The Negotiated Rulemaking Committee met in the Potomac Center Plaza Auditorium, U.S. Department of Education, 550 12th Street, S.W., Washington, D.C., at 9:00 a.m., Ramona Buck, Rozmyn Miller, and Javier Ramirez, Facilitators, presiding.

PRESENT

RAMONA BUCK, Federal Mediation and Conciliation Service, Facilitator
ROZMYN MILLER, Federal Mediation and Conciliation Service, Facilitator
JAVIER RAMIREZ, Federal Mediation and Conciliation Service, Facilitator
JEFF ARTHUR, Vice President of Regulatory Affairs & Chief Information Officer, ECPI University
WHITNEY BARKLEY-DENNEY, Senior Policy Counsel, Center for Responsible Lending
JESSICA BARRY, President, School of Advertising Art
JENNIFER L. BLUM, ESQ., Senior Vice President, External Relations and Public Policy, Laureate Education, Inc.
STEPHEN CHEMA, Ritzert & Leyton, PC
JENNIFER DIAMOND, Program Associate, Maryland Consumer Rights Coalition
DANIEL ELKINS, Legislative Director, Enlisted Association of the National Guard of the United States
RYAN FISHER, Intergovernmental Relations Division, State of Texas Office of the Attorney General
PAMELA FOWLER, Executive Director of Financial Aid, University of Michigan - Ann Arbor
CHRISTOPHER GANNON, Vice President, United States Student Association
ANDREW HAMMONTREE, Director of Financial Aid and Scholarships, Francis Tuttle Technology Center
NEAL HELLER, CEO/President, Hollywood Institute of Beauty Careers
MARC JEROME, President, Monroe College
C. TODD JONES, President, Association of Independent Colleges & Universities in Ohio
ROBERTS JONES, President, Education & Workforce Policy, LLC
JOHN KAMIN, Assistant Director, The American Legion's National Veterans Employment & Education Division
KIRSTEN KEEFE, Senior Attorney, Consumer Finance and Housing Unit, Empire Justice Center
CHRISTOPHER MADAIO, Assistant Attorney General, Office of the Attorney General of Maryland
JORDAN MATSUDAIRA, Nonresident Fellow, Urban Institute; Assistant Professor, Cornell University
MARK MCKENZIE, Executive Director, Accreditation Commission for Acupuncture and Oriental Medicine
LAURA METUNE, Vice Chancellor of External Affairs, California Community Colleges
ANTHONY MIRANDO, Executive Director, National Accrediting Commission of Career Arts and Sciences
MATTHEW MOORE, Director of Financial Aid and Scholarships, Sinclair Community College
KELLY MORRISSEY, Director of Financial Aid, Mount Wachusett Community College
CHAD MUNTZ, Director of Institutional Research, Office of Administration and Finance, The University System of Maryland
JONATHAN K. PIERRE, Vice Chancellor for Institutional Accountability and Evening Division, Southern University Law Center
TIM POWERS, Director of Student Aid Policy, National Association of Independent Colleges and Universities
THELMA L. ROSS, Interim Director of Student Financial Aid, Prince George's County Community College
SANDY SARGE, SARGE Advisors
AHMAD SHAWWAL, Student, University of Virginia
DAVID SILVERMAN, Chief Financial Officer and Director of Business Affairs, The American Musical and Dramatic Academy
JOHNSON M. TYLER, Senior Attorney, Consumer and Foreclosure Units, Brooklyn Legal Services
CHRISTINA WHITFIELD, Associate Vice President, State Higher Education Executive Officers Association

STAFF PRESENT
STEVEN FINLEY, Office of General Counsel
GREGORY MARTIN, Office of Postsecondary Education
MR. RAMIREZ: Okay, so for the record, we are starting the Department of Education Gainful Employment Session 3 and I want to welcome everyone. Just a quick note on the security; that's how it's going to be all week. It looks like we're probably going to have to try to get here a little bit earlier to get through that. And the other thing is to get in and out of the building, you're going to need a Department of Education escort, so smokers good luck. You may be stuck out there for a little bit getting back in because you're going to have to wait for that escort. So that's why we allocated 90 minutes for lunch, a little bit of extra time for folks to get down and get back up. So if you can, be sparing on the number of times you have to leave the building so that we could try and minimize the number of escorted trips. That being said, restrooms are on this floor; men are just straight out the hall; women's, if you
go where the sign-in desk was, you go behind that
way, the hallway, and then to the left. That's
where the women's restrooms are.

Okay, if there's going to be live
streaming today, there's a spot back over here
where you could plug in and stream if you like.
We do ask, again, that during any breaks that the
live streaming be stopped at that time.

A quick reminder, we may do some
temperature checks this week, but at some point
we're going to have to take some official
consensus checks, so I remind you that on the
thumbs you have to put your thumb down so that we
know that you are not in agreement. And
depending on where we're at in the process, we
may just record more or less what that consensus
check is, contestant vote is, or I may pick on
you. I may say what's going on, is there an
alternative suggestion that you have.

On discussions, you all have been
doing great as far as keeping it professional. I
know that we've had some hard issues that we've
had to discuss; I hope that we can continue that professional dialogue, be hard on the issues, not on the people. Let's do our best not to single out any specific organization or institution. And asking again for your help with the elmos. If we're beating at the horse enough, let's move on folks, let me call that.

So we'll do an agenda review and then when we're done with that, we're going to approve, ask for an approval of the summary from Session 2. Hopefully you've had a chance to look at that. Then we'll see if there's any member comments, followed by public comments. And then we're going to jump right into the issues after that. And what I'm going to do, we're going to go in order 1 through 8, and I'm going to ask Greg to give us an idea of some of the modifications from our last meeting to what was distributed, and then we'll go through each one. Erin is going to be kind enough to try and capture up on the screen there as we go any suggested changes and approvals. So I would ask,
if you do have any changes, just repeat a few times so Erin can get it correct up on the board there. Or if you have a paragraph you want to throw up there -- Erin, could you raise your hand?

Erin's over here. So you could either give him the paragraph so he could type up there or I think he's even kind enough to let you put your fingers on the keyboard and type away if need be. Okay, so we'll try our best to give a visual so that way you can see what it truly looks like before we can make any additional modifications or take a consensus check.

So with that, let's start off with any comments from the negotiators. Do any of the negotiators have any comments?

Daniel?

MR. ELKINS: Do we have an ETA or has anyone been in contact with Jennifer?

MR. RAMIREZ: No. I was going to comment that it looks like that's the only group that's not represented at the moment. It looks
like all the other groups have a representative present, but we -- I should probably check my emails and make sure before I say that we have not -- but I have not seen anything yet.

No, nothing yet. But we'll continue to move forward; I'm sure that they'll have a little bit of time before we start voting on anything.

Okay, how about for the public; any comments from the public?

All right, are there any modifications for the summary that was sent out for the last round? Or is everyone okay with the summary?

Let me see a show of thumbs if everyone's okay with the summary.

Okay, so no thumbs down on the summary. Then I guess we're going to quickly jump into the issue statements here, issue papers. Greg, if I could ask you to lead us off, give us any rationale or any guidance that you can, as well as hitting on what the modifications were.
MR. MARTIN: Thank you, Javier. And good morning, everybody. Nice to have you back.

I had hoped that we would have more spring-like weather, but I guess it was not to be. So each paper as we go through it -- we'll start with Issue Paper 1 -- but each paper does contain a summary of the changes since Issue 2, and then a summary provided before Issue 2. I don't think that there's a radical departure here, but when we finished the previous session, there was interest in, I think maybe two areas that were paramount, and one was the issue of potential sanctions where programs consistently performed poorly. And we took that back, we do have a sanctions paper; we discuss issues related to that. So that's definitely a change from last time that reflects what was discussed at the table. Then the other major issue, I think, you'll see reflected in these papers is the addition of a second metric. As you recall the discussions in the last session, there was the issue of whether or not DE rates were the only
metric and then whether it'd be -- remember we had taken out appeals from DE metrics, appeals to DE alternate earnings appeals, so there was the issue of something else besides DE rates that a program could use to show its outcomes. And I think we had a lot of discussion around the fact that perhaps DE rates were the only thing we should be looking at, that a program could have DE rates that didn't reflect the two outcomes of the programs. So we took that back.

We have introduced a second metric here that is repayment rate. I don't want to go into great detail with that now, but we will be discussing repayment rate. And I think when we look at the repayment rate and where the Department is with that and where we're going to solicit discussion around the table is around what threshold should we use. So the protocol we've introduced here is one where an institution would have DE rates calculated for it in the same way we proposed initially, and you would also have repayment rate. And we're referring to the
threshold as benchmarks, as having met a benchmark and not having met a benchmark. And so we have it so that there would be both, a school would be measured by a program rather, would be measured by both benchmarks, repayment rate and DE. We have the DE thresholds in place; we have not proposed an actual benchmark as of yet for repayment rate. We have some ideas, we'll put those forward, and we'll also entertain any you might have and see where we can go with that.

These proposed rules here also reflect removal of graduate programs completely from the entire metric, so either metric. So we would not be looking at graduate programs, and you see that reflected in all the papers where it now says undergraduate educational programs. I'm trying to think of any other -- I think those would be the major changes that we've proposed. We're still committed to doing the calculations administratively without having institutions have to report to us, so we're still in the simplification, still a major part of where we
wanted to go with this.

    I guess that's an overview of the major changes or differences as I see them from last time. So you want to get going to Issue Paper 1 here?

    MR. RAMIREZ: Yes, any questions on that before we get into Issue Paper 1?

    Okay. Yes, so go ahead Jennifer. And just make sure, folks just a quick reminder to state your name for the record.

    MS. BLUM: Yes, Jennifer Blum. And I don't actually really care about what I'm about to say, but the agenda said that we were skipping one.

    MR. RAMIREZ: Yes, I think one was at the bottom for scope of purpose.

    MS. BLUM: Well, I didn't mean skipping.

    MR. RAMIREZ: Yes, I think we modified that a little bit, so just go in order.

    MS. BLUM: Okay. Like I said, I was just -- okay.
MR. ELKINS: Yes, I'm sorry. I just want to go numerically; it's just a personal preference.

MR. RAMIREZ: Yes, okay. All right --

MR. ELKINS: If you feel like I somehow have something -- we're going to start with Issue Paper 1.

MR. RAMIREZ: Okay. So Greg, you want to kick us off then? Folks, I know that there is difficulty sometimes, that some of these papers are linked with each other, but let's do our best to see where those areas of agreement that we could check and hopefully get consensus and save the real time and discussion on the areas where there's great concern.

So Greg, you want to walk us through it?

