
13 the people bringing me things are above me in pay
14 grade so it's -- they just do it because I'm such
15 a nice guy, not because they have to. So yeah,
16 we're looking at then having to get that
17 information, to understand it from schools that
18 are currently have GE programs. We have that
19 information. You're reporting it to us. You're
20 required to do it.

21 But then if we look at a school, a
22 program that wasn't required to report, we have
23 to get a certain number of years of that data before

1 we can start to put those rates out inclusive of
2 that tuition and fees, private and institutional
3 debt. So there are ramifications to it however
4 you go.

5 MS. MILLER: Sandy, Kelly, then
6 Johnson.

7 MS. SARGE: So this is Sandy for the
8 record. So I just want to make sure that I recall
9 properly what -- the proposal is that it would not
10 be all debt. I think this is -- it would be only
11 the Title IV debt as we've been saying.

12 One of the things that is potentially
13 difficult with private loans is that the -- doesn't
14 always come to the school. It can come to the
15 individual and then they pay the school cash. So
16 we don't know that it's necessarily a private loan
17 sometimes.

18 Now other organizations like Nelnet,
19 Sallie Mae, and all those guys, they do send
20 directly to the school. So it's a combination.
21 Private banks not always. But I just want to make
22 sure. At this point, I think we need to keep in
23 mind tradeoffs.

1 So length, where we may have the Title
2 IV debt, which is not necessarily representative
3 of the lower cap on two, you know, it's more on
4 the numerator, the extending of the amortization
5 could in effect bring it back into line of what
6 it would have been more specifically.

7 I think we're -- I agree with Greg's
8 point. We have to start thinking about some
9 practical ways to get to a place where numbers are
10 meaningful, and that's what I would continue to
11 encourage us all to think about. Like are there
12 tradeoffs here that we can talk about, so that we
13 get to a number that makes sense for students?

14 MS. MILLER: Kelly.

15 MS. MORRISSEY: My comments are
16 similar to Sandy's, in that I believe this is
17 definitely a tradeoff. We are definitely
18 welcoming the easing of administrative burden that
19 was involved with the former GE reporting
20 requirements.

21 I think as we discussed in December,
22 there may be opportunities to include data elements
23 in our current reporting structures that are not

1 present at the moment, that would allow us to report
2 tuition and fees that are being covered by Title
3 IV borrowing.

4 I understand that's in the future and
5 maybe that's a goal that we could work towards.
6 But I think especially in an environment where we're
7 looking to expand this to all educational programs,
8 I don't see how it's practical to then pass that
9 level of administrative burden on to institutions
10 which will directly then pass along the
11 administrative cost of that process directly to
12 students.

13 That will result in less time for us
14 to spend directly with students in counseling them
15 about matters that are of grave importance to them
16 in making enrollment decisions. So I really do
17 think it is a tradeoff, but that's exactly what
18 we're trading off.

19 MS. MILLER: Johnson, Whitney, then
20 Chris Gannon.

21 MR. TYLER: I have two comments, first
22 with respect to the private loans. I was looking
23 at the website of a non-profit school the other

1 day, trying to figure out the tuition there. When
2 I went to tuition, it immediately popped up we
3 already have an arrangement with a bank to do
4 private loans. So and we're preapproved for
5 \$1,000, and it was a \$3,400 program.

6 So it's -- it is a problem. It's a real
7 problem, and those debts are very different than
8 federal debts. But I do also appreciate what Greg
9 was talking about, in terms of getting the data
10 to protect the students sooner rather than later.

11

12 I just want to respond a little bit to
13 what Jennifer said about the people taking out money
14 and using some for tuition and some for living,
15 and we talk about this whole debt to earnings ratio
16 as a return on your investment. And part of what
17 is getting paid that doesn't get counted is your
18 Pell grant, and if you're in California your Cal
19 Grant, and in New York your TAP grant.

20 Those things don't get counted as a
21 return on investment. So and when we look at the
22 documents that Sarah gave us, we can see 90 percent
23 of the people who are in the gainful group, the

1 original gainful oversight group are getting Pell
2 grants.

3 So I really think we should put aside
4 this issue of, you know, what was tuition, what
5 was -- what went to living expenses, because there
6 is a loss of opportunity. If you go to a school
7 and you don't get a return on your investment that
8 you could have gotten if you had taken your Pell,
9 your TAP, your Cal aid to a higher performing
10 school.

11 MS. MILLER: Whitney.

12 MS. BARKLEY-DENNEY: So with regards
13 to private loans, I do want to point out, and I'm
14 sorry, I did not follow instructions and number
15 all of my pages, but on the second page, I think
16 we call it numerette ii, or 2, I don't know.
17 Underneath 2, Roman numeral ii, so it was -- the
18 rule was always conceived as what the institution
19 should reasonably be aware of, and I think that
20 there's some room if we decide to do this to figure
21 out how to be more specific about that language.

22 But I am just going to reiterate that
23 I think private loans are different than

1 institutional loans, because the institution knows
2 the institutional loans that they're giving out.

3

4 So even if we say okay, the private loan
5 thing was too hard, I think we really need to think
6 about the institutional loan piece, especially
7 again considering the abuse that we saw with the
8 two institutions that rhyme with Smerinthian and
9 PEE.

10 So we all know that they had
11 institutional loans that they were expecting as
12 investors a 50 percent default rate on those, and
13 that's not really, I think, the same type of burden
14 as figuring out a private loan.

15 MS. MILLER: Greg, Greg.

16 MR. MARTIN: You know the problem is
17 with my glasses off, and with them on, I can't see
18 this. So and I'm too vain to get what do they call
19 them, progressives. Yeah, don't say that word.
20 That's for old people, not me.

21 All right, now. I just want to point
22 out one thing, and this is just something to throw
23 out there, that you know, to the extent that there's

1 a concern about that we all know that schools can
2 currently put students in other instruments other
3 than the Title IV, private debts or whatever, we
4 do have the capability of looking to see if students
5 are -- if schools are pushing students into other
6 forms of debt.

7 We can look at disbursement records,
8 whatever, to see where a school is now. So you
9 know, these rules go into effect and we noticed
10 a huge decline in loan volume. We could certainly
11 have our compliance people look at a school to see
12 are they pushing students into other instruments.

13 So we would have that capability. I just want
14 to point that out.

15 MS. MILLER: Chris Gannon, then
16 Daniel.

17 MR. GANNON: Yeah. So I have serious
18 concerns leaving out private and institutional loan
19 debt, because it incentivizes bad actors to issue
20 bad institutional loans. I think that this would
21 disproportionately hurt low income students.

22 MS. MILLER: Thank you. Daniel.

23 MR. ELKINS: It's already been said

1 better than I could, so I second what Jennifer and
2 Chris said.

3 MS. MILLER: Okay. Jeff, then Sandy.

4 MR. ARTHUR: Yeah. Having
5 experienced the reporting process and
6 understanding the burden, I mean I absolutely
7 understand. It is not going to be practical for
8 all institutions of higher education to go through
9 that exercise. You just wouldn't get through it
10 in three or four years for one year, to resolve
11 everything and for it to be accurate.

12 But I've got an idea that might help
13 move this along. Maybe not, we'll see. So if we
14 look back at the disclosures, and the department
15 has discretion.

16 At some point when it's determined that
17 there may be some way to gather, capture
18 institutional, private debt, whatever, that why
19 not just say okay, when the department's able to
20 or at some point they've got the discretion to add
21 that element to the disclosure, although it might
22 not be in the DTE calculation for the official DTE
23 disclosure.

1 But it still may be supplemental
2 information that could be provided through the
3 disclosure process. Better than nothing, right?

4 MS. MILLER: Any other comments or
5 questions on this? Whitney.

6 MS. BARKLEY-DENNEY: Does anybody, and
7 I'm not going to, I promise, attack you. I just
8 have a question. Does anybody here issue
9 institutional loans as part of their institution,
10 other than -- Okay. So I guess my question would
11 be as far as the burden in reporting those, I mean
12 I imagine that they're somewhere, right, and it's
13 a matter of just transmitting over the amount that
14 has gone out per student.

15 Like it seems like -- and unlike the
16 private loans we have to go ask about that, that
17 information should already be somewhere in a
18 presentable format, because certainly you have to
19 go back to your investors or to whomever's helping
20 to fund that institutional loan program and show
21 then what disbursements look like.

22 MS. MILLER: Sandy, and then David, did
23 you also want to answer?

1 MR. SILVERMAN: She asked about loans.

2 I thought I raised my hands about loans.

3 MS. BARKLEY-DENNEY: Oh yeah. I was
4 just asking is that -- I mean is it something, is
5 it really that burdensome to transfer that. I
6 understand the private loan issue, but I don't
7 understand why it would be burdensome for the
8 institution to show who's borrowing.

9 PARTICIPANT: We track it. I mean
10 every school has a different amount of students.

11 I mean at any one time we have 1,500 students,
12 but some schools might have 25,000. We track it.

13 We don't have investors by the way, but we track
14 loans. We don't have too many. We just do it
15 really --

16 You know, you're looking at
17 institutional loans as a bad things. We do it as
18 a good thing. We know they're hard to collect,
19 but if the student really wants to come and there's
20 a bridge of five-six thousand dollars, we'll give
21 them a loan knowing it's risky. But they want to
22 come to school, so we want to get them into school.

23

1 So we kind of do -- or someone that's
2 already in school and is having trouble. So we
3 do it for a good cause, to keep them in school
4 because they've already paid and they want to stay
5 and they want to graduate. But yeah, we do track
6 it and but I don't know how a bigger school would
7 do the same thing.

8 MS. MILLER: Jeff and Kelly, do you
9 want to respond on both?

10 MR. ARTHUR: Yes.

11 MS. MILLER: Well, I want to see if she
12 didn't want to respond on the institutional behalf.

13 So Jeff and Kelly.

14 MR. ARTHUR: Yeah. One of the points
15 here, this is institutional debt, not institutional
16 loans the way it's been used before, and that was
17 not very well or actually not defined in a way that
18 actually was institutional debt prior, and I think
19 we discussed that at the last session.

20 I mean if you have payment plans, that
21 they exceeded the TIL requirements, where you had
22 to have a certain instrument, that that was being
23 counted as debt even though -- so anything we do

1 on institutional debt should be long-term planned
2 debt, whether it's a payment that goes well beyond
3 graduation.

4 But the way it was done before is
5 payments that were made, even if somebody had a
6 balance that they had to clean up after they left
7 school that -- or you know what? You owed a
8 balance. You left school and you owed a thousand
9 bucks. You should have paid that. Well now, you
10 know, they take a few months to pay that.

11 But they're going by the LDA, what's
12 a debt, and even payments that they had made by
13 the LDA were counted as debt, which was pretty
14 absurd.

15 MS. MILLER: Kelly.

16 MS. MORRISSEY: What Jeff said.

17 MS. MILLER: Thank you, Sandy.

18 MS. SARGE: Yeah but to some degree
19 yes, that's true, and oftentimes debt --
20 longer-term debt comes with an interest rate
21 oftentimes, and much of the institutional gap
22 payment plans that schools put in place, it's while
23 they're in school there's no interest. Oftentimes

1 there's never any interest on it. It is a way to
2 support the cash flow deficiency between what they
3 can get from other sources and what the tuition
4 and/or living expenses may be, like if they're in
5 dorms and stuff.

6 So there are institutions. I think it
7 would be easy where -- you know, in order to get
8 repaid, you have to know who has the debt, right?

9 Who owes you money, right, yeah? And a lot of
10 the schools that I work with, they have collections
11 within the school. Some of them outsource that.

12
13 But most of them that I've seen put
14 together retail installment contracts, which is
15 different than a loan for everything Jeff said in
16 their payment plans. So yes, it is available.

17 MS. MILLER: Tim.

18 MR. POWERS: Yeah, and I just, you
19 know, I'm not advocating one way or the other.
20 But just to sort of jump in from the non-profit
21 perspective, some of our schools do offer
22 institutional loans and I'm not a financial aid
23 administrator. Let me make that abundantly clear.

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But what they -- what we often hear is that it's in many times I don't want to call it a bridge, but when there's an unforeseen financial disruption that can't necessarily be caught by the one time a year you fill out your FAFSA, it's a way for schools to sort of offer you a little bit of a lifeline. Again, not advocating one way or the other, but that's typically how our schools do it.

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MS. MILLER: Sandy.

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MS. SARGE: Could I just ask a clarifying question? So Chris, maybe you can be more specific in what you mean when you say the bad actors incentivizing bad loans, because I want to make sure that I am putting it in my head. What does that mean to you? What's a bad loan? What's -- explain that as a compared to how we've explained some of the financial mechanisms that the schools are using?

21

22

23

MR. GANNON: Yeah. I'm concerned that certain schools will issue loans to students, you know, to incentivize them to go to school that they

1 can't repay, that they're not in a position to
2 repay. So they're bad loans, because they can't,
3 they can't essentially afford to take them on and
4 they deceive them into taking them on.

5 MS. SARGE: And then when they don't
6 pay, the school doesn't get the cash back. So
7 they've loaned them the money. I just want to make
8 sure that the relationship, it is a bad loan. If
9 they don't pay it back, you know, that the next
10 step is that that cash doesn't come back to the
11 school.

12 They can't do that forever, because if
13 they keep doing that -- they don't have the cash
14 flow to run the school. So I want to make sure
15 that if it was coming in from some other source.

16 And you're thinking it's coming from investment
17 money?

18 MS. BARKLEY-DENNEY: No. I'm
19 thinking that you can get it back by selling it
20 to a debt buyer. I mean you might not get
21 everything that you have, but you know some schools,
22 depending on the institution, and I'm not saying
23 anybody here would do that. But you know, you could

1 have a bunch of loans that you know you're going
2 to write off as a loss, and then sell whatever you
3 can to a debt buyer and get your profit from that.

4 MS. SARGE: Okay.

5 MS. BARKLEY-DENNEY: I mean, you know

6 --

7 (Simultaneous speaking.)

8 MS. SARGE: That's a good example.
9 That's a good example. I was just trying to get
10 understanding.

11 PARTICIPANT: Or they're loss leaders,
12 so that you can continue to be in compliance with
13 9010 and can continue to get federal student loans
14 and other private loans.

15 MS. BARKLEY-DENNEY: Yeah, that's
16 right.

17 MS. MILLER: Jeff.

18 MR. ARTHUR: Yeah. I just also wanted
19 to point out that I don't want anybody to get the
20 impression that there aren't reporting
21 requirements. This means there's no reporting
22 requirements to the Department of Education. The
23 disclosure process is still a tremendous reporting

1 burden already.

2 So this is something that's layered on.

3 Don't state that schools aren't going to have to
4 do anything.

5 MS. BUCK: So are there other comments
6 about Issue Paper 7?

7 (No response.)

8 MS. BUCK: I think we're ready to move
9 on to Issue Paper 8.

10 MR. MARTIN: Okay. I'm going to ask
11 Cynthia Hammond from FSA to come up and join me
12 for that discussion.

13 MS. MILLER: While Cynthia's making
14 her way up, I know Laura did a good job of handing
15 out her memo on this. But does every negotiator
16 have a copy of Laura's memo for Issue Paper 8?

17 MS. BUCK: And we'll let her comment
18 on it shortly.

19 (Pause.)

20 MR. MARTIN: Do we all -- you know what?

21 After we introduce this, I'll introduce the topic
22 and maybe Laura can take just a few minutes to just
23 briefly go over, just so we all know what that's

1 about. Just a brief, I don't want to impose upon
2 her to launch into some detailed thing, but just
3 to give us a brief overview of what it is, so that
4 people will recall.

5 I'll start with an introduction of the
6 paper and then we can do that. Okay. We're
7 looking at Issue Paper No. 8, and this is
8 certification requirements, and we propose to
9 require that for any Title IV educational program
10 that prepares students for employment in an
11 occupation for which the state or federal
12 government has requirements for certification or
13 licensure, the institution certify and it's a
14 program participation agreement that the program
15 is approved by a recognized accreditation agency
16 and meets the state or federal requirements.

17 As noted previously, with the removal
18 of loss of Title IV eligibility as a sanction, we
19 propose to clarify the ramifications of that
20 proposal by removing the requirement for schools
21 to explain how a new program is not substantially
22 similar to another low-performing program.

23 Let's look through this briefly before

1 we start. You'll note that we struck the language
2 related to transitional certifications for
3 existing programs. We don't feel that that is any
4 longer germane. I'm trying to see what we did here.

5 What else did we have to go through? Yeah.
6 Basically eligibility and transition rates.

7 So that's the main thrust of what we
8 did. So I'm not going to go through -- I'm not
9 going to bother going through, in the interest of
10 time, going through the whole paper. So why don't
11 we take -- is Laura willing to give us a few minutes
12 explanation of the paper?

13 MS. METUNE: So you might recall that
14 I mentioned this when we gathered in December, when
15 we talked about this issue of certification, and
16 I think I've also mentioned that before coming to
17 the community colleges, I was the regulator for
18 California's for-profit institutions.

19 One of the first school closures I faced
20 was in 2012, when an institution was found to be
21 offering programs. They were related to MRI
22 technicians for which they didn't have the proper
23 programmatic accreditation and students ultimately

1 weren't going to be able to sit for licensure.

2 Thankfully, students were being
3 charged \$14,000 and at the end of the day they would
4 be left with the loss of time, loss of money and
5 no ability to get a job in this field. Thankfully
6 California's laws were really clear. We said
7 essentially that if you wanted to offer a program
8 in a field that requires licensure by the state
9 of California, you must meet the licensure
10 standards for that program, so that the students
11 could ultimately be qualified to sit for exam or
12 to be licensed.

13 That provision of our law allowed the
14 bureau that I worked at to take action to ultimately
15 stop the school from enrolling new students and
16 close the school, and we were able to get students
17 back the tuition that they had paid. But we, you
18 know, we prevented any more students from being
19 taken advantage of, but we did have 400 students
20 who even though they got their tuition back, they
21 still lost their time and really their goals.

22 They realized that they had spent a lot
23 of time towards a goal that they were no longer

1 going to be able to fulfill. So putting aside the
2 need to protect students, which is really a priority
3 for me and it's probably obvious from the things
4 I say while I'm here. I do want to recognize the
5 burden that is placed on an institution when you
6 have to go through a certification process to assure
7 your program's qualified for state level licensure.

8 So when I thought about preparing this
9 memo, I approached some of our career education
10 programs to talk about this, and they were really
11 shocked by the concept that an institution would
12 offer a program that ultimately doesn't allow a
13 student to be eligible for licensure. They felt
14 that this was a no brainer, and that of course you
15 would not enroll a student in a program that doesn't
16 meet the requirements of the state.

17 We also talked about the growth in
18 online education, and for some smaller states this
19 issue of cross-border enrollments. They really
20 felt like it's not an unfair burden for an
21 institution to be responsible for ensuring that
22 the student can ultimately sit for licensure in
23 the state where the student is located.

1 So I appreciate that Issue Paper 8
2 continues to maintain this requirement for the home
3 state, essentially the state where the institution
4 is located, and my proposal is that we extend that
5 to the state where the student is located.

6 Essentially, that if I'm offering an
7 online program say for nursing or teacher
8 credentialing, I'm not going to enroll a student
9 from another state unless my program meets the
10 requirements of that state. I did recognize that
11 there will be instances where a student might want
12 to still enroll. Like if they have a plan to move
13 to the state that meets the requirements, obviously
14 that student should still be allowed to enroll,
15 and I think that the language in this proposal
16 addresses that and would continue to allow that.

17 I also just -- I do want to recognize
18 that fundamentally there's a difference here
19 between what's required for a student to practice
20 in that field versus what additional certifications
21 just might be recognized by the state. So this
22 is really intended to be targeted only on that base
23 level requirement to practice in the field, not

1 the myriad of other optional certifications that
2 a state might offer.

3 So what I was hoping to do is just spend
4 a few minutes talking about it. I'm happy to
5 participate in a subcommittee. I thought we could
6 get your feedback, maybe take a temperature check
7 to guide the work of the subcommittee, and then
8 maybe discuss it in more length in March.

9 MS. BUCK: So maybe some initial
10 feedback to the ideas expressed here?

11 MS. MILLER: Okay. Daniel, then
12 Jennifer Blum.

13 MR. ELKINS: Thank you for putting this
14 well thought-out document together. I couldn't
15 agree with you more, yeah. Thank you.

16 MS. MILLER: Jennifer Blum, then
17 Whitney.

18 MS. BLUM: So this is so complex, but
19 here we go. So there's no difference between an
20 -- in my mind, there's no difference between an
21 online institution that enrolls a student, students
22 in 50 states and a major state university that has
23 students from all 50 states or 30 states or even

1 ten states.

2 So I would say that this is -- broaches
3 on an issue. You don't say online explicitly, but
4 there's a significant issue as to who this would
5 apply to beyond the online, and we would argue that
6 it would have to apply to any institution that had
7 students from multiple states, because why would
8 there be any -- from a consumer protection
9 standpoint, why would there be any difference?
10 And so that's just one point right off the bat.

11 And then I just really want to point
12 out, and this is what we suffer through. So if
13 you take -- well, I'll give you two examples. If
14 you take -- I don't even want to use one of our
15 programs. It's just a program that's subject to
16 licensure in 50 states, and say your home state
17 has particular curriculum, and by the way the
18 Department's going to need to be very, very careful
19 on this regulation because we are now in the
20 curricular weeds, and we are.

21 Because that's how they build their
22 licensure requirements around course work and what
23 type of courses are required for licensure. So

1 if in your home state, and you need to meet your
2 home state sort of first if you will. So if in
3 your home state they say you need to take the
4 following 25 courses and credit hours in the
5 following X places, and then -- and that's State
6 X.

7 And then State Y, the licensure board
8 says you know what? We're going to have you do
9 30 courses. What we do, and I think a lot of schools
10 do this, is we build it to meet our home state,
11 and then we will have the other courses available
12 to the students. We try to always make sure that
13 that student in that state, right, understands that
14 they have to take five more courses.

15 But when you get into certification
16 around it, you're going to get really, really
17 tricky, and again I want to emphasize again
18 licensure boards are not like legislatures or
19 regulations. They change their interpretations
20 all the time. I mean literally all the time, and
21 it's student by student.

22 It's not like they have a set, you know,
23 somehow standardization. I wish they did, but they

1 don't. I'll give you another example. You have
2 in here "if accreditation is required."
3 Accreditation, while a lot of states are
4 increasingly, and I don't necessarily think this
5 is -- I think it blows up the triad what I'm about
6 to say, I think is a practice that I think is not
7 productive.

8 But states because of the burdens are
9 increasingly saying "and if you have accreditation
10 of X, you get a free pass." Now so that's why I
11 know you have "if accreditation is required." Most
12 states, thankfully for students, because there are
13 -- sadly there are specialized accreditors who for
14 whatever reason have dispositions against online,
15 and so they just say oh, we don't approve online.

16 Psychology, which you have in your paper, is a
17 good example.

18 They don't accredit online programs,
19 which is sort of goofy but whatever. Most states,
20 understanding that that's the case, create
21 alternative pathways for students. So that
22 students have a different way of becoming licensed
23 that's not reliant on if accreditation is required.

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So that's an example where I think we can work together to clarify, that we're not talking about just if accreditation is required. We're talking about if there's an alternative pathway to licensure as well. So that would be a good example of I think a place that could be, you know, improved and tweaked.

Then my only other comment is not on your paper but it's on, actually the Department's paper. So I can reserve that or I can mention it now.

MS. BUCK: Why don't you wait?

MS. BLUM: Okay.

MS. MILLER: Okay. So Whitney, Chris Madaio, Daniel and then Tim.

MS. BARKLEY-DENNEY: Yeah. So I'm going to have to disagree that it is the same thing for an online program to be offered in a school as it is to have students come from another state to a brick and mortar school.

I think a brick and mortar school that is serving students in a particular state, you know,

1 their assumption can truly be that they need to
2 meet all of the standards of the state that they're
3 operating in and, you know, that student knows that
4 by going to that state, then the requirements that
5 that school meets are going to be the requirements
6 set up by the brick and mortar state.

7 You don't expect if you're going from
8 Ohio to University of Michigan that, you know,
9 University of Michigan is going to meet the
10 standards for an employment in Ohio. That's
11 different than if you are living in Ohio and you
12 are reached by an online program to train you to
13 do something in your home.

14 You expect to be able to stay in your
15 home, to stay in your home state. That's part of
16 why you are doing the online program. So I think
17 that it is important that we recognize that
18 difference, and that we really understand that as
19 hard of a burden that this seems to be for
20 institutions, it's way harder for borrowers and
21 students who don't know where to start looking,
22 or even what the requirements might be. Truly,
23 the people who have the expertise to do that in

1 this field are the institutions themselves.

2 MS. MILLER: Chris Madaio.

3 MR. MADAIIO: Thank you, Chris Madaio.

4 So certainly I agree with the proposal that Laura's
5 putting forward, in that schools that have the
6 resources to offer these programs, schools know
7 where students are living, especially in online
8 programs.

9 You know, obviously I think Whitney,
10 and I know you hear some grumbling, is drawing the
11 distinction between online, you know, obviously
12 where the school expects that students are living
13 in various states, and a brick and mortar campus
14 where a school, you know, may expect.

15 Of course in smaller states, you know,
16 it's easy for students to cross state lines and,
17 you know, larger states. Maybe it's easier to
18 assume that the student is likely going to try to
19 get a job in the state in which they're going.
20 But I think Whitney's not saying that those brick
21 and mortar schools shouldn't have to follow this.

22 Right, exactly. So I think that that's just kind
23 of drawing a line.

1 I mean right, and I agree with that and
2 I think what Laura says, that a school sure, that
3 has students from states should be able to explain,
4 assuming where the student lives because the school
5 knows where the student lives, should be able to
6 explain to that student where that he or she would
7 be able to get a license in their state.

8 My only other point is just that, you
9 know, Maryland for instance, passed a law that says
10 that for private career schools and for-profit
11 institutions, they can't offer programs that will
12 not allow a student to become licensed in a field
13 in the state of Maryland.

14 So I think there's a basis for this,
15 that states recognize that it's important that for
16 students in states who are taking programs, they're
17 going to be able to get licensed and therefore get
18 a job if a license is required to get a job in that
19 state.

20 MS. MILLER: Daniel.

21 MR. ELKINS: I understand that the
22 administrative burden for all schools will be
23 difficult when it comes to this issue, so I would

1 suggest that the Department look into O*NET,
2 Department of Labor. They currently are tracking
3 career certifications and licensure, ones that have
4 certain levels of earning potential, ones that
5 require or are required to practice based on state
6 and so forth. That could be a halfway step.

7 MS. MILLER: Tim, Tony, then Johnson.

8 MR. POWERS: So this is actually a
9 question for the Department, but one that I think
10 actually sort of pulls together a lot of these loose
11 threads, which and forgive me because a lot has
12 been happening with the change in administration,
13 and if there has been an announcement, I just
14 haven't seen it.

15 But and I apologize for bringing in an
16 outside regulation to the table, but the distance
17 education state authorization regulation, that is
18 still scheduled to go into effect on July 1, right?

19
20 So you're not going to hear us, and I
21 don't do this very often, but we would -- we actually
22 really have a lot of praise for the Department,
23 for the way that I think they constructed -- I know

1 Greg's laughing -- the way that they constructed
2 that regulation, because I think it actually does
3 sort of balance the two, which is they say, and
4 correct me if I'm wrong, but essentially what
5 Laura's suggesting, but if the state requires
6 programs to be authorized.

7 So in other words, sort of what Chris
8 was saying has happened in Maryland, would sort
9 of apply nationwide. Is that generally the gist
10 of it?

11 MR. GANNON: That's correct, and it's
12 also just there's a disclosure to students built
13 into the regulation as well about whether the
14 program would meet requirements in certain states.

15 MR. POWERS: Okay, because I think
16 that's actually a pretty good sort of middle line,
17 because it doesn't tread on any sort of federalism
18 issues, and it kind of allows states to operate,
19 to regulate as they see appropriate. But it
20 doesn't necessarily create a burden on institutions
21 to sort of have to track a student as they might
22 move from state to state or whatever might be so.

23 Just sort of just to put that out there,

1 and again, I apologize for those who might not be
2 that familiar with the regulation, because it is
3 outside the scope of this committee. But I just
4 wanted, I wanted to mention that and actually to
5 commend the Department for the way that they
6 constructed the regulation.

7 MS. BUCK: So before we leave Laura's
8 proposal or her memo, is there -- are there any
9 other questions or comments about it, and then we
10 can get into questions of the Department.

11 MS. MILLER: Tony.

12 MR. MIRANDO: Thank you. Tony
13 Mirando. Laura, I like it, and I know that you
14 asked me to look at this. One of the things that
15 I would recommend that you might want to consider
16 adding into here is the fact that you have down
17 programmatic accreditation requirements.

18 Not all -- I do want to get back to
19 gainful employment programs, have a requirement
20 for programmatic accreditation. And so
21 institutional accreditors, or at least a
22 specialized institutional accreditor such as my
23 agency, we do require that in order for us to approve

1 a program in a state that it does lead to licensure.

2 So just a little piece. There are some
3 states that do require a school to have
4 accreditation, which I really love those states,
5 because not all states require accredited
6 institutions to sit for licensure, which again as
7 an accreditor I find that a little bit shameful
8 to students. But there are states that say you
9 must be accredited.

10 So even institutional accreditation is
11 a requirement for them to sit for licensure, which
12 is nice. But at least in the states that don't
13 have that as a requirement, institutional
14 accreditation for at least in the specialized area
15 ones, we do look at do they meet the requirements
16 to sit for licensure and students must be notified
17 of and given a copy of the law, so they can look
18 at things like do you have a history of being
19 arrested, you know, was it a felony, was it a
20 misdemeanor and what the ramifications of all those
21 things are, prior to enrollment, so that students
22 have a better understanding.

23 MS. MILLER: Okay. So I have Johnson,

1 Bob. John, did you have a -- on both, okay? So
2 Johnson, Bob and then John.

3 MR. TYLER: Hi, Johnson Tyler. I just
4 want to agree with Laura's proposal here. I think
5 there's a human element here, the burden imposed
6 on the student who doesn't spend time studying,
7 arranging their life so they can go to school, and
8 then learn that they can't sit for the test. I've
9 had two clients that this has happened to, and it
10 really, it really kills their souls. They really
11 have put themselves out there.

12 And to the extent that distance
13 learning is involved here, there's a huge economies
14 of scale that's involved with distance learning.
15 You know, that's part of why it's attractive.
16 I think that the institutions need to address this
17 issue, especially when it's pertaining to the skill
18 levels, the certificate type of programs that are
19 designed to get you quickly into a better-paying
20 job. It's -- I think they really have that
21 obligation.

22 MS. MILLER: Bob.

23 MR. ROBERT JONES: I too want to thank

1 Laura and we've discussed this, but going back to
2 my point yesterday and the point that was just made
3 a few moments ago, I think it's not only should
4 we do this, but we need to ultimately move this
5 on. The Department needs to move this on to
6 industry recognized formal certifications. We
7 find more abuse where there's generic technical
8 training going on, but not resulting in
9 accreditation and a certification that is in fact
10 recognized by business.

11 So that issue is going to become more
12 and more important, and this structure is useful
13 for that purpose, and we need to get this
14 fundamental piece in place before we start making
15 judgments on our protocol.

16 MS. MILLER: Thank you, John.

17 MR. KAMIN: Thank you, this is John.

18 Laura, I actually have a question, a clarification
19 question on this. In terms of the requirements
20 to meet professional licensure and certification,
21 would that include unaccredited certification as
22 well? So for instance if I was in digital media,
23 I would need to prove how it leads to an Adobe

1 certificate or a Microsoft certificate or something
2 like that?

3 MS. METUNE: I tried to write this in
4 a way where I thought it could be complied with.

5 I do think institutions should have a
6 responsibility to know what the expected industry
7 standards are. But this wouldn't go that far,
8 because I think it's a harder thing to clearly
9 certify that you're complying with. It would only
10 apply in the cases where the state requires that
11 licensure standard, educational component or
12 programmatic accreditation.

13 MR. ROBERT JONES: Great. Appreciate
14 the foresight.

15 MS. BUCK: So now let's shift to
16 include questions to the Department, as well as
17 any continued comments on the proposal, both.

18 MS. MILLER: Okay. So I have Tony.
19 Then I have Jen B., then I have Jeff.

20 MR. MIRANDO: Thank you again. Tony
21 Mirando. This is again to Laura. I just want to
22 follow up, just probably 30 seconds or less. One
23 of the things that you might want to include in

1 your paper is a requirement, because I actually
2 like it, again I want to show my support for this,
3 is institutions that do have institutional
4 accreditation, where they absolutely do recognize
5 the fact that a programmatic accreditation is also
6 necessary.

7 That would be important, because I know
8 that, you know, for the longest time we've heard
9 of schools in New York who only need to have
10 institutional accreditation, but yet students who
11 because they're right on the line may want to go
12 to New Jersey, and New Jersey requires not only
13 institutional accreditation but there may be a
14 programmatic accreditation.

15 But because the state in which the
16 school is in doesn't have that requirement, the
17 student maybe doesn't have that disclosure. So
18 it may be important to, however you frame this,
19 that that issue is being addressed, because I hear
20 about it and I hear about it and I just said well,
21 you know, this is more of a disclosure issue. So
22 we should just make sure that's pretty clear.

23 We're looking at that method, that

1 cosmetology and barbering and massage have that
2 yet. We're looking at requiring our institutions,
3 that if indeed that day happens, where there is
4 programmatic accreditation and we don't get into
5 that, that we're going to require our institutions
6 to notify their students that that is a requirement.

7 MS. MILLER: Jennifer Blum.

8 MS. BLUM: So actually Tony, just to
9 piggyback off that, I mean I just want everybody
10 to understand. This is a certification for Title
11 IV for the institution. So this is actually a much
12 bigger deal than the disclosure piece. So that's
13 why I'm emphasizing like let's get it right, because
14 this actually -- this is -- this is a big Title
15 IV issue as it relates to the PPA.

16 So this is actually not small potatoes
17 here. So that's why I'm emphasizing let's get it
18 right. I just want to be on record. We're
19 supportive conceptually of understanding the
20 licensure issue and just, I mean we go above and
21 beyond what's required. Right now what we do is
22 we disclose -- we don't just disclose to students,
23 but we actually do and we talk about the burdens

1 of acknowledgments.

2 But we do make sure in writing by state,
3 by student to the extent that we, you know, that
4 they understand in the state that they reside at
5 time of enrollment. So I do want to point something
6 out. One of the reasons why students do attend
7 online is that they are mobile, and they do move
8 state to state.

9 So we also beg them to let us know when
10 they're moving, so that we can then revisit this.

11 Throughout the course of a program, we will notify
12 the student individually with their academic
13 advisor. We will notify them, remind them, have
14 you talked to your licensure board lately. When
15 you're midway through, like are you sure you
16 understand your field requirements? Do you get
17 what your, you know, do you get where you are, on
18 track for licensure?

19 Oh, you moved? Okay. Well now we need
20 to have a different conversation. So we do that.

21 Literally, we try to do it to the extent that online
22 students are actually hard to capture. We do our
23 best to try to capture them. But it is -- this

1 is a lot of work, and so I'm very focused on the
2 certification piece, because that puts it into a
3 whole different realm of responsibility.

4 So I just, I did have one other question
5 before I ask the Department my other question.
6 Whitney, just to be clear, I totally understand
7 the difference between online and on ground of
8 course. But you're not saying that on ground
9 institutions shouldn't have to certify in the same
10 manner? You're just saying -- you're just
11 acknowledging that there's a difference? Okay,
12 got it. Okay.

13 I just wanted to make sure that we
14 understood that this was applying -- yeah. So I
15 just wanted to clarify, this would apply to on
16 ground as well.

17 (Off-microphone comments.)

18 MS. BLUM: Okay, good.

19 MS. BARKLEY-DENNEY: Let me just say,
20 since I didn't say it clearly. What I'm saying
21 is, you know, of course if a school in North Carolina
22 that only has a campus in North Carolina, they would
23 have to certify in North Carolina. I just think

1 it's a different consideration if they have --

2 MS. BLUM: No, no, this isn't a
3 certification about North Carolina. That's why
4 I'm emphasizing. That's why I'm spending so much
5 time on it. We would have not just certify the
6 way, I think the way Laura's proposing, we would
7 not just have to certify in North Carolina if we
8 were in North Carolina.

9 We'd have to be certifying about every
10 single program that leads to some form of licensure
11 in every single state from which we have students.
12

13 MS. METUNE: Yes, you would be
14 responsible for ensuring that the student where
15 they reside, right? They might move and change
16 their residency to another state, in which case
17 you'd be fine. But if they're maintaining their
18 --

19 MS. BLUM: Well only if I knew.

20 MS. METUNE: --- if they're residing
21 in a state that your program doesn't meet the
22 certification for licensure requirements, then
23 yes, my proposal is that the student should have

1 to sign that they know that and that they're
2 enrolling anyway.

3 MS. BARKLEY-DENNEY: So let me just
4 make a clarification.

5 MS. BUCK: Wait.

6 MS. BARKLEY-DENNEY: Let me make it
7 clear from what I understand, and I think Laura
8 this is correct. A student who leaves Ohio to go
9 to Michigan is a resident of Michigan.

10 (Off-microphone comments.)

11 MS. MILLER: Sandy, can you use the
12 microphone?

13 MS. SARGE: I'm sorry. Like I move to
14 Texas --

15 MS. MILLER: It's not on.

16 MS. SARGE: I moved to Texas to go to
17 school. I was -- you had to be out of school and
18 working full time for X number of years to be
19 considered a resident. Otherwise, they wouldn't
20 get the out of state tuition at the state school
21 I went to. So people are not considered residents
22 of that state while they're in school. They're
23 residents of their home state and they vote in their

1 home state. Well, a lot of -- well maybe it's state
2 by state.

3 PARTICIPANT: Okay. So there's a
4 difference in opinion about fact here. I'm not
5 sure we're going to be able to settle that. I'm
6 wondering if we could go back and have you ask the
7 questions of the Department that you have.

8 MS. BLUM: Well yeah. Now I have two
9 questions of the Department. So just to clarify,
10 and this is sort of blending Laura and the
11 Department, Laura, the certification that
12 you're -- the certification in Issue 8 is a
13 certification around the PPA. It's not a student
14 certification. It's a certification that the
15 institution is making to the Department in order
16 to re-up its PPA; is that correct Steve?

17 So the certification Laura that you're
18 talking about is part of the certification to the
19 Department? We're obligated -- we're saying what?

20 MS. METUNE: No. I'm -- yes. The
21 requirement here is the certification to the
22 Department, but the language that I was referring
23 to in terms of the student choices written into

1 the memo, that is just intended to recognize that
2 there might be students who choose to enroll in
3 a program, regardless of the fact that it may not
4 meet the licensure requirement.

5 So the certification is essentially
6 that the school has made -- I mean in my mind, the
7 idea here is that the school's made a declaration
8 that they've informed the student, and the student
9 is making an informed choice to enroll anyway.

10 MS. BLUM: Very helpful, thank you.

11 MS. BARKLEY-DENNEY: So let me just ask
12 a clarifying question, because I'm still confused.

13 In the way that you understand this to work, and
14 everybody please just let me get this out before
15 you jump in, if a borrower moves from Ohio to
16 Michigan and is in residence at the University of
17 Michigan, does the state have to say we may not
18 be licensed in Ohio, but we are licensed in
19 Michigan?

20 MS. METUNE: That is not the problem
21 I'm trying to solve.

22 MS. MILLER: Okay. So let's -- did you
23 have a question?

1 MS. BLUM: Yeah, for the Department.

2 So this is switching gears. I hope people are
3 okay with that, switching gears. It was pointed
4 out to me that in the certification, and I can
5 provide language. We don't have to belabor this.

6 But on the language that you have in the
7 regulations, it says "satisfies any applicable
8 prerequisites."

9 This goes back to the example that I
10 gave, where even in your home state. So let's say,
11 and this happens a lot. So let's say your home
12 state has a requirement of 20 courses, but like
13 48 of the other states require 18 courses, okay.

14
15 So you're going to build your
16 curriculum around the country, around what the
17 majority of the country is, and then what you're
18 going to do or what most schools do is they add
19 on the two course requirements, and they say to
20 the students that live in your home state you need
21 to take these two extra courses to be, you know,
22 to be --

23 The way your language is written, I just

1 have a tweak, which I can provide separately to
2 clarify that it's really -- it's not because a
3 curriculum can be constructed that doesn't actually
4 technically satisfy the requirements in that home
5 state. But you've built an extra curriculum for
6 that home state.

7 So I just want to make sure that we tweak
8 the language to be clear about it, because it is
9 a certification and there is a lot of liability
10 around the certification. So I just have a tweak
11 on that.

12 MS. BUCK: Does the Department want to
13 respond to that or not?

14 (Pause.)

15 MR. MARTIN: A question for you. So
16 you're talking about this idea that you have the
17 program length, right, whatever the program length
18 is, right, set program length?

19 MS. BLUM: Not necessarily a length
20 issue.

21 MR. MARTIN: Well, I'm just curious as
22 how you account for the fact that if you're saying
23 the program length is X and that's what's recognized

1 on your ECAR, that the program is a certain amount
2 of length. So I'm a student in your state and your
3 state has the additional -- the additional so many
4 credits above what the rest of the country's is.

5 So you deal with that by just requiring
6 the student to take additional, an elective that
7 would give them that particular credit? Or how
8 do you deal with that with respect to not having
9 two, I guess what I'm trying to say is how do you
10 avoid having two different program lengths for a
11 program that has one published length?