MR. ELKINS: Yes. Sure, Javier. And again, as you just pointed out, there are areas, obviously especially with scope and purpose, where we're going to see some, raise some things that will be discussed in more detail in other
papers. But just to get you familiar with that. I don't have any problem with people discussing those now. Maybe we should try to keep our comments about those things from a higher level with this paper and then get more into the details as we move along.

So taking a look at this and I'll just read the summary of the changes since Session 2; since the second negotiating session we proposed to limit the scope of the regulations to undergraduate programs; we also proposed to add a loan repayment measure which we are going to address substantively in Issue Papers 3 and 6.

So just to review what these papers did initially; we proposed to change the focus of these regulations for programs that prepare students for gainful employment and recognize occupation to all educational programs. Significantly, we proposed to remove the provision of Section 68-668401 that provides that Sub-Part Q establishes procedures under which the secretary determines whether a program is
eligible for Title 418 program funds. We will
discuss the substantive changes to definitions
and issue papers that correspond to topic of the
defined term.

So the overall structure of this
unchanged; we still have removed automatic
program sanctions. We will have a discussion on
Issue Paper 3 of those administrative sanctions
that we have, that we are presenting.

So we're going to go through here and
see what is -- not a whole lot has changed here --
I do want to draw your attention to where we
have undergraduate educational programs
reflecting the fact that we have eliminated
graduate programs from both metrics and that we
are referring to the thresholds as benchmarks.

And you'll note in 403 gainful
employment debt to earnings rate is undergraduate
educational programs.

On Page 2 668-406, note that the debt,
the DE rates alternate earnings appeal, has
changed to calculating and issuing loan repayment
rates. So what you'll see when we get there, the loan repayment rate metric has been inserted and moved into what was formally DE alternative earnings appeals, so that there are no DE alternate earnings appeals.

And final determinations in 409 you'll note the inclusion of the benchmark phrase, undergraduate educational program benchmarks. And 410 where consequences is stricken, it's notification for programs that did not meet benchmarks. So I know we had some discussion last time around how we would characterize where a program fell with respect to the metrics. So that's what we're going to use, the term benchmark.

In scope and purpose the bottom of Page 2 668-401, just note the sub-part applies to undergraduate programs offered by an eligible institution. So that does take into account then all programs, all institutions, except for graduate programs.

And you'll note at the top of Page 3
where the secretary calculates the programs debts to earnings rate and loan repayment rate. And we note that actions may be taken on the program's rates, and that there are program level and disclosure and certification requirements as well.

668-402 is just definitions. I do want you to take a look at the cohort period. We will discuss this in a little more detail — this does represent a change over what we proposed at the last session. So let's just read through that.

The two-year cohort period, I think we had eliminated the four-year period previously, so that is not a change. The two-year cohort period during which those students -- this is the definition of a cohort -- during which those students complete an undergraduate educational program are identified in order to assess their loan debt and earnings for the purpose of DE rates. And you'll see here that the look-back period is changed from third and fourth year, on
the top of Page 4, to rather the fifth and sixth award years prior to the award year for which the DE rates are calculated in 668-404. For example, DE rates are calculated are for '16, '17, the two-year cohort period is award years 2010 to 2011, and 2011-2012.

Trying to think of other things here we should review -- just continue at the bottom with credential level note that we have removed any reference to graduate programs, again.

And don't think there's anything else here that we need to go over before we open the floor for discussion.

MR. RAMIREZ: Okay, so I'm hearing removal of the graduate and inclusion of all programs, a two-year cohort period and a look-back period of fifth and sixth year versus third and fourth year. Those would be the major changes in there?

MR. ELKINS: Yes, correct.

MR. RAMIREZ: Okay. What comments or questions do you all have on that?
Go ahead.

PARTICIPANT: So I do also have a question about the benchmark; do you want to hold off until the next issue paper about the rationale?

MR. ELKINS: Sure.

PARTICIPANT: Okay. So can I ask about the rationale about changing the look-back period to four and five years; that seems worse for borrowers because it means that it will be longer until it's revealed that a program isn't meeting the benchmark?

MR. ELKINS: Greg for the record, and I guess we should try to remember to say that. The move to the fifth and sixth year of the look-back period reflects the Department's position that it gives students more time to be in the field, earning that it was a more representative look at where people are rather than using a third and fourth year.

MR. RAMIREZ: Okay, let me get Sandy, Jennifer and then Laura.
MS. SARGE: So could you go through the -- you guys use an example in here -- I'm sorry; this is Sandy for the record -- so the cohort of '16, '17 and then you go back '10, '11, '12 -- could you define for me which would be the cohort of students you would look at?

MR. ELKINS: Oh, I'm sorry. That's not so good. It's as it says, it's still a two-year cohort, those are the two years; it's just back -- you could see before it was the third and fourth year prior, now it's just the fifth and sixth year.

MS. SARGE: Okay, so you grabbed the graduates -- if we're reporting in '16-'17, or you're reporting for us '16, '17 year, you'd go back two years, '13-'14, '14-'15?

MR. ELKINS: No, it has nothing to do reporting.

MS. SARGE: No, I'm just trying to find the population of graduates; where do they come from? I'm sorry; it's early.

MR. ELKINS: They graduate '10-'11 and
'11-'12.

MS. SARGE: Okay, just making sure.

MR. ELKINS: Completed, yes.

MS. SARGE: Okay, so you just take those two years.

MR. ELKINS: Yes.

MS. SARGE: Got it.

MR. ELKINS: It's just what it was before, only the period is moved back. We didn't change the two-year cohort, the two-year cohort is the same.

MR. RAMIREZ: Okay, Jennifer?

MS. BLUM: I want to recommend actually that we hold the conversation until we get to the DE and loan repayment rate, because we're appreciative of the earnings piece of it that it's five and six years out is a little bit more realistic in terms of how the student is actually faring after graduation. But it also ties in, in my view, a little bit to the loan repayment rate and what metric that is, so I would just say that before we dive in, we perhaps
wait until we get to the real conversation about the metrics.

MR. RAMIREZ: Okay. Laura and then Kirsten.

MS. METUNE: Laura Metune. I just wanted to say that I was one of the people that suggested that we might consider the idea of treating graduate programs differently, but I am a little bit confused about the rationale of extending the time period for students to begin making money in the field for programs that are short-term certificate programs. Essentially, the GE programs that were designed to be regulated by this practice here, I'm thinking if we're just narrowing the scope to GE and baccalaureate level, why would you need to go out more years?

But I think really my point is I think we need to consider why gainful employment in the first place, who this is designed to cover, what we were designed to protect as we go into this conversation. I think that's all I have to say,
thank you.

MR. RAMIREZ: Okay, Kirsten?

MS. KEEFE: I'm fine with holding off on that -- this is Kirsten -- with holding off on that conversation. I do have more questions about it, but if that's the consensus that we hold off, I'm willing to do that.

MR. RAMIREZ: Okay, thank you. Yes, I think we're going to get into some greater detail later. Whitney?

MS. BARKLEY-DENNEY: I'm willing to hold off as well, but I echo Laura's concerns. I also just wanted to apologize for being late; I went to the other Department of Education building and waited in line, and then had to get here and wait in line. So I apologize.

MR. RAMIREZ: Chris and then Daniel.

MR. MADAIO: Chris Madaio. So my concern is about the elimination of graduate programs. I guess when I look at it, clearly one of the things the Department articulated was an interest in including more students and that was
the basis for including the public's and the non-profits. So it seems odd on one hand to want to give more students information about their debt and their earnings and then not want to give a certain set of sub-students information about debt and earnings. So I guess, maybe I'll just start with that; Greg, can you tell us the rationale for the elimination of that?

MR. ELKINS: Sure. Greg for the record. Yes, the rationale for the elimination of graduate programs; first of all, that was discussed at the previous session. Our rationale for taking it out here is that in looking at what we're trying to do in providing information to students, that for graduate students, the point at which somebody becomes a graduate student we are presuming at that point a certain amount of savvy maturity, familiarity with borrowing in general. And that we just did not feel for purposes of proposing these rules that a graduate student needed to have the same information provided or that the same level of protection
afforded, that you needed for undergraduate students.

And again, part of our efforts here are to streamline and simplify, so I think it goes towards that. But also our recognition that graduate students are in a different place. Of course, if you disagree with that, we're certainly willing to hear any views to the contrary.

PARTICIPANT: Okay, thank you. Yes, I mean, I do disagree with that; I think on one hand a student could go from a certificate to an associates to a bachelors and that student will have gone through multiple levels of education, yet still is deemed by this rule as it's drafted to have needed that information at the level of each program. But on the other hand, a student could just go straight to a bachelors and then to a masters and only have gotten the debt to earnings information the one time. So I guess to me those two students almost are at an equivalent level of need for what the program they're about
to enroll in, how it's going to perform compared to the amount of debt they're going to take on. And especially graduate programs are often more expensive certainly I would think than certificate level and associates programs. So they're taking on a substantial amount of debt, more debt, than they would otherwise.

So understanding the outcomes in this metric I think is important, especially if we're assuming that they're all savvy and mature, then they should be able to -- then more information for such a student would be good because often a complaint is too much is going to confuse them, they won't understand this, but a graduate student would understand this metric and might find it very useful when shopping around for programs. And then of course, there is the need for this in the schools with the bad outcomes. The school in the capital of North Carolina that was a law school, $337 million in loans in a course of five years, whereas one in five students were graduating, passing the bar,
getting a job and taking on massive debt. So I would think that students going to a school like that would have desperately wanted to know how much debt they were going to take on versus the earnings that people at that school were obtaining.

Again, I think especially if the sanction is what it is in these papers -- because again, I recall the conversations that you discussed, to me those conversations were centered around finding an area of potential compromise where there could be legitimate sanctions in line where the rule is currently. And then there could be room for some compromise on what specific programs are covered. But because I don't feel like this set of rules has those levels of sanctions, if it's going to remain essentially a disclosure only rule, then it seems very odd to not be disclosing certain students the information.

MR. RAMIREZ: Let me get Daniel, Jeff, Jordan, Todd and Sandy. Daniel?
MR. ELKINS: This is just for Jennifer. Don't worry, I asked to make sure that you were here -- or I'm sorry, Whitney -- that you were here on time and I was going to hold everyone back until you got here.

MR. RAMIREZ: Yes, I beat it. I'm sorry. All right, Jordan?

PARTICIPANT: Jeff.

MR. RAMIREZ: I'm sorry; Jeff, then Jordan.