12 MS. BLUM: This usually doesn't affect
13 program length, because it might be that, and again
14 it might be -- and sometimes it's constructed in
15 a way where you can drop two other course
16 requirements from another state. This is really,
17 and I do urge the Department to be careful here.

18 You're in the curricular weeds here.
19 I mean you really are because -- and I'll give
20 you an example. This goes down into
21 specializations. So if you take some form of a
22 counseling field, they'll be three different types
23 of licensure. Like if you get just your basic

1 masters in counseling you -- in some states you
2 might just be eligible for that counseling license.

3 But you also might be eligible -- if
4 you took three more courses, you might be eligible
5 for marriage-family teaching, I mean marriage and
6 family counseling, sorry. And so, you know, if
7 you want to do that, then you take X number more
8 courses. This is why it gets hard to, and we do
9 our best. I mean honestly, this is just in terms
10 of student notification.

11 It is extremely important to notify the
12 student, and so you know, I completely support this.

13 But you do get in the weeds in terms of curriculum.

14 It doesn't necessarily impact program length,
15 because you're flipping out things that aren't
16 needed in one state and are needed in another state,
17 and that's literally how it works.

18 Some states have different types of
19 field experience, so that's another one than other
20 states do. So the field experience is different
21 state to state as well, so that's another good
22 example. Where yes, I mean Greg, I mean that could
23 change, you know. The type of field experience

1 could change the dynamic of the program for that
2 student in that state.

3 MS. BUCK: So let's get some other
4 people's comments and questions.

5 MS. MILLER: Okay. So I have Jeff,
6 Daniel and then Laura.

7 MR. ARTHUR: Yeah Laura. Is the
8 intent of your proposal to include all programs,
9 or was it just GE or online?

10 MS. METUNE: I wrote this at a time when
11 we were still talking about gainful employment.
12 So you know, that's really the -- I mean you heard
13 the story I highlighted. You heard the problem
14 I identified. My goal was to address very
15 specifically career education programs, where
16 licensure is required by a state, and to address
17 it in an online format.

18 MS. MILLER: Okay. Greg or Cynthia,
19 did you want to chime in? Cynthia.

20 MS. HAMMOND: Yeah, I don't have a name
21 tag, so I'm just using his. So this is Cynthia.

22 I want to point out the way we wrote the
23 certification requirements for this, it's for all

1 programs where there is a certification or
2 licensure requirement in the state.

3 So that would include a bachelor's in
4 Nursing presumably at any school, but it wouldn't
5 necessarily be Art History at any school. So it
6 would only focus on the ones that -- where there
7 is a state licensure requirement. Those are the
8 ones that we would need to have certified. So it
9 kind of crosses the line, whether it's not really
10 GE but it's not really non-GE either. It's kind
11 of whichever ones would fit.

12 MS. METUNE: And I don't mean that to
13 say that I don't want to make sure that a non-profit
14 nursing program meets the requirement of the state
15 in which the student's located as well.

16 PARTICIPANT: And one other thought
17 occurred to me, and I think only gainful employment
18 degree programs are reported on the ECAR. I mean
19 are we talking about all institutions, including
20 all programs on the ECAR going forward, or would
21 we then be able to stop dealing with the reporting
22 of degrees period, for all institutions? Would
23 it be the same for all?

1 MS. HAMMOND: As it's currently
2 conceived, only gainful employment programs are
3 reported on the ECAR. This certification you would
4 have to do at the time of certification or
5 recertification for all programs.

6 So it's not that University of Michigan
7 would list every single one of their degree
8 programs; but they would provide a certification
9 on all their programs that fit this requirement,
10 where there is state or federal licensure
11 requirements at the time of certification, whether
12 or not those are already listed on their ECAR.

13 PARTICIPANT: And I know I kind of went
14 to a different area, but I think it's, you know,
15 it's been quite a burden. So I guess I'm just
16 curious. Does this whole process mean that we
17 would no longer need to include gainful employment
18 programs or include employment programs on ECAR
19 and be this consistent?

20 MS. HAMMOND: Not necessarily.
21 That's a different part of the reg.

22 MS. MILLER: Daniel.

23 MR. ELKINS: Can we take a temperature

1 check or vote on both Issue Paper 8 as it's currently
2 written, and the proposal we've been discussing
3 for the last hour?

4 MS. BUCK: Are you saying Issue Paper
5 8 plus Laura's memo, or what are you saying
6 specifically?

7 MR. ELKINS: Laura's memo.

8 MS. BUCK: Laura's memo. You'd like
9 to take a temperature check on Laura's memo. So
10 that's what he's requesting.

11 MS. MILLER: What about Laura's memo,
12 that -- what about her memo?

13 MR. ELKINS: That we accept the
14 proposal.

15 MS. BUCK: As written.

16 MS. MILLER: As written by Laura.

17 MS. BUCK: Okay. So let's have a
18 temperature check of Laura's memo as written.

19 (Show of hands.)

20 MS. MILLER: So at least four thumbs
21 down on that.

22 MS. BUCK: More than that actually.

23 MS. MILLER: Five.

1 MS. BUCK: So let's ask some of the
2 people with their thumbs down maybe, as to why you
3 had thumbs down.

4 MS. MILLER: Well Sandy had her thumb
5 down. She also has her tent up so --

6 MS. SARGE: Please.

7 MS. BARRY: Yeah, Jessica Barry.
8 Because it just for GE programs.

9 MS. BUCK: Is there any way the
10 proposal could be modified, that you could approve
11 it? So for anyone who had your thumb down, is there
12 any way you would modify the proposal such that
13 you could approve it? Jeff?

14 MR. ARTHUR: Yeah. I think we've
15 already discussed and kind of agreed that it was
16 -- should or could apply to all programs. So I
17 think that's the modification, and then we could
18 flip our thumbs up.

19 MS. BUCK: So let's try that.

20 (Simultaneous speaking.)

21 PARTICIPANT: I apologize. That's
22 what I was insinuating. I don't think I -- yes,
23 I do apologize.

1 MS. BUCK: So do you want to go with
2 Jeff's modification and see how you respond to that?

3 I see your thumbs.

4 (Show of hands.)

5 MS. BUCK: So I still see some thumbs
6 down. So you want to tell us, Kelly, why you had
7 your thumb down?

8 MS. MORRISSEY: Well, I think the
9 applicability of this changes significantly if
10 we're talking about all programs and not just
11 programs preparing students for gainful
12 employment. For example, I'm thinking my state
13 teacher preparation programs, I can't even begin
14 to fathom how that would work, when we're enrolling
15 students from all 50 states with wildly different
16 certification requirements for teachers in each
17 of those. I just can't even begin to fathom that.

18 MS. MILLER: Tim.

19 MR. POWERS: You know, obviously
20 authorization is different than licensure, and
21 that's something that we try to make, you know,
22 very clear when we talk about how it affects our
23 sector in particular. But again, I'll just go back

1 to the notion that the distance ed state
2 authorization requirements, I think, get at a lot
3 of these problems, and you know, I just kind of
4 echo what Kelly said in terms of the applicability
5 as you change the definitions.

6 MS. BUCK: So having heard the
7 objections, is there anyone who could propose, make
8 a proposal that you think people would be more able
9 to accept?

10 MS. METUNE: I do want to say that I
11 actually was really interested in what Jennifer
12 described that they do for their students. I'm
13 happy to continue to have this conversation to
14 identify -- I mean I think you heard what I was
15 trying to get at and I -- it sounds to me like what
16 you do for your students prevents that.

17 So I'm happy to try and make sure that
18 language is crafted in a way that really addresses
19 the concern that we're trying to address, and then
20 I also just think, you know, just to encourage the
21 Department to continue to look at this question
22 of what it is to be industry recognized or what
23 the states require.

1 I think as an institutional
2 representation, it would be wonderful if I could
3 look to the federal government to tell me what each
4 of the states require.

5 MS. BLUM: I would love that. I would
6 love that, and I was going to propose, it's not
7 a propose to language, but this is directly related
8 to the subcommittee. So things like, and I said
9 this earlier, things like changing the language
10 of if accreditation is required to -- because there
11 are almost always pathways other than if
12 accreditation is required.

13 So I think there's just language
14 changes that need to be made. I also think that
15 certifying that every single state and every single
16 program for licensure is a little stiff. But if
17 you went to certifying that the institution is
18 informing their students individually, that would
19 be something that we would -- because we do it.
20 I know it's a burden for others, but we do it.

21 So that's -- and we encourage -- the
22 Department knows, as I've said in many meetings,
23 that we've encouraged that that be something that

1 all schools do. So I think there's a lot to work
2 with.

3 MS. BUCK: So it sounds like that you
4 are saying the subcommittee could work on this
5 further, rather than reaching general agreement
6 right now.

7 MS. BLUM: Yes.

8 MS. BUCK: Are there other comments
9 that should be made before we leave this topic?

10 MS. MILLER: Neal and then Daniel.

11 MR. HELLER: I guess clarification.
12 In the Department's language, you speak of the state
13 or federal requirement. Are you referring to the
14 state that we operate in? So for instance for us,
15 the state of Florida?

16 MR. MARTIN: Yes. The way we proposed
17 it, yes.

18 MR. HELLER: Okay so --

19 MR. MARTIN: In our rule, our proposed
20 rule doesn't differ that much from the previous,
21 from the existing rule, except that we're now taking
22 into -- it's not just limited to gainful employment
23 programs.

1 MR. HELLER: So I think that that is
2 pretty clear, and I guess for those that serve
3 students from 50 states, you would at least have
4 to disclose to them that that program may or may
5 not meet their particular state requirement. But
6 I think if you combined those two in the language,
7 I think that would be fair to everybody.

8 PARTICIPANT: I will note that it does
9 connect back those regs that -- I think it's Tim
10 keeps referring to. So when those regs go into
11 effect, there is a link in here that connects back
12 to those regs as well.

13 MS. MILLER: Okay. So outside of
14 Laura's memo, which sounds like it's going to get
15 some more work done in the subcommittee, and you
16 can talk to Laura and Jen if you'd like to be a
17 part of that, are there other questions for the
18 Department on Issue Paper 8? Sandy.

19 MS. SARGE: I wish that subcommittee
20 great luck, and I look forward to hearing what you
21 guys come up with, because I think it's really
22 important too. I just can't come up with a way
23 to resolve it. But in this proposal, I just have

1 some questions about understanding timing on
2 things.

3 So I absolutely think it's important
4 that if a program is intended to lead to licensure,
5 that the school should have to say our program meets
6 the requirements, so that you have the opportunity
7 to sit for licensure. I couldn't agree with that
8 more. My concern is just a timing issue or how
9 do you resolve or how were you guys thinking about
10 or how do we do it today, what happens when those
11 requirements change for a state and a student's
12 midway through a program, and potentially there's
13 more than just a minimal amount of change that has
14 to be done to the curriculum.

15 So it's a substantive change in
16 curriculum in order to now meet the new regulations.

17 What happens now, and/or what's the thought
18 process, because unfortunately it's the two do not
19 always happen on the same day, right? Today, our
20 program meets the state regulatory requirements
21 for licensure. Tomorrow, maybe not.

22 MS. HAMMOND: So how this would work
23 or does work is that school -- if there is a change

1 that would change the ability to certify this, like
2 the program does or doesn't, no longer meets it.

3 So like let's say the state changes something
4 fundamental and the program no longer meets it,
5 then you have to do a new certification that says
6 Okay, these 20 programs meet this requirement, but
7 this one no longer does.

8 So you'd do a new certification any time
9 there was a major change like that. It is unusual,
10 but it absolutely has happened, where a state has
11 put in a requirement and made it effective
12 immediately, and in that case we did work with the
13 schools to see how quickly they could get their
14 programs into compliance.

15 And yes, that does propose issues for
16 students. But they would have to change their
17 certification requirements if that were the case.

18 MS. SARGE: Just to make sure I
19 understand. So Okay. So what would happen is that
20 particular certification period or within ten days
21 or something like that happens.

22 MS. HAMMOND: Within ten days.

23 MS. SARGE: Yes. So they go out and

1 they say this no longer meets the state
2 requirements. They're certifying that between the
3 institution and to the Department, and is there
4 also a now -- does that trigger notification to
5 students, which I would think most schools would
6 want to do anyway, to let them know hey, there's
7 a big change?

8 And then what -- I can see where this
9 would be a real concern. But I'm -- but I don't
10 know how to control it, or how to even minimize
11 the impact. So I'm loving some discussion if
12 anybody has seen this.

13 PARTICIPANT: So for purposes of this
14 conversation, right, there's what happens to the
15 program that no longer meets the certification
16 requirement. What I would imagine would happen
17 is the institution is obviously going to know that's
18 happened, because they've been tracking the state
19 requirements and the change.

20 They're going to notify the Department
21 the program you were offering doesn't -- no longer
22 meets the certification requirement, and
23 presumably that you've stopped enrolling students

1 in that program because it doesn't meet the
2 requirements anymore, and that you're going to I
3 guess update it when -- presumably you're going
4 to change the program to meet the requirements,
5 whatever they are.

6 There's going to be a separate
7 conversation about the students in that program,
8 and that's all going to be on how the state provided
9 -- usually there's a grandfather provision that
10 lets you teach out the students when they do that.

11 But that will be a separate conversation unrelated
12 to this, to make sure that the students are still
13 able to qualify for Title IV, as long as the states
14 envision that they could keep taking that program.

15 MS. BUCK: Does that satisfy the needs
16 of the consumers and students do you think?

17 MS. MILLER: Well Jennifer Diamond is
18 next in the queue, so did you want to answer or
19 did you want to take a minute to answer to that
20 and then go to your question or comment?

21 MS. DIAMOND: I'm not sure I have
22 answer right now to that.

23 MS. MILLER: Okay.

1 MS. DIAMOND: But do you want to -- does
2 anyone else have something they want to chime in
3 on or should I move on?

4 MS. MILLER: Go ahead, Jennifer
5 Diamond.

6 MS. DIAMOND: Okay. I just wanted to
7 bring up something that we haven't talked about
8 yet, which is now that we've been discussing the
9 idea of bringing sanctions that could lead to loss
10 of Title IV, I think there's some concern around
11 this substantially similar program issue, in that
12 we have stricken the idea that, you know, a school
13 could lose their Title IV eligibility and then
14 immediately come back with a very similar program,
15 and I would like to look at bringing that back into
16 the regulation.

17 MS. MILLER: Jennifer Blum. Does the
18 Department want to respond first?

19 MR. MARTIN: Yeah, I'll respond to
20 that. That's a very good point Jennifer, that
21 yeah, we put that in there obviously with the
22 presumption that there would be no -- there would
23 be no program sanction that would be lost, could

1 have a result in loss of eligibility.

2 Therefore, the whole idea of adding
3 similar programs would have been redundant. But
4 if we're moving back, if we're moving to thinking
5 about, again and I'm not going to use the C word,
6 but if the general sense that we might want to
7 reintroduce possible administrative sanctions
8 based on certain measures, then I think that's an
9 issue again, right.

10 If it were the case that as a result
11 of these sanctions, the program were to lose
12 eligibility, we would take some action to limit.

13 Would we put into place something that would
14 prohibit from standing up a program that was the
15 same program or one that was very similar?

16 So I think that's something which is
17 definitely out there for consideration. That
18 does, I will agree that that does change the playing
19 field somewhat.

20 MS. MILLER: Okay. Jennifer Blum,
21 then John and then Jessica Barry.

22 MS. BLUM: So actually Jen, I had
23 thought about this too, and actually I sort of

1 alluded to it yesterday in the caucus on the --
2 and I think we'll get to it in the conversation
3 about sanctions. But I would put that into the
4 category of growth restrictions, and so no new,
5 you know, you could limit enrollments in other
6 similar zip code programs and also not have a new
7 zip code.

8 Although one caution, and I say this
9 from an institution that has direct assessment
10 programs, which might share a zip code but they
11 are very different in cost, because they're
12 much -- they're a lower cost. And so just in the
13 interest of being able to offer for lots of programs
14 in CBE or direct assessment, there needs to be some
15 thought around that piece of it.

16 But thought of it too and agree that
17 -- and I was thinking that it could be in the
18 context of the sanctions section when we get there
19 again.

20 MS. MILLER: John.

21 MR. KAMIN: Yeah. It has just been
22 brought to our attention, in the case of for
23 instance, a Marine gets honorably discharged out

1 of Camp Pendleton and is intent on moving back to
2 Texas. But he's been at Pendleton for eight years,
3 so he's got the license. He goes to a California
4 community college, but has every intent of going
5 to Texas and he wants to do something in the medical
6 field.

7 Is there any -- would there be any
8 capacity to inform him of this, because it seems
9 like there may be students who are intending to
10 move elsewhere, that would be -- that would
11 definitely benefit from learning this information,
12 but it doesn't seem like they would be able to be
13 initially identified.

14 MS. MILLER: Does the Department want
15 to answer or --

16 (Pause.)

17 MR. MARTIN: Could we hear some
18 comments from those schools, to see how they deal
19 with this issue? Any -- I mean I see it as a
20 possible disclosure.

21 MS. BLUM: Is it in the disclosures
22 about the state licensing, and would it specify
23 it there? Or at least say something -- somebody

1 made a comment about, oh Neal did, that it meets
2 the requirements of this state if you, you know,
3 and language around but may not require.

4 MR. MARTIN: Yes, that's currently in
5 disclosure, in the disclosure templates, yes, in
6 the template.

7 MS. BUCK: I'm going to propose that
8 in five minutes we take a break, and that we then
9 come back and focus on proposals. So let's just
10 focus on this for five more minutes.

11 MS. MILLER: Jessica.

12 MS. BLUM: I just want to comment on
13 the substantially similar programs. I think I
14 brought this up in the first week. You know, say
15 I have an associate degree program that, for a
16 better word fails, and I go back to the industry
17 and I say hey, we're teaching some really great
18 technical skills here, but the length and the cost
19 of this program is great for the students compared
20 to their earnings, you know.

21 Would it make sense to take this
22 technical curriculum and put this into a
23 certificate program without the gen ed requirement?

1 So it would be -- would take less time to complete.

2 It would be of lower cost. Would you consider
3 that certificate program a substantially similar
4 program?

5 MR. MARTIN: Well I mean first of all,
6 under these proposed rules we took out program
7 sanctions. So that all that language, and Cynthia
8 made a good point to me earlier, that what's in
9 certifications here is sort of ancillary. So what
10 you're doing is schools to explain how a new program
11 is not substantially similar.

12 But that stems from the fact that having
13 lost -- the program having lost eligibility, the
14 school could not stand up a similar program. If
15 we're going to re-think introducing those again,
16 we have to think about whether we would want,
17 whether we as a group would want the current, the
18 existing limitations on standing up a similar
19 program, which is one --

20 (Off-microphone comments.)

21 MR. MARTIN: Yeah, one within the same
22 four-digit CIP. Whether we want to go back to
23 looking at that, how many years we want to put that

1 up for? So I think that's on the table. But not
2 so -- so it's not really a certification issue.
3 It goes back to wherever we added -- if we were
4 to add language about, you know, these
5 administrative actions that could proceed from
6 having unsatisfactory or failing rates, what would
7 be the --

8 If there were a loss of program
9 eligibility, what would -- what would the
10 limitations be on when a school could stand that
11 back up? I think that would be essentially in that
12 portion of the regulations. So I think we should
13 deal with it mostly from there, because this is
14 just -- this is just certifying that they haven't
15 done so.

16 MS. BUCK: So I think there have been
17 some very helpful comments, and thanks to Laura
18 for bringing forward her memo which helped to focus
19 things, and we do have a subcommittee now that's
20 going to go forward with that it sounds like. Why
21 don't we take a ten minute break and then come back
22 to focus on proposals?

23 You've now gotten through the issue

1 papers. Congratulations.

2 (Whereupon, the above-entitled matter
3 went off the record and resumed following a brief
4 recess.)

5 MS. BUCK: Okay, welcome back. As I
6 heard several people say, we're on the home stretch,
7 so that's great. So we've gone through the issues
8 and what we have up on the screen is number four
9 sanctions, because we had kind of been working there
10 for a while, particularly in the caucus meeting.

11 We went a little bit through
12 application, a little bit through metrics. We had
13 gotten to corrective options, which Crystal can
14 pull up. You don't necessarily have to start
15 there. You may have proposals about other areas.

16 I'm just putting -- we're just putting this up
17 in case that's helpful to you, since that's kind
18 of where we had stopped. But I see Greg has his
19 card up, so let's hear from him.

20 MR. MARTIN: Yeah. I think I promised
21 you guys I would tell you how to get to the template.

22 So I just want to maybe write this down. I know
23 for those of you in aid, you're well familiar with

1 the use of IFAP. But if you want to go on to the
2 website, I-F-A-P.ed.gov, we refer to as IFAP. When
3 you go on to IFAP, in the right upper-hand corner
4 you'll see some links to certain things.

5 One of them says "Gainful Employment."

6 Click on the Gainful Employment link. Once you
7 go there, it will give you the option to pull up
8 Dear Colleague letters and electronic
9 announcements, all right.

10 And when you see -- you click on
11 electronic announcements and Dear Colleague
12 letters, you want Electronic Announcement 110.
13 Yes, there have been 110 electronic announcements
14 related to gainful employment. Yeah, is that it
15 really?

16 Cynthia and I once argued over who got
17 to have 100. We were putting conflicting things
18 out at the same time. I said I want 100. She said
19 no, we get 100. So it's 110 and when you go on
20 there, you'll see how you can link to the template.

21 MS. MILLER: Greg, I'm sorry. Can you
22 repeat the website again?

23 MR. MARTIN: Sure. You start with

1 I-F-A-P.ed.gov, I-F-A-P. Then once you get to
2 IFAP, you get on there, on the right-hand corner
3 you'll see a link. You'll see various links we
4 have to like hurricane relief and then you'll see
5 gainful employment. Click on gainful employment,
6 and then once you get to gainful employment you'll
7 see an option to choose Dear Colleague letters and
8 electronic announcements.

9 You go on to -- you click on that, onto
10 electronic announcements and you want Electronic
11 Announcement No. 110, release of the 2018 DE
12 disclosure template. It will give you a link in
13 that particular electronic announcement, right to
14 the template. Once you have the template, you can
15 -- I probably shouldn't use the word -- you can
16 play around with it, because you're not sending
17 it, doing anything with it.

18 So all you have to do is put in a valid
19 OP, I was going to say zip, do you believe that?

20 OP ID number, and then you can -- you could just
21 put dummy information to get to where you want to
22 get to, just to see how it flows.

23 PARTICIPANT: If you Google Electronic

1 Announcement No. 110 it's the only agency with 110
2 announcements on anything. It's the first hit.

3 (Laughter.)

4 MR. MARTIN: Okay, you could do it that
5 way, but that's no fun. You should do it the way
6 I told you.

7 (Pause.)

8 MS. BUCK: Excellent. So we're in the
9 time when people can make proposals, and as I always
10 tell people when I'm mediating with them,
11 understanding the other parties' perspectives as
12 you do, what can you propose that you think they
13 might accept that you could also accept? That's
14 just kind of one way of thinking about it. So John,
15 do you have a proposal?

16 MR. KAMIN: Actually I have -- perhaps
17 is a good time to ask, just in recapping where we
18 are now, I'm curious based off of the proposals.

19 If we could get a little bit of a walk-through
20 from the Department on a phased time line of what
21 happens when --

22 I think I'm especially interested with
23 no reporting requirements how that influences the

1 time line between the Department collecting the
2 information to synthesizing it and disclosing it
3 or how the time line for disclosures as well. So
4 if we can just talk through how the rule would work
5 under the new proposal?

6 MR. MARTIN: Yeah. I'm going to have
7 Cynthia come up and sit here, because she's the
8 one that -- she does this work. So if we're talking
9 about -- so what you want to know is as opposed
10 to the way it works now, how would the time -- how
11 would the time line work if we're using
12 administrative calculation of the rates, correct?

13 MR. KAMIN: Yes.

14 MR. MARTIN: Okay.

15 MS. HAMMOND: So assuming we don't add
16 any -- there is no additional reporting. We don't
17 add in anything we don't already have. The rule
18 goes into effect July 1st, 2019, and sometime during
19 2019 we would be able to -- we're obviously going
20 to start.

21 I mean as soon as in November of 2018
22 when we publish this final rule, we are going to
23 start working on the contracts and the other things

1 that we would need to do in order to do the
2 calculations. So sometime, maybe as early as in
3 2019, we would be able to have a draft completer's
4 list out. I don't know about the repayment rate,
5 because I don't know if you guys are doing that.

6 MR. KAMIN: I'm sorry, it's the draft
7 completer. What is that?

8 MS. HAMMOND: So how the debt to
9 earnings rates work right now is we create a draft
10 completer's list, which is the students who we think
11 have completed the program minus the exclusions.
12 We provide that to the schools. The schools then
13 tell us yes, you're right. No, you're wrong,
14 provide any additional information to get those
15 corrected, to make sure we have the right students
16 in the right programs that graduated in the right
17 years.

18 We then take the results of that and
19 give it to the Social Security Administration, who
20 comes back with the mean and median earnings. Once
21 we have those mean and median earnings, we're able
22 to do a draft debt to earning calculations. At
23 that point, the schools can no longer challenge

1 the earnings information. But they do look at the
2 debt, to see whether or not we have the debt
3 information correct.

4 There's a 45 day challenge process for
5 that, and then we run it based on those corrections,
6 if any. We call them challenges, based on those
7 challenges, if any, and then we put out -- we make
8 sure -- we validate it, make sure everything's good
9 and put out final debt to earnings rates.

10 This year that you're in, the last time
11 we did this, the final debt to earnings rates came
12 out in January of '17. But depending on how we
13 do the new challenge system, that time line may
14 not -- may not be the same. On the last time we
15 did this, we put some things into NSLDS to make
16 corrections and challenges easier for schools.

17 I would suspect that a lot of that could
18 be reused, although it's going off different tables
19 instead of doing it just for the gainful employment
20 tables. We'd be looking at enrollment reporting.

21 But even with that, I would suspect that a lot
22 of that coding could be reused, and therefore the
23 time lines might be shortened a bit.

1 But any way you look at it, it would
2 sometime in 2019 at best, maybe early 2020 when
3 we would have another round of rates out based on
4 these new rules.

5 MS. MILLER: Tim.

6 MR. POWERS: It's been a long few days,
7 so I apologize if this has already been determined
8 and I just zoned out for a few minutes or something.

9 But I just want to make sure it's completely clear
10 to me. So any debt to earnings reporting is only
11 going to be for borrowers who have completed;
12 correct, as in how we sort of currently do it under
13 DE now.

14 MR. MARTIN: Currently yes, and that
15 doesn't change with these proposed rules.

16 MR. POWERS: Just wanted to make sure
17 that that's what it was, okay.

18 (Off-microphone comment.)

19 MS. MILLER: Marc Jerome.

20 MR. JEROME: My apologies. He said
21 for only borrowers, right? Now debt to earnings
22 --

23 (Simultaneous speaking.)

1 MR. MARTIN: No, I'm sorry. I didn't
2 catch that. That's a good catch. No, it's not
3 for only borrowers. It's Title IV recipients.
4 I'm sorry.

5 MR. POWERS: Yes.

6 MR. MARTIN: Sorry, thanks. Thank
7 you, Marc.

8 MS. HAMMOND: And the way we clarified
9 it in these rules, is that it's only Pell and
10 borrowers, because we don't actually have in our
11 systems the campus-based. We don't have work study
12 only students, and so in order to make it easier
13 for you all as well as for us, we just took them
14 out. There are very few work study only students
15 anyway.

16 MR. JEROME: And no Perkins then
17 either?

18 MS. HAMMOND: And I think -- I think
19 we did include Perkins.

20 MR. JEROME: It's a relatively small
21 group.

22 MS. HAMMOND: Yeah actually we do have
23 Perkins, because Perkins is reported to NSLDS.

1 MR. JEROME: Okay.

2 MS. HAMMOND: So that one we do have.

3 I will mention that if there are any additions,
4 for instance, I know we've had a lot of discussion
5 about tuition and fees, about private debt, I would
6 like to note that if we have schools -- what we're
7 talking about doing right now is something in 2020
8 based on the fact that we have 2014 data, because
9 that's when schools started reporting enrollment
10 reporting by program. So we have some data for
11 that.

12 If we started reporting, we couldn't
13 start any earlier than 2019 and depending on how
14 we do it, it might even be later, depending on if
15 we included it in enrollment reporting, or if we
16 just had schools report based on the current DE
17 reporting scheme. So if you had schools start
18 reporting those things in 2019, then it is 2027
19 before we have rates again.

20 And my 12 year-old will be in college
21 by then, but I just want to get you guys to
22 understand. There's a significant gap in time if
23 we add in new reporting requirements, and that is

1 due to the fact that you have completers in a
2 particular year, but then you need to advance
3 several years.

4 Then you have the Social Security
5 earnings year, and that data doesn't become
6 available until a year and a month later than that,
7 and then we need time to get it and to calculate
8 it.

9 So that expands the process
10 significantly. So I was just doing a back of the
11 envelope calculation. I might be off by a year,
12 but I think it is 2027 if we decided to add in
13 additional reporting.

14 MS. MILLER: Chris Madaio.

15 MR. MADAIIO: Yeah, just a quick
16 question, Cynthia, on what you were saying there.

17 Thank you. On the draft completer's list, aren't
18 they relatively kind of an easy thing to do, and
19 that couldn't they also be done, I guess, after
20 November and the publication of the final rule,
21 at the same time you're seeking agreements to --
22 would be necessary to complete the debt to earnings?

23 I guess my question is kind of isn't

1 the -- what is involved in doing draft completer's
2 lists beyond just sending the list to the school?

3 MS. HAMMOND: So currently the draft
4 completers list is a program that we run off of
5 what Sarah Hay described as an antiquated system.

6 I'm not a fan of those words, but she -- she does
7 have a point. So this isn't done by query. It's
8 done by an actual program that we run off of that.

9 In order to do it for all schools, we no longer
10 are going off of that part of NSLDS.

11 We now are doing it on completely
12 different tables, the ones that have to do with
13 enrollment reporting. So there's going to be some
14 significant coding changes that are going to need
15 to be made to that. It's hard to make those until
16 the rule is final. But as soon as the rule is final,
17 we can start working towards that. You know, we
18 don't have to actually wait until it goes into
19 effect in July, July 1st of the following year.

20 So we can start ahead of time, but it's
21 hard to make any coding changes and commit the
22 agency to funding contracts and stuff when the rule
23 itself isn't finalized yet.

1 MR. MADAIIO: Sure.

2 MS. HAMMOND: There will be some
3 significant changes, not just because it's a
4 different table, but there's different information
5 there, and then we also have the issue that we will
6 need to deal with if not here than in a subsequent
7 *Federal Register* notice of how we do attribution
8 of loans.

9 Because we will have the issue where
10 in 2014 they told me that you graduated with your
11 bachelor's degree in Art History, but you had four
12 different majors before you decided on that, and
13 how we attribute the debt related to that.

14 MR. MADAIIO: So then as far as the
15 current rule that's on the books, when does the
16 Department plan to do the draft completer's list
17 now if the coding is able to be done at this point,
18 if they're still going to do it?

19 MS. HAMMOND: I do not have a time line.
20 We are currently working on it.

21 MS. MILLER: Jennifer Blum.

22 MS. BLUM: So Cynthia, I just wanted
23 to double-double clarify something. So we did to,

1 and I'm just asking the question. I'm actually
2 now thinking about like all debt and how that
3 changes the metric and all that good stuff. So
4 don't everybody -- like I'm definitely on the all
5 debt.

6 But I do want to just understand. If
7 it were tuition and fees, if we were going back
8 to tuition and fees, it would still be 2027 because
9 you haven't done that for non-profits or right,
10 okay.

11 MS. HAMMOND: That's correct.

12 MS. BLUM: Got it, got it.

13 MS. MILLER: John.

14 MR. KAMIN: Yeah. Just a final
15 clarification before I ask -- we can move on to
16 actual proposals. To be clear, what you're -- this
17 is being worked out towards an eventual solution
18 for what would inevitably be DMYR, Debt Measurement
19 Year 2017. But before that, we're looking to --
20 right now we only have 2015 and we're waiting on
21 2016 and we'll be patient with that.

22 But there's still the intent to do that
23 before this new math gets worked out for the new

1 rules?

2 MS. HAMMOND: That is our current plan,
3 yes.

4 MR. KAMIN: Okay.

5 MS. HAMMOND: I will also say that --
6 so let's say we go as we proposed and we're looking
7 at a 2020 release of the things, based on what I've
8 heard from you all earlier on in the sanctions,
9 so in 2020, early 2020 or late 2019, at some point
10 we would have rates put out, and then we would go
11 to the two requirements and figure out the sanctions
12 and that sort of stuff would be after that point.

13 MS. BUCK: Any other questions about
14 the phased time line?

15 (No response.)

16 MS. BUCK: Okay. So I think we're
17 ready now for a continuation of proposals. I was
18 going to say --

19 PARTICIPANT: Can we go to metrics?

20 MS. BUCK: You want to see metrics up
21 on the screen?

22 PARTICIPANT: Yeah, that is --

23 MS. BUCK: Okay. We can go back to

1 metrics.

2 PARTICIPANT: This is technically part
3 of 4 and 5, right?

4 MS. MILLER: Yes.

5 PARTICIPANT: Okay.

6 MS. BUCK: Yes, 4 and 5.

7 MS. BLUM: Can I propose that we just
8 focus on debt to earnings and loan repayment first
9 though, because I mean those are the two that are
10 the primaries --

11 PARTICIPANT: Tier 1, right.

12 MS. BLUM: Right.

13 MS. MILLER: Marc Jerome.

14 MR. JEROME: So given that it's the
15 last day, I thought it would help, because that
16 we got, I guess, a more general consensus that the
17 negotiating committee is asking the Department and
18 feels comfortable that we're going with these two
19 metrics, a repayment rate and a debt to earnings
20 rate, because I proposed that when we were in
21 caucus, and I'm not sure it came out in the public
22 segment.

23 So because that would then give the

1 Department, to get some data and come to our next
2 session with a more formal proposal that would be
3 more constructive for us to work off.

4 MS. BUCK: So are you asking the group
5 Marc?

6 MR. JEROME: Yes.

7 MS. BUCK: Okay, Jennifer Blum.

8 MS. BLUM: Marc, you're asking that we
9 not discuss -- like just give it to the Department
10 to figure out?

11 MR. JEROME: No, no. I'm asking is it
12 this negotiating committee's general consensus
13 that the Department should go forward for next time,
14 preparing the metrics to have the alternate
15 repayment rate and debt to earnings? It seemed
16 like we were there, but it's been some time lapse.

17 MS. BUCK: So do you want to ask for
18 people to indicate thumbs on that?

19 MS. MILLER: Whitney, do you have a
20 response?

21 MS. BARKLEY-DENNEY: Yeah. So I think
22 I would maybe categorize it a little differently,
23 and I don't know to what extent this matters. But

1 I think it's our general -- I'm not going to even
2 say consensus. I think we all gave a positive
3 temperature check to the idea that there needs to
4 be something more than what is contained in this
5 rule, particularly some way to get to sanctions
6 with teeth.

7 The way that we have discussed doing
8 that is via debt to earnings rates and repayment,
9 along with another appeals process, and that that
10 had a positive temperature check, rather than
11 saying it's general consensus. Does that make
12 sense to everyone?

13 MR. JEROME: I'm totally comfortable
14 with that. I'm really only saying it, so that the
15 Department and others can start getting how the
16 heck the thing would work, what's the impact on
17 the colleges and all the sectors, because that is
18 very, very important to figure out if the metrics
19 are appropriate.

20 So it just focuses them. It doesn't
21 mean it's definite. It just lets us have a general
22 direction that we're moving forward, and if the
23 data shows it's not right, then we'll revisit it.

1 MS. MILLER: Thelma.

2 MS. ROSS: So Thelma Ross. I am -- I
3 don't have a proposal to this, but I do have a
4 concern that I think that I want to state publicly
5 for the institutions that I serve. So for
6 minority-serving institutions, and they're not
7 just HBCUs, but for minority-serving institutions,
8 we've talked about the first session and this week,
9 about the student population that these regulations
10 are trying to protect.

11 We keep coming back to low income, under
12 -- I'm going to use -- I'm going to stick with low
13 income, and I would suggest that we get a
14 significant number of those students at our
15 institutions for whatever reason and for however
16 long that has occurred.

17 But they come to us with a whole lot
18 of other limitations other than low income. We
19 could talk about philosophically the societal
20 issues that come with those students, and by no
21 means for anyone that's listening to this publicly
22 do I mean that all of our students are in that
23 category, because we have a diverse population of

1 students at minority-serving institutions.

2 We have some that are at this part of
3 the spectrum, that any college sitting around this
4 table would want to have on their campus, and we
5 have those that come that at whatever level,
6 secondary, just did not do well by them. But when
7 they come, we offer them an array of services, and
8 I am -- I'm at a loss to try to understand how,
9 when we get to the other side of this, where we
10 are going to try to roll up programs into this
11 regulation, all programs in this regulation, and
12 then apply debt to earning ratios to those programs
13 or repayment, that those students are going to fare
14 well in that.

15 Because if I look at any statistics with
16 the group of students that we serve, and I start
17 talking about income levels and debt, they're going
18 to come out on the short end every time, every time,
19 and it does not mean that the program was not a
20 good program.

21 It's just that when they go out the door
22 from a very well-designed and constructed program
23 that they did exceptionally well in, when they go

1 out their earning potential is already different
2 than another group of students' earning potentials.

3 Then we're going to apply the same measuring stick
4 to those students or those institutions, and I have
5 a problem reconciling that in my mind.

6 MS. BUCK: Do you have any alternative
7 that you think would be workable?

8 MS. ROSS: I'm going to -- say that
9 again Whitney?

10 (Off-microphone comments.)

11 MS. ROSS: So and Whitney said --
12 Whitney said tongue in cheek and yeah, so that would
13 be my recommendation to be honest with you. But
14 I don't think the Department is going to do that.

15 I said we could do what the regulations was
16 intended, what they were intended to do when they
17 were formed, and some of our schools are
18 still -- they're in that boat.

19 They offer certificate programs that
20 lead to gainful employment, and they've had to rise
21 or fall based on the regulations that were presented
22 to us, right? So and the metrics that were
23 presented to us at the time. So that my -- but

1 I've been -- but we were almost told emphatically
2 from Day 1 that that's not an option. It's not
3 an option just for it to do what the regulations
4 were intended to do.

5 So that would be my proposal, but I'm
6 not sure the Department's going to go for it.

7 MS. MILLER: So Ahmad I see your card
8 up, so I'm wondering if Tim or Jessica Barry or
9 Mark McKenzie have a response for Thelma. Okay,
10 so Tim and then Jessica.

11 MR. POWERS: Well just to thank Thelma,
12 because I think it's a really important perspective
13 and one that I think is essential for all of us
14 to consider. So you know, we all have certain
15 differences of opinion on statutory limitations
16 here, but at a very, very, very minimum, maybe
17 suggesting to the Department that when you sort
18 of dig deeper beyond these metrics, at least taking
19 some very serious considerations for Title III and
20 Title V schools, and the challenges that they face.

21 At a very minimum, just throwing that
22 out there is something that I think we should all
23 consider, given the I mean absolutely essential

1 role that MSRs play in our higher ed landscape in
2 this country.

3 MS. MILLER: Jessica and then Mark
4 McKenzie.

5 MS. BLUM: Yeah Thelma, I'm glad you
6 brought that up. The way you describe your
7 student population though is very similar to our
8 student populations on the proprietary side, and
9 that's why the gainful employment regulations have
10 been so hard for us to comply with. It's very
11 similar populations.

12 MS. MILLER: Mark.

13 MR. MCKENZIE: Yeah, Mark McKenzie.
14 Thelma, well said and you know, the thought that
15 I had about this is that the first two indicators,
16 the debt to earnings and the repayment, are global
17 thresholds that apply to all institutions, and
18 they're kind of the first, the first pass-through.

19 If you don't, you know, if you fail both
20 -- if an institution fails both of those, then no
21 longer is it a global issue. It becomes an
22 institutional discussion with the Department, you
23 know. We had talked, I believe, about you called

1 it administrative capabilities through the -- so
2 now, the institutions have the opportunity to
3 present the additional information in whatever
4 metrics that are applicable.

5 I mean we went through a whole bunch
6 of metrics. I actually think the burden then
7 shifts from the Department to actually the
8 institution that has been red-flagged on the first
9 two, and but they can use whatever metrics they
10 -- that makes sense in their institution. In your
11 case, you know, bringing that piece forward would
12 actually be a very legitimate defense, I think,
13 or at least explanation. Let's say an explanation.

14 I don't actually think we should use
15 the term "appeal" in that second tier. I think
16 it's really a review. It's an institutional review
17 process, and then if the Department finds that there
18 are significant issues here beyond, you know, an
19 easy explanation, then it gets elevated and
20 whatever your process is, whether it's program
21 review and then you go much deeper.

22 But it's no longer part of the global
23 regulation, and maybe the regulation that we're

1 dealing with can be simplified to accommodate that.

2 MS. MILLER: John.

3 MR. KAMIN: Yeah. I think that there
4 is a dissonance that will eventually be reconciled
5 in one way or another over these fundamental
6 differences in structure between state schools,
7 non-profits and for-profits related to gainful
8 employment. I think Daniel said it best, but when
9 it came to compelling need and interest, and where
10 that factors into things.