MR. ARTHUR: Yes, first of all, I do agree with Chris on this. I do think that our purpose here is to provide information to prospects. We know that 38 percent of the debt is at the graduate level, so it's meaningful information that can be made available. Now, I don't necessarily -- and I think the sanctions that are proposed here are very meaningful despite what some might think, I think they really are meaningful. And I would suggest that possibly for grad programs, that maybe we wouldn't need to necessarily impose sanctions.
And then my last fallback on that is, even if we do continue to exclude them, I would strongly urge the Department to at least include the data, as they can all types of data in the college scorecard. And that the information at least be available out of this process, even if it's not part of the actual writing of this regulation.

MR. RAMIREZ: Okay, Jordan?

MR. MATSUDAIRA: Thanks. I was going to say almost exactly what Jeff said, so I won't -- but I totally agree.

MR. RAMIREZ: Okay, thank you. And Todd?

MR. JONES: This feels like deja vu all over again. I mean, we had this discussion last time, there was a consensus. I want to say that I believe that there's been a reversal of some parties here as to where they stood at the end of last negotiation and where we stand now. The reason we had a change to exclude graduate education was not that it couldn't be useful, not that this couldn't be relevant to someone's
thought process; the presumption is that if you've achieved a baccalaureate level of education, you have a sufficient maturity of thought and self-interest to weigh complex decisions such as whether to attend graduate school. And the federal regulatory system should not be a catch-all for protecting everyone against bad decisions that they may make. That is what we talked about last time.

Also, to pretend that this is somehow -- merely disclosure comes without cost, without burden, without further difficulty is to ignore one of the bigger pieces of regulatory burden. We all talk about there is a cost to students; there is a cost to students if you regulate to the nth degree that's incorporated back to the cost of higher education. I'm not going to pull into the bigger discussion, but it's a real one that the expansive federal and state regulatory regimes have increased the cost of higher education. Some of these are for very valid and legitimate reasons, we can go through them. But
the end of the day, every incremental increase is cost, and that is borne not by institutions, it's borne by students. And let's stop pretending that it's not. The reason we excluded this was that it was a prophylactic measure. I actually offered it may be appropriate for baccalaureate students; there was broad disagreement, that's fine. But the reason we're including it for them is as a prophylactic measure. We're possibly over-including people for programs that are below graduate level on a prophylactic basis; we're doing it to protect those that could need assistance, even though some don't.

But we all agreed last time that there was a cut line here, and now some folks seem to be troubled by that. I don't know what has led to the reversal; maybe it's the recognition that we seem to be headed toward no consensus here so let's everyone stake out the position that causes us the least discomfort, I don't know. But whatever it is, it changed, and I think that we ought to recognize that and stick with where we
were at the end of last time for at least some modest change in the original draft.

MR. RAMIREZ: Okay, let me get Laura and then Jordan.

Okay. Go ahead, Jordan.

MR. MATSUDAIRA: You know, Todd, I think the gist of what Jeff was saying and without putting words in his mouth, just kind of the way that I view this issue is that kind of describing the maturity of graduate students as being capable of dealing with complexity and so on, I think is an argument that providing information alone might be sufficient to allow graduate students to make wise choices about what kinds of programs they're attending, but I don't see the argument that withholding that information from them is somehow beneficial.

And on the cost of regulatory burden and all those kind of things, my understanding still is that we're kind of contemplating a world where the Department is going to create all these numbers with their own data without requiring
additional reporting and so on. So I can see the kind of, there's a little bit of added cost in having to monitor these kinds of things and so on. But I'm skeptical of that. You could craft an argument that the additional burden that that would require would really outweigh the value of providing that information to students.

MR. RAMIREZ: Okay, so let me get Laura.

MS. METUNE: This is Laura for the record. I just wanted to say that there were a lot of areas where I was willing to express my openness to compromise, and I feel like all of those areas that weakened the rule were accepted into this draft. And so I don't think it's fair to hold people accountable for the areas they were willing to compromise with the understanding that there would be a larger conversation about meaningful oversight and regulation of the Department. So I just think we should remember that as they're referencing things that may have been an area of agreement at the last meeting,
understanding that there were things that we all proposed that weren't incorporated here that affect what we're willing to compromise on. Thank you.

MR. RAMIREZ: Okay. Todd, did you have another comment?

MR. JONES: Well, I think it's only fair to respond on both counts. I understand that people compromise. I compromise too; I compromised on things that I didn't agree with but that I thought would go forward for the consensus and it'll move things along. In fact, the very discussion about baccalaureate degrees is one with which I expressed disagreement at the time, but I saw as a compromise we'll go forward. After regulatory regret in this process is not a rationale for change. And I have to go back to the comment about whether this is only data collected by the Department. There are other competing interests here and larger social questions as well; access is an important part of what goes on. I think there are institutions
that cater to individuals diligently who would not otherwise have access to careers in, for example, law or medicine, that we'll see higher rates of student loan default based on the fact that they are attempting to serve individuals who may be from under-represented communities, who have under-represented areas that need additional assistance.

Appalachia is a good one; part of where I represent is Appalachia where we have graduate education levels in the 1 and 2 percent range. I think it is important to understand that there are social costs when you stigmatize institutions on the basis of data, that creates a perception that there's something wrong with the institution related to things like a higher than average default rate, when the relevant comparison may not be -- when you have a program that is a -- a type of institution as a 2 or 3 percent default rate and another institution has 6 -- well, that's double or triple, but in reality that institution may be serving
individuals and serving them in an area that has an important social consequence, and there are other ways to address that.

If you stigmatize institutions -- and that's part of what this is intended to do -- let's be honest, that's why we have the numbers -- we want people to stigmatize institutions that are not perceived as performing under these metrics -- those metrics become the discussion and not other issues such as equity and service that are important parts of this calculus. We reduce everything to a metric and we undermine the larger role of graduate higher education in some ways.

MR. RAMIREZ: Okay, let me jump in real quick. Greg, are there areas in this scope that you think we could reach consensus on, a scope and purpose issue paper, or would it make sense to get into the details of now that we have the overview, get into the second issue paper and go down the line and see what areas we can actually get consensus on.
MR. MARTIN: I would think that for the purposes of seeking consensus, we should probably wait until we get to the more detailed papers.

MR. RAMIREZ: Yes, okay.

MR. MARTIN: That's the decision I would make. Yes, I think we'll go that route.

MR. RAMIREZ: Yes, to me that makes sense. Instead of going through and continuing to discuss what I was viewing as more the setup for the discussion, let's go ahead and get into the next issue paper and let's start looking at the details of this and see where we can actually get consensus. Is everyone okay with that?

Okay, thank you. All right, so Issue Paper 2, Greg, can you give us some rationale as to what the modifications were on that paper?

MR. MARTIN: Sure, glad to do that. For the record, this is Greg. So looking at the summary of changes since Session 2, this paper Issue Paper 2 deals with debt to earnings rates. So mentioned earlier, we proposed to add a loan
repayment rate into the framework for undergraduate educational programs. We also proposed to refer to a program as one that meets benchmarks, if it meets the established standards. And a program as one that does not meet benchmarks if it does not meet established standards. Again, the summary of changes that were provided before Session 2, we proposed to amend 668-403 so the programs are no longer considered passing or failing based on debt to earnings rates. We proposed to refer to those programs as acceptable. I just want to point out, this is before Issue 2, so now that's not going to change the benchmarks.

We also proposed to remove the concept of the zone, which continues -- that's not here either. Finally, we proposed to remove the provision that a program is no longer eligible to participate in the programs based on debt to earnings rates. We also proposed that if a secretary does not calculate or issue DE rates for the year, an educational program would
disclose the rates for the previous year.

We have just a couple of points before we move into this, points for discussion that are here and you've probably read that I would like you to keep it in the back of your mind and to comment on it as we talk about this paper.

So we are interested in the feedback, and the feedback in using the DE rates as a comparison tool among institutions of similar size and scope that serve a demographically matched student population, which could include socioeconomic status, percentage of recipients and percentage of students over the age of 25. We also seek feedback on an option that would evaluate outcomes based on only the top 50 percent of those students completing a program. The rationale here being that while a C student meets the Department's requirements for satisfactory academic progress, and may complete the program. Employers may be reluctant to hire other students and they may be less successful on the job. The top 50 percent of students would
demonstrate the capacity or not of the program to adequately prepare students for success, whereas outcomes of 100 percent of completers may inappropriately hold institutions accountable for low-performing students who can't be expected to enjoy the same outcomes as A or B students.

As we move through the paper itself, moving onto Page 2, you'll note that the earnings rate framework has changed in undergraduate educational program and that we have the framework is debt to earnings and loan repayment rates. And for each year undergraduate education program is offered by the institution, the secretary calculates the DE rates and discretionary income rate and annual earnings rate using the procedures in 668-404, 668-405. And you'll note loan repayment rate using the procedures in 668-406, we talked about that earlier in Issue Paper 1. You note that the outcomes have become benchmarks and that we have a program either meeting a benchmark, or at the bottom of Page 2 we have an undergraduate program
not meeting benchmarks.

The debt to earnings rates, the thresholds have remained unchanged from the previous paper. And we do have the addition on Page 3, you'll note at the top there, number 3, an undergraduate program in considered to meet benchmarks under the DE rates if the institution demonstrates to the secretary that the program meets the standards for economically disadvantaged appeals in 34CFR668-213 whether each program meets the standard appeals, in 668.216 for programs with 30 or fewer borrowers. We did add that in to respond to some of the issues that came up at the previous session with respect to programs that serve a different demographic, perhaps a lower socioeconomic demographic, and for those programs with few borrowers participating in it.

Those provisions you see there, 213 and 216, are already in regulation and those are related to the necessity for a short-term program to demonstrate that it has, I believe placement
rate is 70, and the completion rate of 70 percent as well, 70 percent I should say. So we took those, we took the concept from that portion of the regulation and just incorporated it here as a way of addressing those issues that came up previously.

Trying to think of anything other on Page 4 -- well, at the bottom of Page 3 we do have secretary -- if an awardee or the secretary does not calculate DE rates for an educational program, the institution discloses the rates from the previous year. I think we discussed that already, we just wanted to reiterate that.

And then you'll note that we have the benchmark, just to point out again the benchmark for loan repayment measure, an undergraduate educational program is considered to meet benchmarks under the repayment measure if the loan repayment is greater than or equal to -- nothing is there -- that is something that we've been knocking around and thinking about the past couple of weeks and wanted to get feedback from
the table about that. And when we talk about loan repayment rate, we will discuss the benchmarking for loan repayment rates; as I said, we do have some ideas and we'll be interested to hear what you have to say about that as well.

And that's about it for that paper, so I would open it to discussion.

MR. RAMIREZ: All right, so let's trying limiting the discussion -- when I say limit, just time-wise on general discussions -- and then what I'd like to do is go up to the top and just take each section by section and see what modifications we can make and see if we can get any approval on that. So let me get Whitney and then Sandy.

MS. BARKLEY-DENNEY: Sure. I hope, Javier, this is what you want us to do. But I was just going to respond to the feedback questions. You know, I've noted throughout this that we've talked about the Department's goal of streamlining regulation and it seems like with both of the questions in which you're asking for
feedback, we're actually making the room more complicated; particularly with the idea that we're going to somehow compare demographically matched student populations. I'm not even sure how that would work, functionally. Would there be a different rate for people who fall into a different demographic area? Would there be a different scale by which we judge them to be failing or passing a program?

I mean that seems like a complicated thing for us to figure out in a scheme in which we're trying to streamline these regulations. And I would also just note that we already have an appeal, particularly for disadvantaged students is getting incorporated into this rule, and so it seems like we would be sort of getting two passes for the same folks if we did that.

And I would also just note, I think the same thing applies to 50 percent of students completing a program; we're already only contemplating -- and correct me if I'm wrong -- looking at graduates, and so we already have
people who have done at least well enough in the program that the school says that they can graduate and be employed in their field. So it doesn't seem to me like we also need to only take the top 50 percent of that. Certainly if we looked at my high school, my math scores would not put me in that region, so I think most of this will unnecessarily complicate what we're trying to do here.

MR. RAMIREZ: Sandy?

MS. SARGE: This is Sandy. So I have a general question, back to your point about trying to stay on the topic; so it seems to me that the issue about keeping graduate programs in or eliminating graduate programs is in no other issue paper except scope, so the fact that that seemed to have a lot of the discussion, where else would you guys suggest we have the opportunity to discuss that?

So that's my first question and then I have a comment after.

MR. MARTIN: I'm sorry; could you
repeat that again? I'm sorry.

MS. SARGE: Sure, it seemed to me that there was quite a bit of discussion about whether to include or exclude graduate programs. And I just flipped through and I'm trying to decide or determine where else would be able to have that discussion, if not in scope? Is it in another issue paper? Otherwise, we go back to scope, because I think it was a strong enough conversation that we can't ignore it, because I don't see it where we would have it somewhere else.

MR. MARTIN: That's correct, that is a scope issue. If anybody else has anything further to say about that issue, I would entertain that.

MS. SARGE: Okay.

MR. MARTIN: I mean, I obviously saw our proposal, but we can certainly continue that discussion.

MR. RAMIREZ: Let me get Jeff's comment and then we'll come back and we can see
if we can clarify that.

MS. SARGE: Okay.

MR. RAMIREZ: Jeff?

MR. ARTHUR: Yes, Jeff Arthur.

Regarding the terminology, I think last time I suggest that we not use the passing/failing; I had recommended using the about average/above average/below average to match the scorecard language. So I'd just reiterate that again. I think identifying the benchmark is extremely difficult without having the data, and I think as we discussed last time, I still do support setting benchmarks according to population. And that's the question you're asking here is whether we should demographically match students. I do think as the data is analyzed, the benchmarks or the standards, whatever that criteria is, should be set by, maybe the simplest thing would be a percent, recipients at an institution, is one approach to deal with that.

I guess that's all for now.

MR. RAMIREZ: Okay. Erin, could you
put up Issue Paper 1?

Are there any other topics in Issue Paper 1 where that is the only area where that's being discussed.

PARTICIPANT: Besides programs? I mean --

MR. RAMIREZ: Graduate. Greg, do you know if there are any other areas -- any other topics in Issue 1 where it only covered an issue?

MR. MARTIN: We think that's the only one that's not covered in the rest. However, I don't want to rigid; obviously if someone identifies another one that they don't see somewhere else, certainly don't want to preclude further discussion at all. So just bring that to our attention. But I think that's the main one, yes.

MR. RAMIREZ: Okay. So, could we get the entire paragraph up on there for graduate?

MR. MARTIN: Yes, there's only -- just basically eliminate, we're just saying undergraduates, so that's what eliminates
graduate students.

MR. RAMIREZ: Okay, so where are you all at on this then? Because we're going to have to take a vote, right. We're going to have to check the consensus level to see if, officially, because we were doing temperature checks before, right. So let me get Jennifer and then Sandy.

MS. BLUM: Yes, and then also just so you know, my card was up for the Issue 2 when we go back to it.

MR. RAMIREZ: Okay.

MS. BLUM: On this I thought we'd just say we had just agreed that we would vote and do consensus on Issue 1 at the end. And I think as we go through the day in the next couple of days on the metrics, will help inform us as to how it relates to grad programs. So I would simply say that we already agree that we were doing the consensus vote on Issue 1 at the end, so I would just say let's do it at the end.

MR. RAMIREZ: Sandy?

MS. SARGE: So I think that -- I'm not
ready to do consensus by any stretch of the imagination -- this is Sandy -- however, I do want to make some points about, or throw on the table some conversation to Todd's points. I think you were spot on and I appreciate the fact that you made the points you did.

Schools tend to know their students, and if you think about the progression of where and when these metrics are going to be, in front of students before they enter school. And as students mature in their tenure within school, many schools provide financial literacy throughout the programs. And for those schools that serve under-served students who may not be from background where borrowing money was an option or like that, there is a lot schools do to help them prepare for debt repayment. So it's already hard enough to look at debt to earning, I think, as a student before you've ever experienced it. It's kind of like, okay thanks for telling me that my ARM, my adjusted rate on a mortgage is going to be ten times higher than --
you're like, I don't think I really know that means until you're in it and realize what's happening.

But at the end of the day what I think we came back to was in essence if you're dealing with a first-time borrower or a first-time student, those are the students in most need at least getting some perspective on debt to earnings and repayment, like what's happening at those schools; once you're a graduate student, you've been in school and at least if you're concerned about debt, you would have asked somebody in your four to six years of education or what that means. And you would have been already receiving information like, hey, it's time to repay your loans, your undergraduate loans. So instead of labeling it per se for our discussion, undergraduate versus graduate, think of it as has a student ever been in school before or not. And if they have, that's who we're trying to say maybe they don't need it, and if they haven't i.e. either certificate or
undergraduate, then they do need it. Kind of keep it in mind from that perspective.

MR. RAMIREZ: All right, so I thought you wanted to come back to see if there's a possibility of getting a consensus vote on whether graduate programs are being included or excluded, but I'm hearing that --

MS. SARGE: Well, I mean, I think we should at least get a temperature check, like where are we.

MR. RAMIREZ: Well, if I understand it, I think that what the folks are saying is that depending on how some of the other things pan out that might guide their decision on inclusion or exclusion of a graduate program.

So is everyone comfortable with moving on and -- we're not going to come back and say where are we at on the inclusion or exclusion of graduates, we'll have a little bit more discussion before we actually vote on it, okay?

All right, so I want to try and find the areas of agreement and that's why I wanted to
go into the issue paper, so that way Issue 2, so that way we can start getting into some of the details of this instead of just arguing broadly over scope. So I know there's some table tents up, but are those in regards to graduate or are those in regards to Issue 2?

Issue 2?

PARTICIPANT: Scope.

PARTICIPANT: Scope.

MR. RAMIREZ: All right. So Greg, you're going to help me out here because --

MR. MARTIN: But --

MR. RAMIREZ: Let me just try to frame it a little bit better, Greg, because the way I'm looking at this is I like the idea of reviewing scopes, so that way everyone gets an idea of where the changes were, where we're headed. In order to get the actual consensus vote on scope, we have to understand the details, and that's what we're going to go into next. So continuing the discussion on scope to this point, is it going to be fruitful at this time or does it make
sense to come back when we're actually taking the
consensus vote on scope? Greg?

MR. MARTIN: This is Greg. I don't
have any problem with hearing further debate on
the issue of graduate programs. Is that what's
to be addressed, is graduate, inclusion of
graduate?

MR. RAMIREZ: It looks like it.

MR. MARTIN: Yes, I think we could
have that -- I don't think we're in any way for a
vote on consensus. I mean, we have to -- I mean,
when we come to vote, we have to have that
discussion anyway. That's the only place that we
have that, so I hate to cut it off.

MR. RAMIREZ: All right, then let's
get these comments --

MR. MARTIN: If people have points
they want to make, they feel haven't been made
about the inclusion, or the exclusion of graduate
students, rather.

MR. RAMIREZ: Okay, Kelly, Johnson,
Jennifer, Todd and Tony. So let me get Kelly.
MS. MORRISSEY: So my comment's on --

MR. RAMIREZ: Mic. Sorry.

MS. MORRISSEY: So my comment's on Issue Paper 2, so should I hold off?

MR. RAMIREZ: Yes, hold off so we don't keep bouncing back and forth. Thank you. Johnson?

MR. TYLER: Yes, I apologize. It's on, okay. I find it very hard to get into the details of what the metric is without knowing we're discussing the sanction. I feel like the sanction from the consumer's perspective is so de minimis that it's really hard to get into the weeds on the metric that's going to trigger it. And I'm not sure why we're doing the order this way; it feels like we're talking about what's going to -- trigger mechanisms for penalties -- from the consumer side, or not what we talked about before, from the taxpayer side, they're not what we talked about before.

MR. MARTIN: Well, first of all, I think that the scope -- and again, I'm not asking
you to -- I'm not saying you have to agree with
this, obviously -- but the thrust of debt to
earnings, no longer DE, debt to earnings, is
primarily publishing these rates as disclosure
informational for students to make decisions
about choosing programs. The prior, or the
current I should say, regulations, which call for
an automatic loss of program eligibility if
certain thresholds are not met, is not included
here, nor was it included at all from the get-go.
So I think though you may disagree with that, I
don't think we've been very up front about the
fact that it's not there.

With respect to what sanctions there
are and that we're going to discuss in Issue
Paper 3 -- no Issue Paper 4 -- Yes, I'm sorry,
Issue Paper 4 as sanctions -- we discussed at the
table last time -- remember we came with our
original position was there would be no sanctions
at all, there would simply be disclosures. So
that's what was in Issue Paper 2. So we hadn't
put anything on the table with respect to
sanctions, so I respectfully disagree with the assertion that what's in the sanctions paper here is not reflective of what we talked about, it's reflective of the discussion we had in Section 2. There was interest in having some type of administrative sanctions and there seemed to be some compromise on both sides about that, so this paper reflects that.