11 To put a finer point on that, I don't
12 think that if New Hampshire, a New Hampshire
13 community college has a drug counselor program,
14 behavioral sciences at the associate's degree, I
15 don't think the state would appreciate the
16 Department of Education coming in saying oh, that's
17 a poor program that you're running because they're
18 not making enough money.

19 I say that they would probably tell you
20 there's an opioid crisis and it's in the state's
21 best interest to incentivize the program. And you
22 know what? It's their business on how to do that.

23 There is an accountability and structure in place

1 that facilitates that, and empowers them to make
2 those decisions.

3 Now non-profits have their own
4 accountability structures as well. The issue when
5 this originally came up back 50 years ago was about
6 trying to build or cultivate an accountability
7 structure for for-profits, for specific metrics
8 that could be defined because of the absence of
9 these accountability measures in the other sectors.

10 So it seems like applying those across
11 all sectors to my point is going to inevitably lead
12 to some clash, where the schools say this is -- we
13 do not see the utility in this type of disclosure
14 for us. I think that one of the regrets I have
15 about this session is we haven't really honed in
16 or drilled down on what precisely that utility
17 is, for why we're doing that outside of equity
18 across all sectors.

19 Which you know, that's a great point
20 to debate on a fairness level. But in terms of
21 practical effect and practical impact, I think that
22 it hasn't really been mentioned, and that's --
23 I don't know what the answer is, but I certainly

1 have sympathy for the schools who have those issues.

2 MS. MILLER: Johnson.

3 MR. TYLER: Yeah. I think Thelma's
4 point is a great point. People do leave jobs and
5 they're perceived the same way they were perceived
6 before they went into the school, I mean leave
7 school. It does impact on their ability to earn
8 money. That applies to both sectors. But there
9 is a difference here, and the big difference I see
10 has to do with mission, and when you look at the
11 mission of the proprietary schools, they have -- a
12 lot of them have investors.

13 Mark's not included. Mark's business
14 is a family business. His has its own mission,
15 which I think is a good mission. But when you get
16 investors involved, it changes everything. If you
17 look at some of the schools, they've been
18 well-documented. You can see the enrollment
19 increasing. You can see the debt increasing. You
20 can see salaries increasing massively.

21 The person whose story was told about
22 going to automotive school. The structure there
23 was I mean really bloated. The five chief

1 executives made between them \$8 million annually,
2 and the investors, the whole school changed when
3 investment got in it.

4 So I guess I go to what is the
5 consequence, and that would seem to be the only
6 way to get the schools with a mission who are part
7 of the public non-profit sector out of the
8 consequences.

9 Maybe they can identify it, because
10 there seems to want to be this, you know,
11 transparency about return on investment, that sort
12 of stuff.

13 But it doesn't seem appropriate to have
14 a school that has a different mission, that isn't
15 related to satisfying investors, to have to go
16 through this second look process that's very
17 time-consuming and that's going to take away more
18 from their students to the quality of the education
19 they're doing, their bottom line, the number of
20 people they can serve.

21 So I guess I would suggest maybe there's
22 a way to revisit this, because otherwise it really
23 does seem like a universal system here is really

1 going to have some unintended consequences.

2 MS. MILLER: Okay. Johnson, when you
3 say revisit, does that mean in Session 3?

4 MR. TYLER: I'm not sure which session.

5 I think my revisiting has to do with the question
6 of if you were to fail the debt to income and the
7 repayment rate, do you go through -- do you suffer
8 the same consequences at the end that I think people
9 have envisioned for the schools with a different
10 mission, for proprietary schools?

11 MS. BUCK: And I think that would be
12 under Corrective Options that we were brainstorming
13 earlier. So maybe we should bring that up, just
14 so people can see that as well.

15 MS. MILLER: Okay. So Ahmad.

16 MR. SHAWWAL: Ahmad. What
17 guarantees, if any, do we have that the proposed
18 regulations during the third session won't be
19 shamelessly different than from the course of
20 discussion during this session, as was the case
21 with the proposed regulations that we were given
22 on Monday, compared to the discussion in the first
23 session?

1 MS. MILLER: Greg.

2 MR. MARTIN: Is that directed to me?

3 So first of all, this -- we did. I would remind
4 everybody that we did in the initial -- with the
5 initial papers that we did, issue papers for Round
6 1, we did bring up -- those papers were for
7 everybody's consideration. We did not propose
8 rules at those times, at that time.

9 We did introduce the idea of, to throw
10 out there, to contemplate what if the rules were
11 -- the sanctions were no longer there. So I think
12 we did introduce that option. We didn't have any
13 -- there were no -- at that time it was the first
14 meeting. We didn't have any -- we hadn't had any
15 discussion about, you know, we hadn't had any
16 discussions yet.

17 We had discussions at the table about
18 what might occur. These proposed rules represent
19 the Department's starting point as far as where
20 the proposals go. I can ensure you that the, you
21 know, when we go back and take this back, that the
22 next round will reflect, you know, what was
23 discussed here today.

1 And again, we have a whole 'nother week
2 to discuss whatever is proposed. We're not coming
3 back. We're not going to come back
4 with -- obviously, we'll have positions, as all
5 of you do, but we're not going to come back with
6 something that we lay in front of you and say it's
7 hard and fast, you know. This is it. We'll have
8 another week of discussion around that.

9 So we do -- we have every intention of
10 crafting the rules, not rules proposals for the
11 next, the next session based on what we've heard
12 here. You know, we've heard that everybody wants
13 to look at an environment where we reintroduce some
14 type of measure of sanction, and we will go back
15 and look at a proposal to do that.

16 I understand everybody's on different
17 pages with all of this. I don't -- I don't know
18 that I would characterize our references as
19 shameless.

20 MR. SHAWWAL: Thank you, Greg. The
21 reason I asked that is because I know there's a
22 lot of differences of opinion at this table. But
23 I feel like we've made some progress, and I'd like

1 to see that continued.

2 I feel like if during the third session
3 there's proposed regulations that are drastically
4 different from the progress that we've made here,
5 then it just derails the entire conversation and
6 it really negates our entire purpose, and it's a
7 big waste of time for all of us. Thank you.

8 MS. MILLER: Steve Chema, then
9 Whitney.

10 MR. CHEMA: Thank you, Steve Chema.
11 Just wanted to reflect on the point that Thelma
12 and Jessica made about the socioeconomic and
13 demographic backgrounds of the students that
14 predominate their institutions, and what impact
15 that has on their labor market outcomes.

16 This is -- it's not unprecedented for
17 the Department to take that into consideration.
18 If you look in the cohort default rate regulations,
19 there's something known as the economically
20 disadvantaged appeal, which allows institutions
21 to tell the Department about their characteristics,
22 and if they have a proportional amount of low income
23 students coupled with another metric, sometimes

1 it's placement rate, sometimes it's completion and
2 graduation, but it varies depending on the degree
3 program.

4 This is something that, you know, the
5 Department weighs and allows them to consider
6 whether or not that institution ought to be
7 sanctioned. I think that would be appropriate to
8 be considered at the Tier 2 phase.

9 MS. MILLER: Whitney.

10 MS. BARKLEY-DENNEY: Yeah. I just
11 wanted to reiterate a request that I made last time
12 that I don't think was addressed, which was to have
13 someone to talk about the statutory and legislative
14 intent of this language, because I think Thelma
15 is getting to something really important, and I
16 have to be honest.

17 There have been times this week when
18 I've been like are we actually legislating instead
19 of writing a regulation? And it does feel like
20 that to some extent, when we seem to be going so
21 outside the parameters of what this original
22 legislation contemplated.

23 So I would just like to reiterate that

1 request for either something buried in the annals
2 of history or someone who actually knows the history
3 of this, to come and talk to us about whether it's
4 even appropriate to consider applying this rule
5 all institutions.

6 MS. BUCK: Greg, can you respond to
7 that at all?

8 MR. MARTIN: I'm going to let counsel
9 respond to it.

10 MS. MILLER: Steve.

11 MR. FINLEY: So we hear a question, and
12 we've identified for people that we think there's
13 adequate authority to support these disclosure
14 requirements. We're not here to talk about whether
15 this is a reimaging of GE; this is developing these
16 regulations to serve a purpose that we think is
17 valid, which is to promote disclosure of the debt
18 to earnings calculations, and to do so where we
19 think there's authority to do this for all programs.

20 These actually respond to complaints
21 the Department heard about some aspects of the DE
22 regulations saying to the extent it's good to have
23 this information; it would be better if it were

1 available for everyone, and this does address that.

2 It does it in a way that we think is meaningful.

3 And that's the reason we're here, and
4 that's the foundation for why we're here. It may
5 not exactly respond to the questions you're asking,
6 but I don't think they're on point for why we're
7 here. We can differ on that in our opinions.

8 MS. BARKLEY-DENNEY: Sure, and
9 obviously I think we're going to have to. I mean
10 we're talking about even removing, you know,
11 references to the term "GE" when we're creating
12 a gainful employment regulation. So you know, in
13 my opinion we're pretty far afield from the
14 Congressional intent, even by removing the name
15 that Congress gave the statute when they named it.

16

17 MS. MILLER: Kelly.

18 MS. MORRISSEY: So a couple of days ago
19 I made the comment that it was very difficult for
20 me to be asked to make decisions about this, without
21 seeing any of the data that would inform those
22 decisions. So now we do have some data in front
23 of us, and after reviewing it quite thoroughly,

1 I feel further convinced that we are not
2 accomplishing what we are trying to do by casting
3 a wider net here.

4 I'm really wondering why instead we're
5 not trying to narrow our focus to identify those
6 programs and those institutions that are really
7 harming students. You know, hearing Thelma and
8 others in terms of serving economically
9 disadvantaged students, many of our institutions
10 do that. So we're all dealing with the same inputs,
11 if you will.

12 It's what happens after those students
13 arrive, and we really -- I feel, you know, it's
14 difficult for me to say this, but we cannot have
15 this conversation without examining the effects
16 of the profit motive here, and that's what differs.

17 So I really don't think that by throwing every
18 institution in the country into this mix we're
19 solving the problem at hand.

20 MS. MILLER: So we have Daniel, Jeff,
21 Neal and Jennifer B. Daniel.

22 MR. ELKINS: Thank you for that
23 comment. I appreciate that. That's a good segue

1 into my point, which is that under the current
2 regulation, both profit and non-profit schools are
3 affected. So I want to keep in mind that even if
4 we kept things as they were, it still does apply
5 to both for-profit and non-profit programs, and
6 those issues would still be there with low income
7 students.

8 MS. MILLER: Jeff.

9 MR. ARTHUR: Yeah. I'd just point out
10 that these sector lines of demarcation have blurred
11 significantly. Many of the institutions you're
12 talking about, the Wall Street schools, have --
13 some have been converted to non-profits. Some
14 don't exist anymore.

15 I mean it has changed significantly,
16 and you know, if we want to address the issues that
17 a sector-targeted rule, the institutions will just
18 change the sector that they're in. I mean we've
19 seen that happen significantly.

20 But I think I've got an idea on how we
21 can deal with this. I've been pretty, you know,
22 convicted that I think we've got to score any data
23 we look at, norm it for all programs. But being

1 sensitive to Thelma's concern, which is also the
2 concern of my institution. We serve the same
3 demographic, the same socioeconomic diversity.

4 But the Scorecard itself has a
5 socioeconomic diversity score. If you look at
6 IPEDs, they do peer. It's called peer evaluation
7 review reports. There are systems and processes
8 there and ways to analyze data to account for the
9 socioeconomic diversity of the student body served.

10 So I would suggest that maybe that
11 should be taken another step, to where we do this
12 norming and we look for the -- I think it's somewhere
13 in the two standard deviations, but don't need to
14 get into that now, but to identify outliers. But
15 that that should also be done at these -- at the
16 level of some kind of a way to analyze the student
17 body served.

18 I think that may help us get to where
19 we need to go. Every measurement in the scorecard,
20 you would see -- in every ranking in U.S. News and
21 everything, a lot of that is the population served
22 more than the institution's quality per se. And
23 so we've got to find a way to identify the truly

1 outlying programs that we want to target, and try
2 to improve.

3 MS. MILLER: Neal.

4 MR. HELLER: So you know, I think
5 Thelma stated it very eloquently, and I thank you,
6 and Johnson I couldn't agree more that some of the
7 people that came into our industry, starting in
8 the late 1990's when they saw an opportunity with
9 government money quite frankly, we became an
10 industry that opened up to publicly traded
11 companies, private equity groups and their only
12 motivation, their only incentive was profit.

13 I 100 percent agree with it. They
14 destroyed this industry, and they made it bad for
15 everybody. Fortunately, and maybe it took too long
16 than it should have, most of them are gone. It's
17 not to say that there aren't outliers amongst
18 family-owned businesses as well, but the majority
19 of the wrongdoing was done by these private equity
20 held and for-profit institutions.

21 Not for-profit, sorry, publicly traded
22 institutions that only looked at how much profit
23 every quarter was being earned, and what were their

1 stocks worth at that time and their stock options.

2 Anyway, fortunately most of them are gone and yet
3 this rule that came into play has only affected
4 the ones like the schools that are represented here
5 today that were left behind, and quite frankly most
6 of us do it right.

7 We're not perfect, but we do serve
8 difficult student bodies, and I think we get it
9 right most of the time. So with that being said,
10 you know, I think it's very hard to distinguish
11 between a for-profit institution and a
12 not-for-profit institution and I'm sorry, but you
13 know, we are all in this one way or another, to
14 make a profit.

15 Just because your tax status says not
16 for profit doesn't mean you're not profitable.
17 I've gone around this country and I've seen some
18 wonderful private and public institutions in the
19 traditional sector that have some of the most
20 amazing facilities I've ever seen in my life.

21 I can point to one of Whitney's favorite
22 schools, which I actually love, the University of
23 North Carolina, and you've never seen a place like

1 Chapel Hill, and you know, forget about the Dean
2 Dome, which is a 19,000 seat gorgeous basketball
3 arena. Right next door is the swimming facility,
4 which I've never seen anything like that in my life.

5 So and you know, public money. So I
6 also point to of all places, a *New York Times* article
7 a few years ago, *New York Times*, that has castigated
8 the for-profit industry, and I feel has done it
9 in a very unfair way many times, actually wrote
10 an article about Princeton University. They
11 picked on Princeton. There are many others in the
12 same boat.

13 Princeton has \$20 billion sitting in
14 a bank under investment. They actually went on
15 to say that Princeton paid more money in fees to
16 their financial advisors than they gave out in
17 scholarships that year, which was 2015. Now I
18 don't know about you, but I think that's as immoral
19 and unethical as it gets, as they continue to raise
20 their tuition to levels --

21 PARTICIPANT: This is -- sorry, this
22 is about one of the schools in our sector, and I'd
23 just point out that Princeton, they're not a

1 scholarship-granting institution because they give
2 need-based aid. They say we're going to charge
3 you based on what you can contribute.

4 MR. HELLER: Okay. Well I appreciate
5 that.

6 PARTICIPANT: I just wanted to correct
7 the record.

8 MS. MILLER: So Neal, do you have a
9 proposal for what you're saying about that?

10 MR. HELLER: I don't have a proposal,
11 but I do think, and I'll stop. You know, the words
12 "gainfully employed" were put into the Higher
13 Education Act in 1965. I was five years old. I'm
14 pretty sure that it was not Congressional intent
15 to somehow define it 50 years later as a debt to
16 earnings ratio. So I hear everybody around this
17 table and everyone has a problem with it.

18 So I think the Department has headed
19 in the right direction, and I do think there are
20 other metrics that obviously do a much better job
21 of identifying bad schools, no matter what their
22 for-profit, not-for-profit, public or private.

23 MS. MILLER: Jennifer Blum.

1 MS. BLUM: So yeah. I just want to try
2 to get back on track. I will say that I agreed
3 with the last things that Neal said. Of course,
4 you know, I wouldn't throw all types of for-profits
5 and whatever size or type under the bus because
6 of bad actors.

7 I certainly think that this country has
8 things like distance ed, where of course there have
9 been some non-profits, but the private investment
10 that was made, for example, into distance ed very
11 early, I'm not sure we would have distance ed the
12 way we have it today if it weren't for the private
13 investment of for-profits.

14 So I just want to -- let's not lose sight
15 of the value of private money, and certainly as
16 Neal very eloquently said, the non-profits
17 certainly invest in often actually for-profit
18 education in myriads of ways.

19 As Senator Alexander eloquently
20 inquired of Tony Carnaval last week at a hearing,
21 he said I'm sure you wouldn't let Georgetown operate
22 at a deficit. So let's like all keep on track here.

23 So with that, I'd like to propose that we get to

1 debt to earnings, and discuss actual metrics.

2 MS. BUCK: Is that -- would the metrics
3 chart be focused on that, the one that we were
4 looking at before?

5 MS. BLUM: I don't think we need -- I
6 mean with all due respect to the slides, I don't
7 think we need the slides, because I think we have
8 the proposed metric of the Department that we're
9 going to go back to and discuss whether, what that
10 one should look like in the context of the
11 conversations we've had the last few days.

12 So it's debt to earnings, which is the
13 one that was proposed in issues -- it's sort of
14 Issues 2, 3, whatever. But it's really about the
15 metric of, you know, and I think it's a combined
16 conversation of, you know, are we sticking with
17 the N size of ten?

18 What is, you know, is eight percent
19 appropriate -- 8 and 20 percents appropriate when
20 you are now including all debt, and what is the
21 amortization period going to be for the bachelor
22 and below programs?

23 I mean those to me are the questions

1 on the table, and I would just encourage. We've
2 got less, you know, like a little bit more than
3 an hour. So I just don't want to leave the
4 Department -- with all due respect to the
5 Department, I just would like to give the Department
6 some insights, given the information which has been
7 very helpful and education to us the last few days.

8 I'd just like to give the Department
9 a bit more information on what it, and then if we
10 can get to loan repayment, those two, and then we
11 still haven't even talked about the alternative
12 Tier 2 metric. So I just want to get to that.

13 MS. MILLER: So Jennifer, Sandy might
14 have a suggestion for that. Sandy.

15 MS. SARGE: Just the -- the only thing
16 that I would suggest is maybe we go to a blank sheet
17 as we keep notes, so that we're seeing where the
18 differences are going to be from that perspective.

19 MS. MILLER: Okay. So with Jennifer's
20 suggestion that we move to talking about the debt
21 to earnings repayment there's -- some cards went
22 down but then some are still up. Tim?

23 MR. POWERS: Yeah. I mean just before

1 we move on, I just want to put it on the record
2 that I just fundamentally disagree with this sort
3 of notion that non-profit and mission-based
4 organizations and for-profit corporations have the
5 same goals in mind when it comes to governance
6 structure, right?

7 This is Milton Friedman stuff, right?

8 I mean the point of a for-profit corporation or
9 an entity is to maximize profit. That's not the
10 mission of a non-profit so -- and I respect that
11 there are some wonderful institutions around this
12 table, and I am a firm supporter of the notion that
13 proprietary schools do play a really important role
14 in this country.

15 But I just needed to put it on record
16 that this notion that there's sort of this blurred
17 line, I don't think that that's something that I
18 can just accept and move on from, and I just felt
19 a need to point that out. So thank you for that.

20

21 MS. MILLER: Okay, Whitney.

22 MS. BARKLEY-DENNEY: Yes. I wanted to
23 make a similar though different point to Tim, just

1 sort of a philosophical reorientation, which is
2 I think -- I've spent most of my career working
3 with people who are under-served, and working with
4 people in really dire economic conditions,
5 particularly in the Mississippi delta.

6 What those people deserve and what they
7 need when they go into higher education is more
8 protection, not less. So that would include more
9 understanding of how much money they're going to
10 have to take out and what that means, more
11 understanding.

12 Like Sandy pointed out, a lot of these
13 kids think financial aid means free, because
14 Medicaid means free. Other things that they accept
15 means free.

16 They need more career services, because
17 they don't have mom or dad to put them into an
18 internship like a privileged kid does. And so I
19 just wanted to say I understand where everybody
20 is coming from, and from my perspective, that means
21 that we have to do actually more for those kids,
22 not less.

23 MS. MILLER: So in doing more for them,

1 can we move on to discuss the metrics that are up
2 here? Does anybody else need to make an
3 impassioned response or speech about their
4 particular community of interest? Kelly you do?

5 MS. MORRISSEY: Everyone.

6 MS. MILLER: Everyone does?

7 MS. MORRISSEY: Well no. I'm just
8 wondering before I feel comfortable moving on, is
9 it even appropriate to take a temperature check
10 on the basic tenet of whether or not we are
11 comfortable with the expansion of this to all
12 colleges and all programs. I just don't know if
13 we're there. I feel like the rest of this hinges
14 upon that.

15 MS. BUCK: Let's ask that question.
16 Are you comfortable with including all college
17 programs?

18 (Show of hands.)