I mean, if your feeling is simply that if what's proposed is not what you would want, that it's not worth discussing any of the other aspects of this, I can't change that opinion and you're welcome to it, but there are still discussions to be had about the rates, how they'll be calculated with respect to the disclosures and with respect to those sanctions as they appear in Issue Paper 4. I'm disinclined to discuss the idea of sanctions until we get to the actual issue paper, but I mean, it's perfectly okay for people to offer their opinions about that, but I don't want to go into the details of the sanctions until we get to Issue
Paper 4.

MR. RAMIREZ: Let me get Todd and then Tony.

MR. JONES: I'm sticking with the issue of graduate studies because I think it's a red herring; 38 percent of the debt is held by graduate students, but graduate students have a 5 percent loan default rate. The majority of students with more than $100,000 in debt are students who went to graduate school, but they have letters after their name like JD, MB, MD and MBA, DDS. I mean, these are people who can pay their debt. There is no -- it is federal policy to encourage the taking on of debt for expensive programs that lead to successful outcomes. Yet make no mistake, there is a cost associated with having to explain these kind of disclosures. I mean, why do people take on $100,000 in debt? Because they have a 3 percent loan default rate. So all those people taking on large sums are people who are not having a problem. Yes, there are individuals that have problems, yes there's
schools and we can trot them out, but you do not impose an entire, full-scale federal regulatory regime for the purpose of curing a handful of issues. And I simply will not accept the idea that there is not a social cost and an operational cost associated with the imposition of these new reporting requirements and disclosure requirements. They create more.

And we can have a much longer discussion about equity issues if that's where we want to go, but we're going to waste a lot of time on this issue as we did at the previous meeting when we came to a general thumbs up, if we term it that. This is an issue -- I simply don't understand why this has returned as a focus.

MR. RAMIREZ: Okay. Tony?

MR. MIRANDO: Thank you, good morning.

This is Tony. Once again I just sit here and I'm kind of contemplating if we're going to do a temperature check, where I would go with this.
And I find myself on the fence, thus I needed to get some clarity here. So when we were here last time I asked the Department to explicitly give us what our mandate is, and so I sit here as an individual who has several degrees, both undergraduate and graduate, I can see the benefit and I hear both sides of the equation, but I find myself debating as to whether or not this mandate is to ensure clear notification to students prior to enrollment as to what their debt to earning will be after they graduate. I'm struggling to understand why a graduate student would be different from an undergraduate student? So again, I'm looking at you, Greg, and I'm hoping that you can give me some clarity as to, again, what is our mandate here? We all have personal opinions, we come from different sectors, we're here to hopefully help provide the Department with some clarity on which direction to go. But I'm sure I'm not the only one sitting here who's sitting on the fence truly not understanding what it is we're supposed to get to, so if you could
just give me some clarity, that would help sway which direction I can live with.

MR. MARTIN: Well, I mean, obviously our -- I don't know if I'd call it our mandate, I hate to use the word mandate -- but I think our defined task is to try to reach consensus on a new package of regulations attending to what previously was GE but now encompasses a much broader scope. I mean, I think it's obvious in the fact that we're back here on the table, and I've pointed this out before, that if the Department's leadership had determined that the existing regs were what was wanted, we would not be here. So we're definitely here to change that particular protocol. However, and I think as we've proposed in going back to the initial regs we proposed, that the, that what we're looking at is primarily an informational regulation, a disclosure-based regulation. We have introduced the concept of sanctions as a result of the discussions we had previously, but if asked to characterize the thrust of these negotiations, it
would be to establish a mechanism for providing students with information, with requiring institutions to disclose information about their programs. And now as an addition based on what we talked about before, having some programmatic consequences associated with a continued failure to meet those established benchmarks.

And I don't know that I can -- I can't twist everybody's opinions and viewpoints and get them to come to a certain place, but our goal is still to reach consensus on the package, given what the thrust of these regulations are.

MR. RAMIREZ: Yes, go ahead follow up.

MR. MIRANDO: Again, this is tony. Again, if the primary function is to provide disclosure to students, is the Department handcuffed so to speak on whether or not there is a distinction between undergraduate and graduate for say a penalty if they don't meet, can it be broken up?

MR. MARTIN: Our reasons for this, if I can go back to what I stated previously and
what Mr. Jones stated which I think was a pretty good overview of why we went in that direction, so I won't restate those position points. But in addition to those, there's also the concept of simplicity when we get to graduate programs, when we get to medical programs and the number of years, it does add some complexity to the calculation of the rates, which we eliminate from not having to calculate the rates from graduate students. And looking at whether or not the added value for providing this information to people who, as we said previously, are mature students who have already received undergraduate education, making a decision to go further and are fully cognizant of the fact that that will entail debt. I think these students are in a much different situation than an 18-year old person who's embarking on undergraduate education, whether it's in a GE program or any other type of eligible program.

So I mean, that's where we came at it; we didn't approach this from the standpoint that
there would be different, that we were reluctant to put in place -- I should say we weren't looking at this in such a way that we would say that, that whatever sanctions there were, that we didn't want to apply those to graduate school programs as well as other programs. Whatever sanctions there are would be applicable to all programs covered by the reg. We weren't trying to shield graduate programs from that; that was not our intention.

MR. RAMIREZ: Okay, let me get Chris, Whitney, Jordan and Ahmad.

MR. MADAIO: Thank you, Chris Madaio. My issue, I think, is simply because a certain sector is arguably better on outcomes; I don't think that means that we shouldn't be disclosing something to those students. I think if that was the case, I think then why are we disclosing anything to public schools or non-profits. I think generally you're going to have less debt because a lot of them charge less, or they have better outcomes than the for-profit sector, which
brings us back to where we were in the beginning
of the first session. So I think that's kind of
my first point.

And then the second; to me it's not
about that a student understands they're taking
on debt. I mean, I get some students may not
even understand that a student loan is in fact
debt compared to a grant, certainly a financial
literacy concern. And I get that a graduate
student may fully cognizantly understand that
this is debt and I'm going to have to pay it
back. But it's not just that they're taking on
debt; it's about being able to shop around at
comparable schools and being able to say this
school has a lot of debt but their average
earnings are really high, so that's a good value
for me. Or this school has very low debt, not so
good outcomes, but that's an okay value for me.
So that to me is the essence of what this metric
is trying to do, I mean especially if there's no
sanction to give someone a shopping tool, we're
just taking away from the students who we think
are the most savvy and able to shop just boggles
my mind. We say some students may not
understand, so we throw some information at them,
and then other students would, so we take it
away. I mean, that is completely flies in the
face of everything we're talking about here.

And the last thing/question, Greg, is
has there been any studies, consumer testing or
anything to form a data-driven opinion that
graduate students don't need or don't want or
wouldn't read this information if it were given?

MR. MARTIN: No, we did not base this
on an analysis of data. I don't think we look at
it as they wouldn't look at it or that it would
have no use for them whatsoever; our approach
was, again, one based on where those students are
relative to their education, so at a different
point than someone going into an undergraduate
program and also some of the technical
difficulties involved for calculating the rates
for graduate students.

MR. RAMIREZ: Whitney, Jordan and
Ahmad.

MS. BARKLEY-DENNEY: So I would just point out that when it comes to the difficulty of calculating the rates for graduate students, we're already contemplating extending the look-back period to six and seven years, so it seems we're already thinking about looking further out to see how their salary is evolving. And certainly, without graduate students in the mix, that doesn't make a lot of sense, particularly somebody who is going from a certificate program into immediately being a certified medical assistant or something like that. But I would also just point out the idea that graduate students are more savvy consumers; a lot of times -- well, I don't know, I can't definitively say a lot of times -- but in my experience, many people who are attending graduate school are actually borrowing for the first time, they may have had scholarships or parents helping them out in undergrad. And so it's really their first time in thinking about how much they're going to have
to pay back.

And so I think that's an important consideration that while they're older in age and certainly older in experience, it doesn't necessarily mean that they've ever had to take care of anything financially. Because particularly my experience at private and a lot of upper tier public schools, parents are the ones who are providing that financial support and paying the bills while they're in undergrad.

MR. RAMIREZ: Jordan, Ahmad, then Mark.

MR. MATSUDAIRA: Thanks, this is Jordan. I just want to make a couple points; so one is just about the default rates for graduate students with graduate borrowers being low. The default rate is low but they're defaulting on really large balances, the balances are much higher, so from a taxpayer standpoint if we care about being good stewards of public investments and the loan program, the information could really be more beneficial to the extent that it
helps to guide students to better programs. So even though the default rate is only like 5 percent, given that balances are significantly higher, it could be the case that graduate student loans make up closer to the 40 percent to the overall outstanding debt that they comprise.

That's something that the Department could produce numbers on pretty straightforwardly, just the share of total loan balances and default that are represented by graduate students.

I agree with everything that's been said about just the benefits of providing more information overall, but one thing I wanted to say about the complexity involved in calculating DE rates for graduate students, the same argument doesn't apply for earnings. I would argue earnings is something that currently graduate students don't have access to that; there's no other way that they can get information about the labor market outcomes with people entering different programs. So even if the Department ends up kind of going away from reporting DE
rates for graduate programs, I urge you to consider keeping that information available, again, just for information for students to be able to use, because that's something that's straightforward to calculate and students don't have other ways of getting it.

MR. RAMIREZ: Thank you. Ahmad?

MR. SHAWWAL: Ahmad here. My understanding is that there are two main concerns with disclosures on the graduate side, one was the increase in burden, the second was stigmatizing schools potentially. I guess in regards to the first point, my understanding as Jordan has mentioned, that this wouldn't actually require additional reporting systems in place to calculate the status of the case?

MR. MARTIN: No, we currently calculate rates for graduate programs that would be in a for-profit environment, so we do do it. We could, even with -- if you're asking is whether we're going to calculate these rates administratively, do we need anything additional
for graduate students, for graduate programs rather?

MR. SHAWWAL: Or is it within your capabilities to do so?

MR. MARTIN: Yes, it's within our abilities to do so. Yes.

MR. SHAWWAL: So I'm still having trouble understanding the concerns on the first point. On the second point, I guess and Todd correct me if I'm wrong, your viewpoint was that, for example, in a school in Appalachia, you don't have half the students graduating, it might be good for that context. Or were you saying that would not be appropriate to compare that to school maybe in urban environment?

MR. JONES: No, what I was saying is as a matter of equity there are areas of our country that are deeply underserved, some rural, some urban, but I would never say something like 50 percent default rate which would be a school that should be shuttered. That's nowhere near what I'm talking about. I'm talking about
creating a perception that an institution creates a debt burden by judgement against its peers, and to use law as an example, some rural law schools which have slightly higher default rates but where they are certainly more than reasonable ensuring that there is a supply of attorneys in an area where people's rights are run rush, something I think consumer groups would understand. And yet what we see is by having that be the driving force around disclosure, it creates a deterrent for people being interested in rolling.

MR. SHAWWAL: Okay, thank you. That's something I can spend some time thinking about, but I would I guess refer back to what Chris said and Jordan has mentioned, that I think graduate students should be entitled to this information.

I really have difficulty in understanding the distinctions on why graduate is so exceptionally special that students don't need this information.

MR. RAMIREZ: Okay. Thank you, Ahmad.
All right, so we'll get Mark and then we'll take a break, and then we'll go back into the DE rates. Mark?

MR. MCKENZIE: This is Mark. So I've been giving a lot of thought to the whole graduate discussion, and essentially what we're talking around, and Chris' comments are on point, and Johnson's comments, and even the comments from Jordan on default, but I think we're underestimating that the Department's approach, whether we go with graduate or not, has actually alleviated many of the concerns people around the table have, and because we just don't have the data, we're not able to see it. So I guess what I want to make sure we know is that we're looking to identify, not to burden the whole country with regulation on graduate, but to identify graduate programs that are just clearly burdening students with horrible debt and low earnings.

And the difficulty I want to bring out is the single metric debt to earnings clearly doesn't do it. I've been doing this seven years
on debt to earnings and when I go to just the
government offices and ask the employees who have
graduate degrees would they like their debt to
earnings to be measured on which the old GE rule
was they're earning 18 months after graduation,
and the answer was no. And I think if the data
was run, we would find law schools and other
graduate schools that are considered high quality
where the student's going to public service or
government the first few years, take a lot of
debt, and they would fail debt to earnings.
That's why last session I was adamant about
putting in a balance which is a repayment rate or
something else that tries to not capture good
performing programs but still capture poorly
performing. And I guess at some point you've had
a discussion, I have run a lot of the data, I
think I have some data, I'm willing to share
tomorrow morning that should shed some light.

But I guess to Todd, I think the
current proposal with an either/or almost may
exempt almost all graduate programs anyway,
especially if we come up with a certain repayment rate. So I think this group, we're still talking theoretical, we need to figure out a way of bringing a discussion to do what we came here for, which was to find a metric that actually identifies the programs that we think aren't serving students well, and addresses them. And I think Jordan and I have been together on this, when we finally get some good data, it's going to help a lot and I'm hoping I have something to offer tomorrow.

Last comment, Jordan, and it's to my point; I think default and high debt with a graduate is important, but I think Jennifer pointed out the data does show that the graduate programs in students who would default are the ones that more poorly performing programs because they default with the lowest amount of debt. It's not the high borrowers who are defaulting at graduate, it's the non-completers.

And so last comment, and this is back to administrative capability for the Department,
and I'm aware of this, but there are graduate schools that essentially -- I don't want to be inflammatory -- but have no admission standard and are close to open admissions. And it's possible there's another way of going around this to find how to address quality, and I know it from my own student's experience where they're admitted to institutions where it's clear to be they should not have been admitted and they're going to be taking debt they should not have taken. And so maybe there's another way to go around this, and I'll open it up to my fellow colleagues who know more about graduate school than me.

MR. RAMIREZ: Okay. So again, when we're done going through the issue papers, we're going to have to come back to scope and we're just not going to ask for thumbs, there'll be some more dialogue on that. I do want to try and find those areas of agreement, though, so when we come back from break, we're going to get into the DE rates and see where we can find those areas of
consensus.

And just a quick reminder; if you leave the building, it may be a little while before you get back in. We'll get you back in but it may be a little while.

So let's take 15 minutes.

(Whereupon, the above-entitled matter briefly went off the record.)

MR. RAMIREZ: Okay. So, when we took a break we were, Greg had done an overview of issue paper 2. And there was some discussion as far as the order goes.

And in all honesty, I know that we struggle with this, because of the way that things are related to each other. But, Greg, where would you like to go from here?

MR. MARTIN: Okay. Yes. Before we broke, at the table there was some discussion about the order of things. And we had talked about which issue papers to look at.

And in going back to my original rigidity as regards to what paper we're going to
discuss, my colleagues convinced me that perhaps I was a little extreme in that regard.

So, being willing to admit when I'm wrong, which is frequently, I think that on balance, since there seemed to be a lot of interest in the issue of sanctions, that if we're amenable to it here, and there's not huge amounts of disagreement, it does not mean we will not discuss other things.

The big issue in, the big matter and issue too is the economically disadvantaged appeals. And we will discuss that. But I, we're not going to skip anything.

But since there seems to be this tension in the room regarding the appeals paper, I've been convinced that we perhaps should look at Issue Paper 4. So, unless there's serious pushback about that I'll introduce Issue Paper 4.

MR. RAMIREZ: Okay, yes. And just a quick correction. You had said appeals, but 4 is sanctions, right?

MR. MARTIN: I'm sorry. It's
sanctions, yes.

MR. RAMIREZ: Okay.

MR. MARTIN: Sanctions, yes. Issue Paper 4 is Sanctions for Programs based on DE Rates. So --

MR. RAMIREZ: Okay. So, just really quick, what I'd like to do is see if Greg can give us just, give us an overview. Tell us what's different. If you'd give some rationale of why that would be beneficial.

But then, when you're done with that what I would like to do is, do a, just a small general discussion, right, just to make sure that we all understand where we're going. And then go section by section, and see if we can reach agreement on as many sections as we can. Okay, Greg?

MR. MARTIN: Okay. That sounds a good way to proceed. So, let's talk about what happened since issue, since Session 2. And I just want to reiterate that with, our initial proposal did not contain sanctions. So, what we
had originally was not a sanctioned environment. But based on what we discussed in Session 2 we've come back with what we propose here.

So, we're proposing to tie sanctions for poorly, poor performance under the D/E rates and loan repayment measure to standards of administrative capability.

The potential sanctions on a program may be limitations on an institution's ability to expand programs by more than 10 percent for programs that do not meet benchmarks, or start new programs in similar occupations to the programs that do not meet benchmarks without prior approval of the Department or a program review conducted by the Department.

We also propose some clarifications on when notifications must be made in non-English languages. We expect that programs that are not taught in English or use non-English promotional materials to provide notifications in the language of instruction.

And you'll note, just going back as a
reminder, before Session 2 we proposed to eliminate the loss of eligibility to participate in the programs as a possible sanction.

And we had proposed notifications would be provided to students for any year of programs determined to be low performing, which we now identify as not meeting benchmarks.

Some notes at the bottom of the page, before we go into the actual proposed rule itself.

While the Department agrees it is important to hold poorly performing programs accountable, which we believe will be accomplished with the proposed language below, the Department would like additional and focused feedback from negotiators on the following issues potentially raised by this accountability framework.

We would also like additional feedback on an additional threshold, on an appropriate threshold rather, for taking administrative action against a program.
There are many factors that the current regulation does not take into account, such as demographic and economic variables that may account for a student's success, or lack thereof.

How can the Department ensure, better ensure that when the Department does take action against a program, it is doing so for reasons that are within a program or institution's ability to fix and not from mitigating factors that the program cannot control?

Bear in mind, we will be discussing the economically disadvantaged and participation rate. And that's in Issue Paper 2.

So, if we look at, on Page 2 where this would tie in. So, remember the current reg has the automatic loss of program eligibility, as a result of failure to meet the debt to earnings thresholds.

You see here, we've moved the sanctions over into a measure of administrative capability. So, that is the 668.16. And those
are, that's a longstanding regulation which most of you are probably familiar.

It talks about to begin, and continue to participate in the programs, in institutions who demonstrate that it is capable of adequately administering that program.

And so, you can see the section here that has been added in Q, bottom of Page 2. The institution offers an undergraduate program that meets benchmarks as measured under both the D/E rates benchmark and the loan repayment rate benchmark.

If more or, if one or more of the institution's undergraduate educational programs meets neither the D/E rates benchmarks nor the loan repayment rate benchmark, the Secretary may determine that the institution's capability is impaired.

And may limit an institution's ability to expand programs that do not meet benchmarks by more than 10 percent, or to start new programs that share the same four-digit CIP code.
programs that do not meet benchmarks without
prior approval of the Department or schedule of a
program review.

So, we'll stop there. And that's the
meat of what this entails. So, I think if,
Javier, if you want to go section by section, we
should start here with P, and discuss that.

MR. RAMIREZ: All right. So,
thoughts, or questions, or comments on that?
Tony?

(Simultaneous speaking.)

MR. RAMIREZ: I'm sorry. Okay.

MS. BARKLEY-DENNEY: Thanks, Tony.

So, I'm just a little concerned about the use of
the term may. It seems to me that if we're going
-- I understand allowing some discussion in
determining whether or not a program doesn't meet
these thresholds, particularly if appeals are
involved.

But it then seems like, particularly
in what we were contemplating last time, it's
more of a shall situation. Once you have decided
that a program no longer meets, is not meeting, or does not have the administrative capability to meet the thresholds, then we really should be moving towards concrete action, and not, you know, possible action if the person reviewing it feels like doing so that day.

So, I would just like to see, I mean, at the very least, that strengthened so that the, you know, there is a particular outcome that's going to happen, or a choice of outcomes that's going to happen if a program does not meet the standards.

MR. RAMIREZ: I'm going to ask Counsel to respond to that.

MR. FINLEY: So, this is Steve Finley. I think we want to hear comments from a number of people before we start kind of responding generally to this topic.

MR. RAMIREZ: Okay. That's fine. Tony.

MR. MIRANDO: Thank you. This is Tony. So, in just reading through this, is it my
understanding that the Department has abandoned the primary and secondary tiers of meeting the D/E student repayment rates?

Because we had talked about having that as a primary. And then we talked about a whole series of secondary. And I remember bringing it up a second time. And we never really quite ever got back to that.

And then, it just seems like that whole discussion, which was for quite a long time, just has been abandoned, it appears.

MR. MARTIN: First of all, I don't think anything's been abandoned. As Steve said earlier, we're open to any discussion about this. As far as why we came to this, we did discuss the --

And I know that at the previous session we had a fairly involved discussion about what other measures there might be besides D/E. And obviously repayment rate's not the only one one could potentially use. There's completion rate, placement rate, all these other things.
I think the main reason we didn't go down, as far as establishing some type of a protocol where we'd have all these various considerations.

First of all, the complexity of that gets maddening. So, it's, you know, if not this, then this. Well, what about completion rate? What about placement rate? So, all these things came into play.

Also, determining how those things would be calculated was another issue. So, we settled on having an additional metric. And I think where we are with that is that we were convinced by arguments made at this table, that the D/E measure shouldn't be the only measure of a program's outcomes.