19 MS. MILLER: Daniel has a question.

20 MS. BUCK: Except for graduate, which
21 you already knocked out yesterday.

22 MS. MILLER: Daniel has a question.

23 MR. ELKINS: Is the Department willing

1 to not expand it? If the Department's not willing
2 to do that, then it's not -- why are we even going
3 to take the vote? I thought it was established
4 already.

5 (Off-microphone comments.)

6 PARTICIPANT: I thought that's what we
7 were told yesterday, that's our new mandate. So
8 I felt we worked through this yesterday.

9 MR. ELKINS: Yeah, that's what I'm
10 tracking.

11 PARTICIPANT: There's no harm in
12 telling the Department what we think. I mean if
13 they're not going to do it, they're not going to
14 do it but --

15 MR. MARTIN: This is Greg. I agree
16 with that. No, there's nothing wrong with giving
17 us your opinion. You see our position, which it
18 is a basic tenet of where we started from in these
19 negotiations, and where we remain right now, that
20 the -- that the rule be expanded to include all
21 programs at all institutions, right?

22 I mean if -- I would hope that the
23 proposals coming forth -- if the proposal is just,

1 you know, we want to go back to the old rule, that's
2 it, we're not moving off of that. That's going
3 to be a very different -- I'm going to say this.

4

5 We're open to anything, hearing
6 anything. That's going to be a very difficult
7 position for us, me, to negotiate from the
8 perspective of the Department, if that's going to
9 be your implied or tacit position.

10 Just like I would say to people on the
11 other side, if someone's position were to be that
12 I absolutely will tolerate no measurement of what
13 we do or any implications of what we do, that's
14 another position I think would be rather untenable.

15 So I think we all have to be willing to get to
16 some place based on the reason I'll reiterate,
17 saying everything's on the table. But why did
18 we come here to begin with?

19 If the intent of the Department was to
20 keep the rule that we had in place with no changes,
21 none of us would be here, right? That's just --
22 that's not Greg Martin's opinion or anything;
23 that's just reality. So let's keep that in mind

1 as we move forward.

2 MS. BUCK: And yesterday you did take
3 a temperature check on graduate programs. Whether
4 or not they're going to listen to that, you don't
5 know. But you did take a temperature check on it.

6
7 So why would it not be Okay to ask
8 similar kinds of questions, even though you don't
9 know for sure what their response would be? So
10 with that in mind, do you want to ask that question
11 again about colleges? No.

12 MS. MILLER: I'm hearing no.

13 (Off-microphone comments.)

14 MS. MILLER: Thelma.

15 MS. ROSS: So Thelma. Kelly, then
16 your question or your ask was for a temperature
17 check, because you said that it was not clear, in
18 your mind at least, and as a negotiator at the table
19 you have a request on the table. Can we ask --
20 she's asked for a temperature check. We've had
21 50 temperature checks. Can we not do this one?

22 MS. BUCK: Please ask it again.

23 MS. MORRISSEY: I'm just asking for a

1 temperature check on the basic tenet here, as to
2 whether this will no longer be specifically DE
3 programs, but an expansion of these disclosures
4 to all educational programs at all institutions,
5 and if that's something, a direction that we're
6 comfortable heading into?

7 MS. BUCK: Okay. Is that clear? Can
8 people indicate their response?

9 MS. MILLER: Or thumbs.

10 (Show of hands.)

11 MS. BUCK: Okay. There are quite a few
12 thumbs down.

13 MS. MILLER: Quite a few thumbs down.

14 MS. BUCK: 1-2-3-4-5-6-7-8.

15 MS. MILLER: Eight thumbs down.

16 MS. BUCK: I see eight thumbs down.

17 And by the way, we usually don't count the alternate
18 unless the person is not --

19 MS. MILLER: The primary is not here,
20 yeah. Jennifer.

21 MS. BLUM: So I just want to go back
22 to something that Whitney said, I think it was the
23 last time she spoke, about giving the students more.

1 One thing that, you know, we can talk a long time
2 about the Congressional intent from 1965 and then
3 again in '92, where they actually did a lot on
4 gainful employment.

5 We can talk about what the intent was
6 then, but the realities, as I've said before, are
7 different today than they were then. So one of
8 the big struggles here is for universities and
9 colleges too, that are at the degree level, that
10 have exposure from the disclosures, that where the
11 students who are making decisions don't have the
12 counterpoint of comparable programs at non-profit
13 institutions.

14 I mean that's just -- and so if part
15 of this is about consumer protection and consumer
16 information, you're only giving students, you know,
17 a third of the loaf. You're not giving them the
18 full picture and let's see how it looks. I mean
19 if I think it's important for students to see
20 everything.

21 I don't know how it's going to look,
22 by the way. I mean I'm just saying -- but it's
23 important for the students to see it, and that we

1 just -- I mean the fact of the matter is is that
2 higher ed moved beyond the term "gainful
3 employment."

4 The Department has created a statutory
5 -- not created, but has used -- is using a statutory
6 framework within their broad disclosure authority
7 for a rational, sound solution here, and I think
8 from a consumer -- you know, it just strikes me
9 that we would want these students to see all of
10 the data, not part of the data.

11 MS. MILLER: Sandy.

12 MS. SARGE: So I'm -- I very much agree
13 with the table, I think Johnson and Tim and Chris
14 Gannon, with regard to the intent of for-profit,
15 particularly and to Neal's point exactly, to PE,
16 to private equity and to publicly held
17 universities. They have a mandate to their
18 shareholders first and foremost, even though their
19 mission statement as far as what they're doing,
20 just like Ford says I want to make a good car.
21 But at the end of the day, they really want to make
22 a profit, insurance companies, name them. You're
23 exactly right.

1 So I would be more than willing, and
2 in fact would emphatically wish we could bring
3 together a group of people who could talk about
4 how do we bifurcate this group that's been deemed
5 in the regs maybe, and maybe I'm overstepping
6 because it's sanctions and I'm not an expert --
7 or not sanctions but statutory -- what a for-profit
8 is.

9 Because I think, exactly to Neal's
10 point, people that start off small family-owned
11 schools that group and just pay their taxes had
12 no idea 20 years ago what the ramifications were
13 to be labeled in this group, and they don't have
14 the same mission statement. I would love to move
15 the Department into a way to separate out the
16 sophisticated --

17 Todd said it yesterday, the
18 sophisticated investor or the sophisticated person
19 who's investing in those schools, and then when
20 the school goes bad, those investors walk away.
21 They lose their initial investment, but they don't
22 repay our taxpayers, and they leave the student
23 burdened and the Department burdened and us as

1 taxpayers.

2 I'm in full agreement. Is there a
3 way -- where would it be appropriate for us to
4 start those discussions with the Department? How
5 do we do that, and please don't tell me go to my
6 Congressman, because we only get one or two and
7 the state senators and a handful. I tried to do
8 that, by the way.

9 (Pause.)

10 MR. MARTIN: First of all, we're
11 prohibited by law from telling you to go to your
12 -- to contact your Congressman, yes. So we never
13 do that. Yeah, I don't.

14 Whenever anybody brings this up with
15 me, I always say -- I just always say to people
16 about anything statutory, just remember your civics
17 lesson. Some people make the law, some people
18 interpret the law, some people enforce it, right.

19 That's by the way all I remember from
20 my 8th grade civics class. But no, to the point
21 of not for profit, I think that -- that question
22 is somewhat rhetorical. I mean we're not in a
23 position here to -- I mean, you know, for-profit,

1 not for profit is a tax status, and I don't know
2 that it's probably way beyond what we can do here
3 to look at, you know, bifurcating within
4 for-profit, different types of for-profit and
5 different rules we would apply to that.

6 I don't -- I think that's well beyond
7 the scope of -- what we'd like you to get to what's
8 within our scope, let alone to go there. So I mean
9 I think it's an interesting thing to think about
10 and it certainly is, but -- and I fully understand
11 the distinctions you're making there.

12 But for purposes of where we are now,
13 I think we, you know, we have to look at those
14 distinctions which currently exist.

15 MS. MILLER: So Jennifer has requested
16 to answer Sandy's question.

17 MS. BLUM: So and Steve can certainly
18 help me out here. But the fact of the matter is
19 is that, and we can have a long conversation about
20 its effectiveness or not. But the fact of the
21 matter is is that in the financial responsibility
22 standards, there is a bifurcation between
23 non-profit and for-profit as it relates to the

1 financial composite score first of all, and then
2 secondly just by sheer structure of a for-profit
3 organization, that all gets meted out in the
4 financial responsibility standards.

5 I mean, you know, it's not explicit per
6 se, but the holdings and the assets and all that
7 get meted out when they're looking at financial
8 responsibility. So there is a place in the statute
9 and in the regs where this does get meted out, and
10 it does get enforced. Is that fair Steve?

11 MS. MILLER: Chad.

12 MR. FINLEY: I actually understood
13 Sandy was making a slightly different point of
14 there's for-profits and there's for-profits, that
15 you'd like some help putting initial caps on there
16 or something but --

17 (Simultaneous speaking.)

18 MS. BLUM: Yes, but my point -- yes,
19 but my point is that even that gets meted out in
20 a financial composite score.

21 MR. FINLEY: You know I think the goal
22 here is to have a discussion about trying to
23 identify programs that have high debt and low

1 earnings, because the suspicion is they're in many
2 places, right.

3 The conversation this week has
4 broadened substantially to talk about other kinds
5 of ways to look at them, to see if they're bad
6 program or if there's -- if that's only one aspect
7 of a good program, and that's felt like a very
8 constructive part of our time this week.

9 MS. MILLER: Chad.

10 MR. MUNTZ: Chad Muntz. All right.
11 I agree that perhaps maybe it doesn't apply to the
12 public sector. I'm going to set that world aside
13 for a second, and move this conversation forward
14 I hope with some debt to earning metrics ideas,
15 okay.

16 VOICES: Yea!!

17 MR. MUNTZ: All right. So if this has
18 to be a one-size-fits-all in this new universe,
19 I will reiterate my position that I don't think
20 we need to do -- I want to make it simple. Let's
21 just do total earnings, total debt, the consumer,
22 the advocates, whoever out there can then make any
23 ratios they want.

1 A student can then determine if they
2 can pay \$10,000 over 10 years, over 15 years, over
3 20 years, over the rest of their life and their
4 grandchildren's life. I don't know.

5 But that could be a value statement.

6 My value statement could be that we could make
7 this ratio that one year's worth of earnings is
8 equal to one year's worth of debt. Let's just say
9 that that's the benchmark. You have 30 years'
10 worth of working. Is it worth spending one out
11 of 30 years to get this credential?

12 That's the point. That's the
13 benchmark to maybe start with. Now if this has
14 to apply to all of us, that would be one simple
15 way, because once we go into an amortization
16 schedule, once we get into a payment interest rate,
17 it's going to be confusing because by the time
18 you're finished with all of your undergraduate
19 degree, now you're in a new interest rate with a
20 new company.

21 Your loans got consolidated somewhere
22 else. Who knows what that is? But I just think
23 earnings to debt, does that make sense to you?

1 Maybe I'll look at the consumers. What do you guys
2 think? The students, would you like that kind of
3 information? The Department can produce that kind
4 of information. That's one point.

5 Now from -- it's on the College
6 Scorecard, that's right, and we start at the
7 institutional level. If the institution has a
8 problem, then we can get to the program level.
9 That's kind of the way I look at it. The Department
10 can produce that.

11 The second piece of it is the
12 disclosure. So the Department's disclosing this.
13 We've got hundreds of thousands, millions of
14 students in the beginning. I would have to say
15 for this to apply, we can't then keep pieces of
16 paper that everybody read this that were
17 prospective students to make it work, at least in
18 the public and maybe the non-profit sector.

19 So from that point of view, I reflect
20 back onto the data that we got yesterday. The
21 current rule identified three million low income
22 people who tended to be single mothers, Pell grant
23 recipients and after the end of their program they

1 were making at best 20 to 28 thousand dollars no
2 matter what.

3 So the current rule did get at a very
4 high risk population. I would say that disclosure
5 might have to have a two-tiered approach. Maybe
6 for the public and non-profit, bachelor degree.
7 I'd be welcome to open that up, and a master's that
8 maybe it's just an email notification like what
9 we currently do.

10 But for certificate programs to be
11 gainful, there has to be a second step because there
12 are the lowest income students, and they need to
13 -- we need to verify that they understand that
14 they're going to take on \$20,000 of debt or whatever
15 it is to only make \$20,000.

16 I think that that's the key that we're
17 trying to protect is to consumers at that point.

18 So that's just my putting this out there. Two
19 tier approach on the disclosures, depending on your
20 sector. But an overall one metric approach for
21 the department to produce or maybe two if we had
22 the repayment rate, for all of our programs.

23 MS. BUCK: Okay, thank you for that.

1 MS. MILLER: Thank you. So thoughts?

2 PARTICIPANT: Chad, can I ask one
3 question of you please? So you're talking about
4 the -- this would be under a disclosure environment.

5 Did you give any thought to how, given those
6 disclosures, the Department would make a measure?

7 MR. MUNTZ: Well so I think the measure
8 would be the ratio of debt to earnings.

9 PARTICIPANT: Okay. You're still on
10 that measure, okay.

11 MR. MUNTZ: And we can discuss the
12 earnings. Is it ten years later, five years after
13 you graduate? I don't know. Is the debt the
14 beginning debt or is it the debt five years later?

15 I don't know. But that's the point, is that this
16 could apply to everybody.

17 MS. MILLER: So thoughts, comments, to
18 what Chad has proposed? Jeff.

19 MR. MUNTZ: Yeah, I agree.

20 (Off-microphone comments.)

21 MR. MUNTZ: So the two tiered
22 disclosure approach would be for the current
23 gainful kinds of programs, because of what their

1 customer base might be, would have to be an email
2 sign-off. But for disclosures for everybody,
3 maybe we could do just a notification like what
4 we already do and our typical work that Pam had
5 referred to.

6 I'd be willing to open this up, that
7 it would be degree programs could fit within the
8 first tier notification and the signing off by the
9 student could fit in the second tier, for the volume
10 of students involved in higher ed. Just an idea.

11 I'd be willing to have pushback on this but --

12 (Off-microphone comment.)

13 MR. MUNTZ: Yeah. No sector
14 differentiation for the degree level. Sector
15 differentiation for maybe the certificate level.

16 MS. BUCK: Responses to this idea.
17 Jeff.

18 MR. ARTHUR: Yeah. So I mostly agree
19 with Chad. I mean the first step, absolutely.
20 We have an opportunity here to finally disclose
21 debt data by program to students for everybody.
22 That's never happened. We've got 1.3 trillion of
23 debt or whatever it is. We have no idea how to

1 manage it without getting it down to a program
2 level.

3 And so the data, this really is a first
4 step. To try to talk about sanctions and tiers
5 for anybody is a little premature until that data's
6 there. We've got to analyze it. We've got to
7 figure out, okay, what kind of sanctions are
8 appropriate? You can't determine an appropriate
9 sanction, I think, without starting with the data
10 and identifying the outliers.

11 MS. MILLER: Other thoughts on this
12 idea? Marc Jerome and then Whitney.

13 MR. JEROME: So, Chad, I do really
14 appreciate the proposal, and I'm trying to
15 understand it. Did I hear you propose something
16 that I had proposed yesterday, with starting out
17 first at an institutional debt and earnings? So,
18 I actually believe that remains one of the best
19 ways for the Department to focus its energies on
20 programs that may need their energies focused on.

21 So I would second that.

22 I'm open to the discussion about, you
23 know, different approaches to different sectors.

1 I guess what I would say is I still view the rule
2 from a student perspective, and so if there is a
3 program or an institution in any sector that the
4 data shows as clearly having very, very low
5 outcomes, I'd like the Department to protect them.

6 I always view the Department as having an
7 obligation to protect students wherever they come
8 from.

9 And then when you were proposing, how
10 does your debt to earnings proposal differ from
11 what we've been discussing?

12 MR. MUNTZ: I think it's just total
13 debt, total earnings at the end of your credential,
14 making a ratio of that. I don't know yet what the
15 benchmark is.

16 MR. ARTHUR: But that's what the -- how
17 does that differ from the current rule?

18 MR. MUNTZ: It's not the amortization,
19 yeah.

20 (Off-microphone comments.)

21 MR. MUNTZ: We're not going to try and
22 do payment and discretionary income and all that
23 --

1 MR. ARTHUR: Okay. So basically
2 they're the Mark Kantrowitz, which is if they were
3 about equal, okay.

4 MR. MUNTZ: Maybe. I don't know. I
5 mean, I'm just trying to throw something out there,
6 because otherwise my next argument will be, well,
7 if you use a six percent we pass; if you use a seven
8 percent, we don't. And I --

9 MR. ARTHUR: So you're just really
10 proposing a gross -- like, I would call it a gross
11 or more simplistic formula that avoids all the
12 variables.

13 MR. ARTHUR: Yeah, that's right.

14 MS. MILLER: Whitney.

15 MR. MUNTZ: Easy for people to
16 understand.

17 MS. MILLER: Hang on. Whitney has
18 more ideas about this. Whitney.

19 MS. BARKLEY-DENNEY: Okay. So I'm not
20 going to comment on what it would look like to do
21 the gross and the gross, just because I would
22 appreciate it actually if the Department could take
23 that back and possibly run some of those numbers

1 so we could see what the difference would look like.

2 Because I'm not a good enough mathematician to
3 think that through in my head.

4 The other thing, though, I was going
5 to say is I am concerned about the institutional
6 level view, because of all of the reasons why that
7 Jordan outlined this morning with his data, the
8 potential of it really masking problems. And I
9 think if we want to get to the program issue, we
10 have to understand what's happening at the program
11 level.

12 It may be that at some point if a certain
13 institution had several failing programs, or a
14 certain percentage of failing programs, then we
15 look at their institutional rates to see, to
16 diagnose the problem. But, as a first look, I think
17 we have to look at program rates.

18 MR. MUNTZ: The reason why I was
19 thinking that way -- I agree, that if your
20 institution is bad, all of the programs are going
21 to be bad, it's going to come to the top. But from
22 the disclosure standpoint, as it stands, most of
23 our institutions, you get admitted to the

1 university even in a general education program.

2 But if you have 100 programs and we've
3 got to disclose every single rate -- I mean every
4 single earning and debt for every single program
5 to every prospective student, it's going to be all
6 this paper combined that we're sending on an ongoing
7 basis. And I don't know if that's the intent of
8 protecting the consumer that you would hope to have,
9 versus right now your institution's bachelor degree
10 programs tend to have this debt, this outcome, like
11 the Scorecard. And if you want more data, then
12 maybe you could dig down deeper.

13 If the institution has a problem in the
14 disclosure piece or in the sanction piece or
15 whatever we're calling that, the Department can
16 dig down deeper to that level.

17 Like I said, it's just a proposal.

18 MS. MILLER: Okay. So, Jordan, Chris
19 Gannon, and Daniel. I see your tent's up. Is it
20 related to this idea that Chad has presented?
21 Okay. Johnson, is your idea?

22 MR. TYLER: Yeah, only that -- and
23 there are other social -- I'm not a social

1 scientist, but I did read something that Jordan
2 sent to me. I mean, I think there's a very high
3 correlation with outcomes and institutions. I
4 think there's a lot of science behind that, a lot
5 of studies.

6 So this whole issue that Chad's trying
7 to avoid, the disclosure per program, which really
8 becomes a huge drain on resources, but if we're
9 talking about institutions that are consistently
10 failing students, you know, I think there's some
11 studies out there that would back that up.

12 MS. MILLER: Daniel and Chris Gannon,
13 were yours directed towards Chad's? Daniel's?
14 Okay. Well, let's have Chris Gannon go first, then
15 Daniel.

16 MR. GANNON: Yeah, I just also had some
17 concerns with the institutional level view, because
18 I think that's just going to mask bad-acting
19 programs and not necessarily help students by
20 masking those programs. So I just have -- I still
21 have issues with that.

22 MS. MILLER: Do you have a proposal or
23 any thoughts on how to correct that at this time?

1 MR. GANNON: I just don't agree with
2 the institutional level view.

3 MS. MILLER: So back to the program?

4 MR. GANNON: Yeah, back to the program.

5 I think it needs to be viewed at the program level,
6 or else you're just going to mask bad programs that
7 are scamming students.

8 MS. MILLER: Okay, thank you. Chad.

9 MR. MUNTZ: Sure. I'll respond to
10 that. I think our data that we've been given might
11 be able to highlight some programs that we could
12 amend to that, the institutions who offer programs
13 where a lot of the enrollment is from, you know,
14 it looks like communication technologies. It
15 looks like basic skills and developmental and
16 remedial education.

17 I mean, just looking at the table, Page
18 6, Table 5, wherever the bulk of the enrollment
19 is. Maybe we could limit some of our programs to
20 that level for the disclosure, to help in that
21 regard.

22 MR. JEROME: So, just one question on
23 that. My apologies, Marc Jerome. The data from

1 University of Texas, which is not included in the
2 GE data set, I think that data, which is publicly
3 available and easy to look at, shows that in the
4 liberal arts and those areas, that's where the
5 problems with debt to earnings are. So just be
6 aware of the implication.