And that it would be possible for various reasons for a program to have perhaps D/E rates that don't meet whatever benchmark we establish, and still be a program with good outcomes.

So, how to allow for another metric
that might show that, while sticking with our intention that this rule not become maddeningly complicated. So, we settled on debt, on repayment rate.

As far as whether it was a primary or a secondary metric, in thinking about that I don't, I'm not, we weren't convinced that makes a difference really.

I mean, if you're going to say that you're introducing the repayment rate -- I mean, the repayment rate, then it, then you say, well, how do you use that, you know? I mean, so whether it's primary or secondary you get to this, you get to the point where --

And I'm going to, what I want to do in a moment is pass out this graphic that we've put together, which kind of walks you through the issue of sanctions, where these sanctions fall in. It was done by one of our staff members. I think it's very well done, and will kind of help you walk through where we are with this.

But the, but so, if you say, so, if
the school doesn't meet, a program rather, doesn't meet the benchmarks established for D/E rates, then where do you go?

Well, you can, whether you're calling it primary or secondary, it would be if you don't meet this one, if you do meet this one, then what do you meet? So, I don't think it makes any difference whether it's primary or secondary.

And as far as including other potential metrics, I just think at this point the complication of adding all of those in would be further than where we're going to be able to go here. So, that's why we wound up here.

As we continue the discussion, and I'm going to hand around, and I almost forgot to do so when Scott reminded me, this metric that will sort of walk you through where we are with respect to this.

MR. RAMIREZ: Okay. Thank you. So, we have Sandy, Jennifer, Johnson, Laura, Ahmad, Daniel, and Jordan. So, let me go with Sandy.

MS. SARGE: This is Sandy. Whitney, I
see exactly what you mean. It's a little bit ambiguous. So it, we have some concerns.

But I was thinking exactly the same thing that Tony brought up, is we had discussed the concept of, that if a school failed one or the, or failed both of the primary metrics, and just for definitional purposes we'll call that D/E and loan repayment, the primary metrics, then a school would have to provide additional evidence as to why they consider themselves to have, in this case, administrative capability.

And I agree that they would, and should have to. So, maybe the terminology could be that the Secretary will require additional evidence to support an institution's academic capability.

And as long as there's, I think there should be a next step. And we should say there's a next step. There's another step that they would have to prove.

And then, that would be where we go into completion, and maybe graduate rates, and
licensure, pass rates, and things like that, that others have brought up, to be an alternative way to say that their students are being well educated.

MR. RAMIREZ: Okay. Let me, Greg, you want to walk us through this chart? I think everyone has one.

MR. MARTIN: Sure. Be glad to do that. So, I mean, I think the, I've seen some charts in my time that, some produced by the Department, by the way, that don't look quite as simple as this does. I shouldn't say it.

And they were nothing, you know, if you try, if you look at some of the charts that were produced about a report like GE, I mean, I'm sorry, COD, and NSLDS, and how they all come together, I've reviewed, I've had to train on some of those charts sometimes.

And you get confused halfway through it. And you're like, wait a minute, which box goes where? But this one drops down very nicely for you.
So, let's take a look at the first, at the upper left together. Did your program meet the debt to earnings benchmark? So obviously the preferred outcome there for everybody involved would be yes.

So, at that, at the point at which you meet the debt to earnings benchmark, then no additional actions are necessary. And neither are there any notifications necessary.

You would still have to do disclosures. Because of course disclosures are for all programs. It's currently that way under the GE rule, for GE programs. That would be extended to all programs. But no additional notifications. No actions would take place.

So, now it's, let's look at what happens if the program does not meet the D/E benchmark. So, your program did not meet the D/E benchmark.

And then we go down to the next step there, the NCIs (phonetic). Does your program has fewer than ten borrowers? If the answer to
that question is yes, then you note there off to the side that there's no additional actions, no notifications.

If the answer to that is no, so it does meet that NCIs, we ask, does the program meet the standards for economically disadvantaged appeals in 34 C.F.R. 668.213, or the standards appeals in 668.216, for programs with 30 or fewer borrowers?

So again, you'll see that if the answer to that question is yes, then that would key up to no additional actions, no notifications.

So, let's now say that you do not meet the standards for economically disadvantaged, or fewer than 30 borrowers appeal. Then the institution must inform students through the notification process, which is a modification of the current warning process.

And then at that point you see, are there multiple administrative capability issues for the institution? Multiple failing programs,
or one failing program, and other administrative
capability issues?

So, if the answer to that question is
yes, that there are multiple administrative
issues for this program, or multiple failing
programs, then we would limit, we have the option
of limiting the expansion of enrollment to no
more than ten percent, require institutions to
get special approval to add programs or
locations, schedule a full program review.

If the answer to that question is no,
so, the only administrative issue we have with
this institution is one program that fails to
meet the benchmarks, then the ramification would
be limiting the expansion of enrollment in the
program to no more than ten percent.

So, hopefully this walks you through
where the regulatory language is. And I think
it's an easier way of conceptualizing where we're
going with this.

MR. RAMIREZ: Okay. Thank you.

Jennifer?
MS. BLUM: Thanks. This is Jennifer. So, this flow chart helps answer one of my questions. And it was along the lines of what, where Whitney was going too, in terms of sort of the Department's options.

But the flow chart, which is really clear, is not reflected, in my view, in the paragraph. And so, if this is the intent of the Department, can we re-write it?

And by the way, what I'm saying is, I'm not, this is on first blush. But regardless of whether there's consensus or not on this flow chart, it seems like this paragraph should be written to reflect the flow chart.

And then we can have a discussion about whether the flow chart is, you know. But they definitely don't align right now. So, I would encourage alignment on that.

And then, I did have one question as well, which is a much broader question. And I completely agree with talking about sanctions first. Although I think we'll agree that this is
all like a muddy mess at this point, in terms of like how you get into.

Because I do have a fundamental question, which is, once you start applying this to all programs, what's the Department going to do in the event that every single bachelor of blah, I'm not even going to try to pick a bachelor, you know, if more than 50 percent of bachelor of blah programs for whatever reason don't meet benchmarks, you know, at all institutions? What's the Department going to do with this?

And we don't necessarily have to answer that now. But I do want the question on the table as we get into the benchmark piece. Because I do, and this is why I say that everything sort of does, which is good, it does all interconnect.

But I would say, and I think you sort of posed the question up above, when you're seeking feedback about sort of the dynamic of a program, both as it relates to demographic too.
Because you could also say, what happens if every program that has a majority population that's, you know, X, and they're all, right, and all those programs are sub-par, are you penalizing all of those programs?

And so, to me there does need to be a dynamic down the road. And maybe it could be written into the regulations now, for the future, about what higher ed looks like as a whole.

I don't want to pre-judge a metric, you know, a benchmark today, to be honest with you. I'm just saying that I think that there does need to be a public policy standpoint, you know.

You are going to have the huge benefit of a lot of data down the road, to be able to judge whether, you know, how this reflects on different types of programs, both professionally, and also different types of programs from the demographic standpoint.

And so, allowing the Department, or just all of us, or whatever, some dynamic that
allows for the ability to judge, you know, on a comparative basis before, I mean, I don't even know how you would handle a bench --

You know, going through all of this, if every program that's a bachelor in blah has an issue, or even half of them have an issue, how are you going to manage, you know, imposing ten percent?

And that's a huge by the way. And then you're getting into socio-economic issues of, you know, directing the marketplace, in terms of how many teachers, or how many nurse, I mean, you know, whatever the profession is.

So, those are my comments. But the first one really is, and I, you know, I think maybe some of us could help draft whatever. But the paragraph needs to reflect the flow chart.

MR. MARTIN: Yes. Just to mention, just to your last point. I think you're right that the paragraph needs a little bit of cleaning up. But we, a lot of this is being done at the last minute. We will definitely take that back
and look at that.

MR. RAMIREZ: Okay. Thank you.
Johnson.

MR. TYLER: Hi. Johnson here. So, I wanted to go with the ten, ask about the ten percent. Because I think, I don't think that was one of the proposals last time.

I think it was simply just keep the enrollment at the current level, if not requiring a letter of credit, or something related to that program. So, what was the Department's thinking, if you want to share it, of why it's ten percent?

PARTICIPANT: All right. So, that's going to invite discussion here. We knew it would. The idea was, some issues with schools capping enrollment in programs from time to time.

And there's always a question of whether you cap the current enrollment, or whether you look at the enrollment over the year.

Because you've got cycles of programs that may be low at the time, but six months ago they were higher. Or six months from now you know they'll
be higher.

So, the ten percent is kind of an acknowledgment that it may not be exactly what the enrollment is. We're welcome, you know, we're open to other suggestions for how to track what you would lock in as an enrollment cap. And so, it's, the ten percent's a, kind of an invite for discussion around the table.

MR. RAMIREZ: Laura.

MS. METUNE: I won't repeat everything that has been said. But I just, I agree, the flow chart language don't match. I'm confused about whether the language is meant to be a limitation on the Department's authority. That's, these are the only mays that could be considered. If that's true, I oppose that generally.

I agree with Jennifer about staff capacity. Generally this doesn't align to where I thought things were left off at the last conversation.

In regards to the ten percent. I
apologize for the side conversation. We were just laughing about how our community colleges are facing declining enrollment. And we would be happy to have ten percent increases in most of our programs. So, it just seems really dumb.

So, I think, frankly, if you're failing both of these you should not be enrolling more students into this program. Thank you.

MR. RAMIREZ: Daniel.

MR. ELKINS: I'd like to yield my time to Ahmad, and then talk after him, if that's possible.

MR. RAMIREZ: Yes. Go ahead, Ahmad.

MR. SHAWWAL: Ahmad here. So, obviously this is like fundamentally different from what I believe was the course of the conversation during the second session.

Okay. So, it was like my understanding that people -- Okay, I get it. There's opposition to the idea of immediate enactment of the removal of Title 4 funding. I get it.
But given the course of the conversation during the last time around, people were generally receptive to having a system in which, okay, if you didn't meet D/E, if you didn't meet the repayment rate, you know, you don't meet the standards for economically disadvantaged appeals, then we'd have a process by which there would be some sort of consequence, including, and potentially up to the loss of Title 4 funding.

And I felt like people here were generally receptive of that, if you remember that discussion. But now it seems like the only consequence is the, limiting the expansion of enrollment in a program to no more than ten percent.

Who even does that in a year. I can't think of any programs that can expand by ten percent, especially not any that don't meet D/E benchmarks, or repayment rates, and any of these other metrics that we have before that process is even considered.
I don't know, this seems kind of funny to me, this entire flow chart. Or is that out of the question? Are we not, are there no consequences for institutions that don't meet D/E or repayment rate, and don't have standards for economically disadvantaged appeals?