7 MR. MUNTZ: Yeah, I agree. But I'm
8 trying to start us somewhere, right?

9 MS. BARKLEY-DENNEY: So, just a
10 follow-up, one other thing I wanted to clarify.
11 So are we considering, because we were talking about
12 using Scorecard data versus GE data. So were you
13 considering including non-completers and
14 completers, or just completers?

15 MR. MUNTZ: Well, it depends, right?
16 I mean, you're right. The devil's in the detail.
17 We can do completers, but, I mean, I could go either
18 way on this. But if we did the entire student body
19 that's ever had contact with that institution, then
20 I would also want to include all the students who
21 never had to take out a loan, and add them in as
22 a zero for your averages.

23 But if we're only doing, you know, the

1 other, then we would have to look at that. But,
2 yeah, I mean, it's a good question.

3 MS. BARKLEY-DENNEY: Yeah, and I don't
4 have an opinion on it necessarily at the moment.

5 I just wanted to point out, if we're moving over
6 to Scorecard data, that's something we have to
7 consider.

8 MS. MILLER: Daniel.

9 MR. ELKINS: To what Marc said a few
10 minutes ago, this is very reminiscent of Mark
11 Kantrowitz's paper. Like this is almost identical
12 to what he proposes if you've spent any length of
13 time talking to him.

14 MS. MILLER: Okay. Any other thoughts
15 on Chad's proposal before we go to Jordan? Tim.

16 MR. POWERS: I just wanted to thank
17 Chad for moving the ball forward. So, thank you.

18 MS. BUCK: So, go ahead, Sandy. What
19 were you going to propose?

20 MS. SARGE: Would you guys be
21 interested in doing a thumb check on whether this
22 feels like it could be something we move forward
23 with and we continue moving on this?

1 MS. BUCK: Or you could do a thumb check
2 on whether you would like the Department of Ed to
3 explore this approach.

4 MS. SARGE: There you go. That sounds
5 better, okay.

6 MS. BUCK: Okay. Could we have a check
7 then on whether you would like the Department of
8 Ed to explore this approach as it has been
9 described. And give the data.

10 (Show of hands.)

11 MS. BUCK: I don't see any down thumbs.
12 I see a few sideways and I see some up thumbs.
13 Am I right about that? Okay.

14 MS. MILLER: Thank you for that.
15 Okay, Jordan.

16 MR. MATSUDAIRA: Yeah, thanks. So,
17 I'm going to be the jerk who I guess goes backwards
18 or moves us backwards. I hope it's not that, but
19 I had kind of an alternative way of just thinking
20 about kind of a path to consensus about a broad
21 way of constructing a rule that I feel like, you
22 know, maybe splits the difference between a lot
23 of kind of concerns or kind of criticisms of the

1 old rule and the new rule, and maybe splits some
2 of these differences.

3 So I just wanted to throw out the kind
4 of general idea. So, you know, for me I think
5 maintaining some of the current structure of the
6 original GE rule is really critical for protecting
7 students, and in particular having a path that's
8 kind of close to automatic with appeals around data
9 and so on for Title IV eligibility loss is
10 important.

11 But, you know, I think a lot of what
12 we talked about is, you know, a desire to really
13 improve the metrics that are actually used to do
14 that and kind of revisit whether we're really
15 isolating programs that are poor performing. So
16 we've talked about adding in a repayment rate,
17 thinking about, you know, like changing time
18 horizons for different metrics and so on.

19 So I think, you know, that's something
20 that makes good sense. The other criticism that
21 I've heard is just a feeling like only having to
22 focus on the GE structure puts a lot of for-profit
23 programs at a competitive disadvantage to poor

1 performing non-GE programs, and so, you know,
2 folding in this idea of expanding the disclosure,
3 so, compute the debt to earnings rate, compute
4 repayment rates at a program level for every
5 institution, and have a disclosure and notification
6 regime that does, you know, pop up with a warning
7 on whatever space we decide is appropriate.

8 But it says, you know, simply people
9 who go to this program struggle to repay their debt
10 or, you know, have high debt relative to earnings
11 or have low repayment rates. So you kind of add
12 that in, and then outside of the DE accountability
13 structure, which again I still advocate for having
14 an automatic path for Title IV eligibility loss,
15 outside of that perhaps building in the kind of
16 thing that we've been talking about where, for the
17 non-GE programs, there is a trigger that triggers
18 some kind of compliance review or administrative
19 action with the sanctions that Ed has available
20 to it in the way that we've kind of been describing
21 as a Tier 2 process.

22 So I imagine that makes everybody a
23 little bit unhappy, but it feels like it addresses

1 a lot of the different kinds of concerns that have
2 been raised. So I wonder whether there might be
3 some room for pursuing consensus along that path.

4 (Off-microphone comments.)

5 PARTICIPANT: Can we get a new page and
6 you can write them up so we can see?

7 MR. MATSUDAIRA: Okay. So --

8 MS. BUCK: As you say them, Crystal
9 will write them up. So, say them, see them go up,
10 make sure it's what you're saying and then go to
11 the next point. How about that?

12 MR. MATSUDAIRA: Okay. So, GE
13 accountability structure with improved metrics,
14 including the repayment rate.

15 (Off-microphone comments.)

16 PARTICIPANT: Are you saying DE? Debt
17 to earnings?

18 MR. MATSUDAIRA: Yeah, I'm sorry,
19 including a repayment rate in addition to DE.

20 PARTICIPANT: Just a minute. DE
21 accountability structure with what?

22 MR. MATSUDAIRA: So, automatic Title
23 IV loss and sanctions for GE programs. Part 2 would

1 be --

2 (Off-microphone comments.)

3 MR. MATSUDAIRA: What I mean is similar
4 to the structure of the 2011 GE rule, there's still
5 some structure where based on DE and repayment
6 rates, there's still some -- for programs that
7 persistently do not pass those kinds of rates, there
8 still is a path to automatic Title IV loss.

9 In the non-GE sector, debt to earnings
10 and repayment rates are still measured, and
11 according to the same process there's a
12 notification and warning structure. So, in other
13 words, the students get the same information based
14 on the performance of GE versus non-GE programs.

15 It's just the sanctions side of the regime that
16 would be different.

17 On the non-GE side, the non-performance
18 on the metrics would lead to some sort of compliance
19 review, programmatic reviews or administrative
20 sanctions.

21 PARTICIPANT: Would you be open to --
22 because the Department had open stated they would
23 not have a structure where there were sanctions

1 with one identical degree program without the
2 other, especially total loss of Title IV. Are you
3 open to some other path that would encourage
4 improved programs?

5 MR. MATSUDAIRA: Yeah. What I'm
6 worried about is just on the -- if the path to
7 improving these programs is through some sort of
8 programmatic oversight, I just don't feel like
9 we've gotten information that makes me confident
10 that the Department would really have the capacity
11 to do that at the kind of scale that's being
12 contemplated now.

13 So that's why I feel like, you know,
14 to protect students, we really need some kind of
15 automatic process that's metric-based. It has an
16 appeals process but can do this in some sort of
17 efficient way in order to keep students protected.

18 MS. MILLER: Greg, did you want to
19 weigh in?

20 MR. MARTIN: I was just looking for a
21 clarification from Jordan. So, automatic loss.
22 So automatic loss of some pathway to automatic loss
23 of eligibility for programs that are currently

1 defined as -- it would still be in the law; the
2 law still defines what a GE program is.

3 So, for those programs, then, there
4 would be -- I don't want to pin you down, but would
5 you see that being what is currently in a
6 regulation, along those lines, or something
7 modified from that?

8 MR. MATSUDAIRA: I guess what I'm
9 suggesting is something like the current
10 regulation, in the sense that there's still some
11 kind of automatic Title IV eligibility loss that's
12 triggered by continued failure, according to some
13 set of metrics, but improving the set of metrics
14 in a way that addresses some of the concerns that
15 have been brought up with debt to earnings, the
16 measurement of those things, and having the appeal
17 process and so on.

18 But then also adding to that structure
19 kind of a measurement and disclosure regime that
20 covers the non-GE space in a way that kind of
21 addresses some of the concerns that Marc has brought
22 up, like, you know, I don't want to be here running
23 a good program and having a kind of non-GE program

1 that's doing really poorly and not have a way to
2 kind of communicate that to students.

3 MS. MILLER: Mark McKenzie.

4 MR. McKENZIE: Actually, I'm going to
5 have a different suggestion, so maybe you should
6 finish and if you want to do temperature checks,
7 whatever you were going to do. I'll come back.

8 MS. MILLER: Okay. Thank you, Mark
9 McKenzie. Jordan, does this look right, what we've
10 --

11 MS. BUCK: Can you see it? It's too
12 small. Can you read it off, Crystal?

13 PARTICIPANT: So it looks kind of like
14 a bifurcated system where it's I guess similar,
15 but DE and loan repayments and automatic title loss.

16 Is that for the traditional GE programs on one
17 side? And then you have a different structure,
18 slightly different structure for the non-GE
19 program, which is still DE plus repayment. And
20 there are a notification and warning structure,
21 as well as sanctions, meaning non-performance
22 rates, compliance, programmatic reviews, and
23 administrative sanctions? Is that about right?

1 MR. MATSUDAIRA: I think so. I think
2 the only difference, or the only thing that might
3 not be reflected well, is just that I mean for the
4 notification and warning structure to be symmetric
5 across --

6 PARTICIPANT: Oh, for both sides, for
7 both.

8 MS. BARKLEY-DENNEY: This leads to my
9 question. And it's very pedantic, but I don't
10 understand what automatic means in this context.

11 Because if there's appeals, if you're
12 contemplating an appeal, then it's not really an
13 automatic loss, right? So can you just clarify
14 that?

15 MR. MATSUDAIRA: I mean it in the same
16 way that it exists in the current regulation.

17 MS. MILLER: Is it okay to use pathway
18 to Title IV loss, rather than automatic, or you
19 want the automatic?

20 MR. MATSUDAIRA: As long as we
21 understand each other. I'm not sure. What I mean
22 is in the same way that in the current rule, if
23 you fail the metric two out of three years, there

1 exists an appeals process. But, in principle, if
2 you fail the metric two out of three years, that
3 triggers Title IV eligibility loss.

4 MS. BUCK: So is his proposal clear?

5 MS. MILLER: Daniel, did you want to
6 say something or ask something?

7 MR. ELKINS: I wanted to ask a
8 question.

9 MS. MILLER: Okay, Daniel.

10 MR. ELKINS: Jordan, help me
11 understand the intent for the bifurcation,
12 specifically with the loss of Title IV not being
13 applied across the board. Is your intent more to
14 do with you feel like that's a statutory overstep?
15 Or is it because you feel like that's too harsh?

16 MR. MATSUDAIRA: I think the main --
17 I think one constraint, and Steve can correct me
18 if I'm wrong, but I think one constraint is that,
19 you know, because I think the loss of Title IV
20 eligibility is basically implicit in defining GE,
21 that I think it might not be statutorily possible
22 to kind of have that automatic metric-based trigger
23 to Title IV eligibility loss through there. But

1 Steve can correct me if I'm wrong about that.

2 But I'm also sympathetic to the idea
3 that a more holistic review of non-GE programs might
4 be appropriate to kind of build in some of the
5 considerations about, you know, what the mission
6 or kind of goal of a particular program, what
7 constitutes good programs, not to say that's not
8 an issue at all in GE sector programs, but that,
9 you know, those programs in general are more
10 vocationally oriented.

11 So the focus more on the financial side
12 of things might be appropriate, but that's to me
13 like a lesser of the argument than the statutory
14 authority piece.

15 And I'll just say that I think the
16 asymmetric treatment of the two sectors, again,
17 is warranted by the fact that, based on the data
18 that we have available, the problems that students
19 are having with debt are much more concentrated
20 in the for-profit sector.

21 MS. BUCK: Does that answer your
22 question?

23 MS. MILLER: Okay, Jeff, do you have

1 a question, clarification point?

2 MR. ARTHUR: Yeah. Were we about to
3 take a temperature check on this?

4 MS. MILLER: We were, but if you have
5 more questions about it --

6 MR. ARTHUR: Okay. Then I just want
7 to point out, if I've got a program that's at 10
8 percent debt to earnings, and I get it down to 9.5
9 the next year, and I get it to 9 percent the next
10 year, maybe 8.5 the next year, I mean that's a very
11 significant improvement in that program, but it
12 fails.

13 Exact same program, and there will be
14 the exact same programs at institutions that aren't
15 subject to this, where their debt to earnings is
16 15 percent, 16 percent, 14 percent, each of those
17 three years. And for any scenario where mine fails
18 and is deemed a failure, and theirs has no
19 sanctions, that's an automatic thumbs down for me.

20 MS. MILLER: Jennifer, another point
21 or question?

22 MS. BLUM: Yes, for Steve Finley. So
23 I am sitting in, and Steve might help me out here,

1 too, a little bit. But I am sitting in the legal
2 seat, so I am going to put on my legal hat here.

3
4 In terms of statutory authority, you
5 now have a metric that's the same metric across
6 all higher ed using the disclosure authorities of
7 the Department, of the statute. And that's the
8 basis because you can't use the gainful one and
9 have the metric. You can't argue that you're
10 somehow subjecting the non-profit bachelor's to
11 this disclosure under gainful.

12 So now you're using the disclosure,
13 which is what you've been doing all week, using
14 the disclosure authorities that you have and the
15 various different provisions of the statute, which
16 we can list if we need to, and you're disclosing
17 all of these metrics.

18 And then you're deciding that, from an
19 enforcement standpoint, you're going to enforce
20 only on one sector of higher ed. The problem is
21 that there is absolutely no rational basis for
22 -- and particularly I'm going to take the bachelor's
23 level, where there are probably -- and I don't know

1 what the data is, but I'm going to guess that
2 two-thirds of bachelor programs in this country
3 are non-profit and one-third are for-profit. I'm
4 just going to guess. That's a round, and I could
5 be wrong, but, you know, but it's the majority of
6 the bachelor's degree in this country are probably
7 in the non-profit, or it's at least even.

8 Then you're going to get into a
9 discussion. So there's already that point, right?

10 So, somehow you're going to punish a bad
11 performance of a for-profit bachelor degree program
12 but not the non-profit.

13 Then I'll take it one step further.
14 That program has a demographic, a socioeconomic
15 demographic of, let's call it, low. And yet
16 there's going to be a whole bunch of non-profit
17 institutions that have the exact same demographic.

18 But somehow, even though it will be disclosed that
19 they have a low-performing program, too, somehow
20 they're not seeing the same punishment. So my
21 question is, can you really do that at the
22 Department?

23 MR. FINLEY: I think that's a great

1 rhetorical question, and I'm going to leave it on
2 the table in just that way. It does seem like a
3 proposal that calls for like keeping what's there
4 and then adding on the new thing that's proposed
5 and ignoring that you may have programs that look
6 very similar having very different outcomes based
7 on the sector in which they're being offered. But
8 I think it's an interesting rhetorical question,
9 certainly problematic in a lot of ways.

10 MS. BUCK: Are we ready to take a
11 temperature check on Jordan's proposal? Okay.
12 It's not showing. Oh there is it.

13 MS. MILLER: There it is, okay.

14 MS. BUCK: So, temperature check.

15 (Show of hands.)

16 MS. BUCK: Okay I see 1-2-3-4-5 at
17 least thumbs down on this proposal. Does one
18 person want to say why, just so Jordan understands?
19 Not everybody, but one person? Go ahead. Yeah,
20 you just did, okay.

21 MS. MILLER: Yeah, we did.

22 MR. MIRANDO: One reason, one reason
23 alone, as I've been stating the whole day: my

1 understanding is that's not what our mandate here
2 is, and I feel like we're just spinning the wheels
3 again. So that's my rationale, like there's no
4 point in continuing this conversation. It's just
5 not what they want from us.

6 MS. MILLER: Okay. Thank you, Tony.

7 Mark McKenzie, did you have another proposal for
8 us to consider? Please say yes.

9 MR. MCKENZIE: Yes, I think so. Yeah,
10 I've spent a number of days listening to this, and
11 great ideas, and there are lots of challenges.
12 There are challenges with metrics, there are
13 challenges with public versus private, for-profit,
14 non-profit. There are capability and capacity
15 issues at the Department. And there's a rule in
16 place.

17 It seems to me that a reasonable way
18 forward is to potentially partition this into the
19 next four years, apply this new tiered process to
20 the for-profits or the current GE-covered
21 institutions, and give it a time to pilot all of
22 these metrics that we're using. And then at a set
23 date that there's a rollover into the rest of the

1 programs.

2 So the one thing we don't want to do
3 is continue to propagate bad information and apply
4 that to a bigger group of people. That's just --
5 that's crazy-making.

6 So, maybe stay focused on the
7 institutions where you already have data, and apply
8 that data over a period of time. And then expand
9 it out into the public arena when you've actually
10 demonstrated that the data is actually effective
11 or accurate. And it gives the folks looking at
12 that a good amount of time to demonstrate it.-

13 MS. BUCK: Questions about that
14 proposal? And thank you for proposing it.

15 MS. MILLER: Greg and then Daniel.

16 MR. MARTIN: Mark, during this piloted
17 period of time that you have in mind, would there
18 be any type of -- so you would pilot this and it
19 would apply to GE institutions. And would there
20 be -- what would happen to the sanction structure?
21 That would be set aside for that period of time?

22 MR. MCKENZIE: No, actually, the
23 two-tiered process that you were talking about,

1 that there seemed to be agreement on, is these two
2 measures. Whether you go to Chad's measure for
3 DE or the one that's already retained, it's like
4 figure out those two metrics. What are reliable
5 metrics in those two? And they're red flags. If
6 a school, an institution fails both of those, then
7 they need to go into a review process. We need
8 to continue to protect students that are currently
9 enrolled. And so, you know, it keeps the process
10 going with changing a little bit of the focus.

11 So I'd use that structure instead of
12 an automatic. It's not an appeal, but it's a review
13 process. And it's not only a review process for
14 the Department, but if you've got institutions that
15 are failing those two metrics, accreditors are
16 going to absolutely jump on that bandwagon, because
17 that's going to be a reportable non-compliance
18 event for us and we're going to be looking at that.

19 So it seems to accomplish a lot of what
20 we're trying to do, keep the focus on the students
21 and protecting students in this case without that
22 drop.

23 And the other thing that I was concerned

1 about is the capacity issue. When you go from
2 expanding, if I remember correctly, from the
3 for-profit sector to including all of those, the
4 potential for inaccurate readings was five to six
5 percent. And it's a greater number of institutions
6 that's going to blow up the number of potential
7 appeals, because you haven't resolved that the
8 metrics actually work.

9 MS. BUCK: Additional questions about
10 the proposal?

11 MS. MILLER: Daniel.

12 MR. ELKINS: I had one question. The
13 four-year rollout as currently exists with what's
14 on statute right now or what we're talking about
15 today?

16 MR. MCKENZIE: Yeah, I'm not sure.
17 I'd probably ask Cynthia or Greg how that can work
18 in. That one, I haven't thought through the
19 ramifications of that.

20 MS. MILLER: Sandy.

21 MS. SARGE: So, in your proposal, Mark,
22 would o the discussion we had the other day where,
23 the graduate programs, we all had at least a neutral

1 to a thumbs up on excluding the graduate programs.

2 Would we all be amenable to taking those out at
3 least? Or are you saying keep the population of
4 programs as it stands today, but pilot the new
5 methodology of review?

6 MR. MCKENZIE: Actually I think
7 because most of the data that is based on the
8 Scorecard, and a lot of that doesn't apply to
9 graduate programs, I actually think that exempting
10 the graduate programs actually makes sense.

11 MS. SARGE: Okay.

12 MR. MCKENZIE: You know, just from that
13 perspective. So that population would change at
14 least.

15 MS. SARGE: At least those would be.

16 MR. MCKENZIE: Yeah.

17 MS. SARGE: Oh, and I had one other
18 question, and maybe this is -- if Sarah's still
19 here.

20 MS. MILLER: Is this on Mark's
21 proposal?

22 MS. SARGE: It rolls up to something
23 that was asked earlier and it applies to every

1 suggestion, in essence, because it's the Scorecard.

2 MS. MILLER: Okay.

3 MS. SARGE: So there are some places
4 on your chart, Exhibit 1 on that first paper, Sarah,
5 where you show things like excludes non-completers,
6 includes non-completers, things like that. These
7 are questions that have come up. Would you be able
8 to get them consistent?

9 (Off-microphone comments.)

10 MS. SARGE: I'm trying to find out, are
11 there identifiers in those databases that would
12 help to be able to exclude it so the data is
13 consistent?

14 (Pause.)

15 MS. HAY: Hi. So, this is Sarah. The
16 data are really different. So, I could probably
17 spend a entire day explaining it, but I think the
18 answer is no. They cannot be made consistent with
19 each other.

20 MS. MILLER: The data is what it is.
21 Okay. So, John K., Marc Jerome, and then Johnson.
22 And then let's see if we can do a temperature check.

23 MR. KAMIN: Okay. I just want to

1 backtrack for a moment on the idea of sanctions
2 for non-profits and public schools. Would I be
3 out of order to ask what potential authority or
4 statutory authority that could be derived from,
5 because that wasn't, I think, my reading of 1001
6 and 1002.

7 MR. MARTIN: Well, I mean, okay. So
8 we started from the perspective of, you know,
9 currently sanctions, automatic loss of eligibility
10 for, you know, gainful employment programs. And
11 as Steve indicated yesterday, any statutory
12 authority to extend such a loss of program
13 eligibility based on DE metrics would be dubious
14 at best. So, probably not.

15 What we talked about yesterday was, in
16 looking at programs that are not GE programs, and
17 expanding this to all programs, would be something
18 where we would look at a rates measure and then
19 tie rates that were -- I don't want to characterize
20 it -- less than satisfactory, whatever we determine
21 that to be, tie that to an administrative evaluation
22 of that program, right?

23 So it wouldn't be an automatic loss of

1 eligibility. So we would be looking at that
2 program through the other tools the Department has
3 at its disposal. Or if you keyed it back to a
4 measure of administrative capability, the
5 Department certainly has the statutory authority
6 to look at an institution's administrative
7 capability. And I don't know, Steve, do you want
8 to add something there?

9 MR. FINLEY: I mean, the concept there,
10 that is one indicator of a bad program, right?
11 That would be one indicator. It could be offset
12 by showing that a program has high repayment rates.
13 Maybe it doesn't. A program with high DE and bad
14 repayment rates and lots of drops. There are a
15 lot of indicators that, when considered together,
16 any institution is accountable for its
17 administrative capabilities to the Department, and
18 this could be one factor. Does that help?

19 MR. KAMIN: Yeah. I think from my head
20 I was just looking at it like there were components
21 of the 2011 GE that we seem to be amenable over
22 providing some flexibility. And, again, going
23 back to 2011, that statutory authority was defined

1 under those provisions for a program providing
2 gainful employment.

3 Which leads me to think that it would
4 be tough to have any type of remedial actions or
5 corrective steps that schools would take if they
6 were outside of that definition. So I just think
7 that it's important to be thoughtful and
8 considerate about how we could correct this
9 difference between institution types.

10 So, I'm not saying that there shouldn't
11 be any correction on the part of public schools
12 or non-profits eventually after -- because I agree
13 with the way this is kind of looking in terms of
14 piloting and understanding the data. But it may
15 conceivably be different than, and unique but still
16 comparable to, what the for-profits are going
17 through.

18 And I will just close in saying if this
19 is the no-go zone in terms of us exploring the idea
20 of these remedial actions, sanctions, corrective,
21 whatever we want to call it, and we return to --
22 then it would appear that we're going back to the
23 transparency model.

1 If that's the case, I would just highly
2 advise that graduate schools, of course, be
3 introduced back to the program, because there's
4 nothing, no problems -- I think we could gather
5 from just learning more about the program. I think
6 it hinged on the idea that we were taking a more
7 serious approach. But if it's just transparency,
8 by all means we should capture as many schools as
9 possible.

10 MS. BUCK: So let's continue to focus
11 on this pilot program up here, see if there are
12 any additional questions about it, and then take
13 a temperature check before we go on to other issues.

14 MS. MILLER: Marc Jerome, did you have
15 a question about Mark McKenzie?

16 MR. JEROME: Yes, Mark McKenzie. So,
17 in my mind, I'm fairly surprised you're putting
18 this out there, because the schools that you
19 accredit I thought presented the exact reason why
20 this proposal is problematic. You have two schools
21 or three schools, I understand, that are GE that
22 fail. You have a number of schools that are non-GE
23 that we don't know but you suspect, all the evidence

1 indicates their debt and earnings is about the same.

2 And so for another four years, the
3 schools that fail are labeled failing. Their
4 enrollments are declining. Students are attending
5 the other schools without knowing the debt to
6 earnings. So this is, you know, for me, I'm going
7 to be consistent. This is exactly what I believe
8 we should be avoiding, because you have to protect
9 consumers, and to me that's -- and you have to give
10 students the information to make an intelligent
11 decision.

12 MR. MCKENZIE: Right.

13 MR. JEROME: So I just wanted to
14 reflect on that.

15 MR. MCKENZIE: Sure. Actually, I
16 think Greg might have asked. The concept would
17 not be that the same negative things apply, that
18 we'd switch to that two-tier review. So you'd have
19 to have the two metrics. The two metrics, if they
20 are both red, then it just leads to a higher level
21 of review.

22 But, again, instead of being a global
23 issue, now you're looking at an individual

1 institutional review, and the institution has the
2 opportunity to bring other metrics to the table
3 to have that discussion with the Department as to
4 whether these sanctions apply or not.

5 So one of the things that you can do
6 -- I mean, one of the concerns I think there would
7 be from students -- and this would be from a
8 regulator as well, as an accreditor -- any time
9 you have institutions that don't meet particular
10 thresholds, it's a red flag. It doesn't mean it's
11 a bad program. It could just lead to, okay, the
12 sanction is this program's under review, you know?

13 So that's a way to do it, rather than
14 hanging the penalty. Because you're right. I
15 don't think the penalty phase that's in the current
16 regulation should continue to be applied, because
17 I just don't think that's fair at all. And that
18 kind of leads back to the other issues with the
19 validity of the measures that we've all been talking
20 about for four days.

21 This is trying to kind of accomplish
22 a little bit of everything for everybody. But,
23 most importantly, trying to put students first,

1 because that's the thing that we need to continue
2 to make sure that they're protected in this current
3 environment.

4 It allows the Department to ramp up.

5 As we heard earlier, you know, their capacity to
6 do things is lower just because of the hiring freeze
7 and everything else. So to add a huge burden onto
8 the staff would be very difficult. So I think this
9 is a way to get there, but it's just going to take
10 some time.

11 MS. BUCK: So I need to tell you that
12 it is 4:30, and I wonder, are there questions that
13 must be asked before we take a temperature check
14 on this proposal?

15 MS. MILLER: Chad.

16 MR. MUNTZ: I think it's a question for
17 maybe the Department. Can we do a roll-out like
18 this over four years, or does the Department need
19 to go back with something that covered everybody
20 from Day 1 on, what was it, 2019?

21 MR. MARTIN: This is Greg, for the
22 record. I don't think that we're in a position
23 to answer that right now. We certainly can take

1 -- you know, the proposal were to achieve a level
2 of supportability -- I keep looking for a way to
3 get around that word; I think it's interesting.
4 I like the term now, level of supportability. I
5 want that enshrined from now on.

6 But if that were the case, we would
7 certainly take it back and look at it, if there's
8 support there for it. I can't guarantee or make
9 any assertions that we could do it or how fast that
10 could be done. But it doesn't mean we'd be
11 unwilling to consider it. But at this point, I
12 can't give you that, I can't give you an estimate.

13 MS. BUCK: Are there other questions
14 that have to be asked before we take a temperature
15 check?

16 (No response.)

17 MS. BUCK: Then let's take a
18 temperature check of this pilot program proposal.

19 MS. MILLER: Show of thumbs.

20 (Show of hands.)

21 MS. BUCK: Looks to me like there are
22 three thumbs down.

23 MS. MILLER: Four thumbs down.

1 MS. BUCK: Four thumbs down, okay.

2 MS. MILLER: Thank you.

3 MS. BUCK: There was some support and
4 some sideways thumbs as well.

5 So it is now 4:35, and I want to ask,
6 does anything need to be said about the technical
7 and conforming changes issue paper, or can people
8 simply look at that without discussion?

9 That was something that wasn't covered
10 before, and I don't know if it needs to be, but
11 I just want to mention it. So, Greg, I was asking
12 you that. The issue paper on technical and
13 conforming changes.

14 MR. MARTIN: I personally don't feel
15 I need to say anything more about it than was said
16 at the outset. Certainly if someone has comments
17 about it, questions, wants to bring something to
18 our attention, we're glad to entertain that.

19 It basically is technical and
20 conforming changes based on what we proposed. Now,
21 obviously, if something changes based on what we
22 talked about here, it could change what's in those
23 technical and conforming changes, right, if we

1 proceed in a different direction. That was based
2 on what was proposed to you here.

3 MS. BUCK: Okay. I just wanted to be
4 sure, that's all. So it was mentioned and we can
5 pass on that for now.

6 MS. MILLER: So, Ahmad, your tent is
7 still up.

8 MR. SHAWWAL: I have more of a general
9 question. So, say by the third session, we all
10 reach some sort of consensus on our items. What
11 is the legal obligation that the Department of
12 Education has to incorporate our recommended
13 changes, assuming that we all reach some sort of
14 consensus on each of the issue items that we have?

15 MR. FINLEY: So, this is Steve, and I
16 realize I've been forgetting to say that the whole
17 time this week, so that I would say it now.

18 (Laughter.)

19 MR. FINLEY: So in the third session,
20 we'll have proposed reg language, and some
21 background information on it to present. We will
22 try to work through those as we go and try to be
23 in a position where if there's changes suggested,

1 we provide feedback on it and they get modified
2 during the week.

3 And if at the end of that week we get
4 consensus on the package, the Department would
5 publish that regulatory language as the proposed
6 regulation, except that the Secretary does have
7 the right to deviate from that with an explanation
8 in the NPRM. But the goal of the consensus is to
9 create the proposed regulation.

10 MR. SHAWWAL: Thank you. And to that
11 effect, before the third session, if everyone here
12 is okay with it, is it okay if the Department
13 prepares a summary of their take-aways from this
14 session from what we have recommended to the
15 Department, so that we can have something to
16 reference during the third session?

17 It's just a way of -- it's a way of
18 helping us keep track of what it is that we had
19 discussed, and also finding a way to hold each other
20 accountable in that sense, if that makes sense.

21 MR. MARTIN: This is Greg. I don't --
22 I can't commit to that on behalf of the Department.

23 If you want to put that request in writing, we

1 will consider it. I can't say now, yes, we'll
2 definitely do that. It will be committing the
3 resources of a lot of people to that.

4 I don't know whether that's going to
5 fit into our current protocol. But I don't think
6 I need to tell you who to send that to, scott.filter.

7 But no I'm serious, do. If you want that you can
8 certainly request it. We can take it into
9 consideration. But I can't promise we can do that.

10 MS. MILLER: Daniel.

11 MR. ELKINS: Yes. If I could put Mark
12 on the spot just for a moment. Yesterday, in
13 caucus, you brought up a point that was very
14 innovative and we kind of were blown away by it,
15 but it never got fully fleshed out. I was wondering
16 if we could put that on the board. I don't know
17 if that fits into Chad's option, but I think it
18 had to do with institution versus programmatic
19 level. So if you could explain that a little bit
20 more as another metric? I think that that would
21 be very valuable.

22 MS. BUCK: We can spend ten more
23 minutes, and then we'd have to have time for public

1 comment.

2 MR. MCKENZIE: It's only one minute on
3 this, because the group already discussed it. I
4 just generally believe in order for the Department
5 to be the most effective in being able to identify
6 poorly performing institutions or programs, they
7 may be better served by first running an
8 institutional metric, whatever it may be, and then
9 only after that go to a programmatic.

10 I think that the group should consider
11 that this is proposed in the spirit. If the
12 Department is going to straight programmatic
13 metrics, they're going to be unable to be effective
14 because of the huge, vast number of programs in
15 different types of institutions. So that's the
16 spirit it was given in, to be actually the most
17 effective in protecting consumers.

18 MS. BUCK: Would you add anything to
19 that chart in covering your proposal?

20 MS. MILLER: Okay. Sandy, then
21 Whitney.

22 MS. SARGE: I just had one procedural
23 question. Last time we had talked about getting

1 a transcript of the meeting and maybe I'm just
2 forgetting. Has that been published of the last
3 meeting? It was supposed to be three and a half
4 weeks or something after the last meeting. I can't
5 remember. I just can't remember.

6 (Simultaneous speaking.)

7 MS. MILLER: There's a question about
8 the transcript for last session.

9 MS. BUCK: I think they're going to
10 answer it in just a minute.

11 PARTICIPANT: It's online.

12 MS. SARGE: I'm just asking, okay.
13 Thank you.

14 MR. MARTIN: I believe it's out there,
15 but Scott's going to check and confirm for certain.

16 MS. BUCK: Check the GE site. That's
17 where it should be.

18 MR. MARTIN: I have to confess that
19 having lived it I wasn't keen to go right back and
20 re-read everything right away but --

21 MS. MILLER: Okay.

22 MS. BUCK: Mark, in terms of this
23 proposal, is it enough that people want to have

1 a temperature check or not? Help me understand
2 where you'd like to have this go.

3 MR. MCKENZIE: No, I think enough has
4 been said about it. I don't believe it needs a
5 temperature check.

6 MS. BUCK: Okay. All right.

7 MS. MILLER: So we have one tent left.
8 We have 20 minutes.

9 MS. BUCK: Whitney, did you want to
10 close us out?

11 MS. BARKLEY-DENNEY: So take the whole
12 20 minutes?

13 MS. MILLER: No, no. We still have to
14 do public comment and then talk about our next
15 meeting and wrap this up.

16 MS. BARKLEY-DENNEY: So if we're not
17 taking a temperature check on it, it's not that
18 relevant. But I just wanted to say again that we
19 think that this is actually should be the opposite.

20 So we start with programmatic metric and then you
21 can see if an institution has, you know.

22 I think if you look at the data, you're
23 going to notice that a lot of institutions fail

1 programmatically. If you notice that, then
2 perhaps you can do an institutional review, as well
3 as -- you know, instead of having to
4 programmatically review every single one of those
5 programs.

6 But you start with a programmatic
7 review and then see what the institution looks like
8 as far as the number of programs that they've had
9 that have passed or failed or met expectations or
10 not met expectations, or been an angel or a devil
11 or whatever we decide to call it.

12 MS. MILLER: Okay. I think with that,
13 I'm going to see if there are any public comments.

14 Any public comments? One, two. Any more than
15 two? Okay. Could you come up to the microphone,
16 state your name, and give your public comment?

17 MS. MERCHANT: Hi, everyone. My name
18 is Senya. I'm with the group Higher Ed, Not Debt.

19 We've been running this livestream throughout the
20 hearing, and as a consequence of opening up this
21 process to the wider public, we've been receiving
22 hundreds of stories from borrowers themselves,
23 often stories of less than gainful employment after

1 being lied to by many for-profit college programs.

2 So these are one of those comments that
3 came in on our livestream video. This comment is
4 from Andy Conrad Watson. "I went to ITT Tech for
5 a B.S. in Criminal Justice and graduated in 2010,
6 'valedictorian and top of my class.' I was
7 guaranteed employment, they said, because of my
8 academic effort and my degree.

9 "It's 2018, and not one company or
10 government body has accepted my degree. It's not
11 from a lack of applying, either. I turned in
12 multiple pages of denied job applications that I
13 qualified for after receiving my degree, they said,
14 with my defense to repayment. I have been ignored,
15 overlooked, and laughed at by potential employers.

16 "Many of have told me that my degree
17 is worthless and they do not consider ITT a
18 legitimate school. There is no such thing as
19 gainful employment when you're a victim of one of
20 these dishonest for-profit schools such as ITT
21 Technical Institute."

22 If I have time, I'm going to read one
23 more comment. This comment is from Deborah Jean.

1 "The Art Institutes from 2013 to 2014 left me to
2 \$20,000 in debt and no job offers. I now work a
3 job that pays \$9 an hour. While I was in school,
4 the culinary director was fired from embezzlement
5 around the time that I finished. Another culinary
6 instructor was fired during my culinary process
7 for showing up to class drunk or high. I have a
8 worthless degree, and ended up deciding on a
9 different career path because I had no other choice.

10 But unfortunately this debt is one that I cannot
11 get rid of." Thank you so much.

12 MS. MILLER: Thank you. Next?

13 MR. SCHRADE: My name is Jeff Schrade.

14 I represent the Paul Mitchell Franchisee
15 Association. I've spoken before. I do want to
16 extend my thanks to Greg and all of you that are
17 here. I know this is really hard work and it's
18 hard to come to an agreement.

19 Contrary to the testimony, the comment
20 that was made yesterday, I do support going into
21 executive session. I've been in negotiations.
22 I know what it's like. It's sometimes helpful to
23 close the door.

1 For what it's worth, I used to work as
2 a communications director in the U.S. Senate. As
3 a communications person, I loved having reporters
4 there. I loved having cameras. I wanted to get
5 my boss on the news back home. But in my
6 discussions with other congressional staff, I heard
7 over and over again that in the old days they could
8 close the doors and people could cut deals and not
9 face the kind of public outcry. And the addition
10 has unfortunately led to the situation we now see
11 on Capitol Hill where nobody wants to bend.

12 All that said, I've got to say I'm
13 extremely disappointed, particularly in some of
14 the consumer advocates that are here, those of you
15 who voted to take down or remove from consideration
16 applying GE to all schools.

17 I'm a father. I have a daughter, two
18 daughters. One's in school in Florida and the
19 other one graduated with a master's degree in museum
20 studies. The oldest daughter, I thought, being
21 in Washington, D.C., lots of museums, Smithsonian,
22 my kid's going to get a job right out of the block.
23 She's working as an aide now to an attorney,

1 because, guess what? There are few jobs in
2 museums. When I talked to some of the head people
3 in the Smithsonian, they said if she was willing
4 to work there for a year, 40 hours a week with no
5 pay, she might be considered for a job.

6 So if the university that she went to
7 was under a gainful employment metric, that would
8 look very poor on that public institution that she
9 went to. So, those of you, I understand the
10 schools, you know, University of Michigan and
11 others, you don't want to have any more rules and
12 regulations than the rest of us.

13 You talk about how hard and difficult
14 it is to comply with. Well, guess what? It's hard
15 and difficult on our schools. We spent
16 \$500,000-plus complying with the regulations. The
17 computer system was so poorly put together that
18 our folks ended up providing advice to the
19 Department on how to make it work.

20 So if you hear some frustration, I'm
21 frustrated as a taxpayer, as a father, as someone
22 who represents people who only schools -- they're
23 usually husband and wife teams that have invested

1 a million dollars or so into the programs.

2 It's not easy for them. They're
3 fortunate to have a corporate sponsor that's helped
4 them through this process. A lot of mom and pop
5 schools have gone out of business. Maybe they
6 should have. But I don't think it's fair to stick
7 it to some and not to all. So, anyway, those are
8 my thoughts. Thanks.

9 MS. MILLER: Thank you. So, we're at
10 4:48. We didn't think we were going to make it,
11 but we have like 11 minutes to spare. But before
12 I release you, I do want to thank you for your hard
13 work this week. We've had a lot of tough
14 discussions. We've done a lot of things to make
15 sure that we get to some general area of at least
16 a tentative agreement and make sure we were heard.

17 Before I turn it over to Greg, I just
18 want to remind you of our next session, March 12th
19 through 15th, and it will be at the Potomac Center
20 Plaza Auditorium at 550 12th Street, Southwest.

21 MS. BUCK: And just want to thank
22 particularly the people who did come up with
23 proposals. I know it's really hard to do that with

1 all the restrictions and things you're dealing
2 with, and that made it possible for us to really
3 consider some options. So, thank you for that.
4 Is there anything anybody wanted to say before Greg
5 says some final words?

6 (No response.)

7 MS. BUCK: Okay.

8 MS. MILLER: Greg?

9 MR. MARTIN: Yeah. Before we leave,
10 on behalf of the Department, I want to thank
11 everyone for being here and for their time and their
12 patience. I know it was a difficult week, that
13 we all have positions, and there's been some
14 disagreement around here at this table and, you
15 know, after a while nerves get to people and
16 everybody, myself included.

17 But I think overwhelmingly everybody
18 comported themselves in a professional way, and
19 I applaud you all for that. And I have an immense
20 amount of respect for each and every one of you.

21 I especially want to thank our sound person, Bill,
22 who I think did an excellent job this week.

23 (Applause.)

1 MR. MARTIN: And with that -- oh, I
2 should add one more thing. People say, as a huge
3 weather geek -- which my wife hates, by the way
4 -- I will say that, for those of you who do not
5 like winter, at least on the east coast, if you
6 look at the weather records, February 8th is about
7 the general day where the temperatures start to
8 go back up.

9 So for those of you, like in New
10 England, you're still in a pretty big hole and
11 that's a slow rise. But it is going that way, so
12 hopefully when we come back in March at least the
13 weather might be a little warmer and you might see
14 some crocuses coming up, and that will lighten
15 everybody's spirits. So, y'all have a safe trip
16 home.

17 MS. MILLER: Thank you.

18 (Whereupon, the meeting was adjourned
19 at approximately 4:50 p.m.)

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