MR. MARTIN: Yes. There are no consequences what, for institutions that don't meet. Well, the consequences are as you see them laid out here. These are the only ones with, these are the consequences we currently have, we have proposed.

MR. SHAWWAL: Who could even expand more than ten percent in a year? That's what I want to know.

(Simultaneous speaking.)

PARTICIPANT: Yes. We're somewhere between ten or more. I have a school that's fundamentally vocations schools, HVAC, medical programs, nursing. I could name a time.

But I just, I'm literally going through the audit right now. So, I've seen the
increase. And also, if they merge with another small school with it, then they've grown. So, there's lots of ways to do it. I think if you go beyond just thinking of the 20,000 --

MR. SHAWWAL: Yes, but let's --

PARTICIPANT: -- capacity. If you look at a school that's 400 students or 200, that's not many. And a program then is 30, that's only three, right.

So, think about it not just from I'm in a school with 2,000 students in a program. Then it's 200 students, maybe. But if you're in a school where a program has --

Like, California medical nursing programs are limited to 30. You're only allowed to have 60 in the school. They can, of any time nursing students. So, that's only three for the class, and coming in, and six overall.

MR. SHAWWAL: Okay. Understood.

PARTICIPANT: Yes.

MR. SHAWWAL: And --

PARTICIPANT: That's accreditation
rules.

MR. SHAWWAL: Okay. And just to reiterate, I'd like to get an idea of what everyone thinks of potentially going back to the previous diagram that we had. Or making an amendment to this diagram, in which we would include that.

And then through some means, which we could discuss, the Department would evaluate whether or not they want to only enact the limiting of the expansion of their enrollment to no more than ten percent. And then potentially include things like, and we can discuss this, including and up to loss of Title 4 funding.

Because I thought, I don't know. I thought we were making some progress in that regard last time. I'm not sure why there's a down trend.

(Simultaneous speaking.)

PARTICIPANT: I'm wondering if the Department's thought was, if you find, if you schedule a full program review, and you find
other things, then it definitely could. I'm thinking that may have been. But I'll let them answer.

MR. RAMIREZ: Yes. Could you, Greg?

MR. MARTIN: Yes. Correct. And on the left, those three boxes there, where if there are multiple administrative capability issues, or multiple failing programs.

And yes, one of those consequences could be scheduling a full program review, obviously. If we found other issues that, yes, that could definitely have an impact on the school's continued participation.

MR. RAMIREZ: Okay. Let me go back to Daniel, Jordan, Jeff, Whitney, and then Kelly.

MR. ELKINS: This is Daniel. I wanted to thank the Department. I think the intent of the flow chart, and what's going on here, it's moving in a good collaborative direction.

I do think that there is some work that needs to be done. Many around the table have suggested that. And I'm completely
supportive of that.

In addition, I would like to put back on the table a discussion of limiting expansion to zero students. I would like to also put on the discussion for --

Well, I want to clarify that that would simply mean that, you know, if they didn't meet both there wouldn't be a way to expand programs and/or enroll new students in those specific failing programs. Thank you.

MR. RAMIREZ: Okay. Thank you.

Jordan.

MR. MATSUDAIRA: Thanks. I just wanted to ask for a little bit of clarification. I share Ahmad's concern about the lack of teeth to the sanctions.

But just from the language, wanted to make sure that I understood the proposal correctly, which was, when we get down to the red box in the middle where you ask, are there multiple administrative issues, multiple failing programs, or one failing, and other capability
actions.

Is the way to read this that if any of those three statements are true, then we automatically go to the left? We automatically get into --

And then, are the three boxes on the left, are those like all together? Or are those like, some of those things might be invoked, but not necessarily all three? Or all three are invoked?

PARTICIPANT: Or or and, right, between the boxes.

MR. MATSUDAIRA: Yes. And then, my last question is whether these are meant as illustrations of like a couple of sanctions that might be invoked under the administrative capability part of the Code, which I'm sorry, I don't know as well as others around the table know as well.

But I'm just wondering, I think, is that the part of the Code that also has other sanctions like cash monitoring, or other things
like that?

PARTICIPANT: Yes.

MR. MATSUDAIRA: But the idea here is just to, we're limiting the kinds of things that could be remedies under this kind of administrative capability ruling, to these three things only? Or these are just examples? Thanks.

(Simultaneous speaking.)

MR. FINLEY: So, the three items on the left, this is Steve. The three items on the left could all be deployed. They, I'm not sure if they necessarily would all be deployed every time, at the same time if you had multiple instances of administrative capability.

It could be, it's going to, it really is kind of a totality of the circumstances thing there. You've got one failing program, plus something else is what that bottom, the box on the bottom says. And it's the, it's whether the failing program, or the program not meeting benchmarks, plus something else, merits taking
more extreme actions.

The question you've asked about heightened cash monitoring can be done separate and apart from this at any institution, when there's concerns.

So, it's not referenced here, just because that kind of is an always available alternative to deal with heightened monitoring at an institution. And there's various levels of cash monitoring that can be deployed, right. So, but you're right. That is not mentioned there.

PARTICIPANT: So, those options are not exclusive. There could be some other options as well. Is that right?

MR. FINLEY: Yes.

MR. RAMIREZ: Okay. Jeff.

MR. ARTHUR: Yes. I had similar thoughts when I looked at this as Jennifer. Well, what if a program fails across the board? Well, I had an idea. I mean, first of all, I thought that the metric, or the benchmark should be something like two standard deviations to
begin with.

But if we don't get there, and we have a hard and fast metric, that maybe we could take that concept to the, after we inform students, to say, okay, that when the Department's making a decision, is the program an outlier, by looking at the, generally it's two standard deviations that would be something that would identify outliers. Or whatever it is.

But identify, is it truly an outlier before deciding what action to take at that point. So, that's one way I thought, you might be able to insert that easier there.

The other thing that we observed is that, is this intended to be a one year, and all this happens? I mean, it's not, we don't have the concept of two out of three years, or two consecutive years, or three. It seems to be that it's one year. So, I just want to clarify that that's the intent.

And then I do think, and then, do not underestimate the power of a program review, and
what, the actions that can be taken there. And I
also even point out that I wouldn't be surprised
if the compliance -- Every institution has to
have compliance audits on a regular basis for,
our institution's is every year.

And if the audit guide has a
compliance auditor identify, or test these
metrics, and they have a finding or some kind of
issue there that they put into an audit report,
those get referred for Department of Education
review. It's called a final program, or final
audit determination.

And that any issues there, after
that's done, can get referred for further action,
fines, penalties, limitations, suspension,
termination, all that. So, there would be some
regular review of that, that would be at the
Department's disposal.

And then the last thing, does the
program have fewer than ten borrowers? I think
that's your first box. Because I don't think
you're doing a DTE on programs with less than
So, I think you move that to the beginning. Because if that's no, then you're stopping right there, and you're not doing a DTE rating.

(Simultaneous speaking.)

MR. RAMIREZ: I believe you're correct.

MR. ARTHUR: Yes. All right.

MR. RAMIREZ: Okay. So, we have Whitney, Kelly, Neal, Daniel, and then Mark. So, let me get Whitney.

MS. BARKLEY-DENNEY: Thank you. I just have a question for the Department. Or there may be institutions around the table that can answer this.

On the economically disadvantaged appeals in 34 C.F.R., how often are those used? And how often are they successful? I'm just trying to get an idea of the scope of these appeals.

MR. MARTIN: Yes. On those appeals, I
misspoke earlier. Those are, my brain's a little fried. I've not been feeling too well the last couple of days.

But those appeals are — So, you have 213 and 216. And there are appeals for if you've been notified of a loss of eligibility to cohort default, right. So, there are two cohort default rate appeals.

And I don't know, I mean, I could probably find out from program compliance how some of our cohort default people how often they're invoked. I'll ask Steve. Do you know?

MR. FINLEY: I don't know how often. I know they're used. And I know that institutions that use them are able to prevail on the appeals. But I can't tell you whether it's, you know, 50 percent, or 70 percent, or 20 percent.


MS. MORRISSEY: This is Kelly. I think in looking at this flow chart, the bottom box in the center needs to be further parsed out.
I believe that it would be impossible to, well, it may not be possible to determine if there are other administrative capability issues for the institution unless a program review is invoked.

So, I think there should be a separate box stating that if there are multiple failing programs, that would immediately trigger the actions on the left. Because that would be something that would be known without further review of the institution.

And then, have a separate box saying, if there are multiple administrative capability issues, that could also trigger actions on the left.

MR. MARTIN: Let me just clarify. So, what you're asking on this box is that -- So, are there multiple administrative capability issues for the institutions, multiple failing programs, or one failing program and other administrative capability issues?

So, I mean, if there -- So, you're asking if it's just -- I'm not sure what your
point was.

MS. MORRISSEY: So, what I'm asking is, if it's immediately known that there are multiple programs that don't meet the benchmark, that that separately could trigger the action on the left.

MR. MARTIN: Correct. Correct. If there are multiple programs that don't meet the benchmark, yes, it would trigger the action on the left.

MR. FINLEY: So, just to clarify. They don't have to hit all of those. Any of those would trigger those.

MS. MORRISSEY: Okay. I just think that that should be a clearer, less --

MR. FINLEY: So, maybe putting ors in there instead of commas?

MS. MORRISSEY: Right. Just to make it clear that that would be an immediate concern if there are multiple failing programs. Because some of these other things may not be immediately obvious.
And then, beyond that I do believe there was somewhat of an agreement that a lack of administrative capability generally does trigger LS&T, which is what we were seeking to gain by putting this under administrative capability.

So, I think we have kind of taken the teeth out of a lot of this, especially by allowing a ten percent expansion of programs. So, I would echo the comments of others saying that institutions that fall under these sanctions, if they are, should not be allowed to expand at all.

PARTICIPANT: Kelly, could you define LS&T?

MS. MORRISSEY: I'm sorry. Limitation, suspension, termination.

PARTICIPANT: Got it. Thank you.

MR. MARTIN: I just want to clarify one thing about that. First of all, I, there are ways the Department has of knowing if a school has administrative capability issues besides program reviews.
We regularly review audits, looking at program, looking at cohort default rates. So, there are other mechanisms we have of knowing that.

Wish respect to limitation, suspension, and termination, even currently under admin capability, we're not obligated to take LS&T action. That's a separate thing. So, I don't, I, we're not going to tie ourselves to an automatic, to some type of an environment where we have to take LS&T, with respect to the failing to meet the benchmarks.

MR. RAMIREZ: Neal.

MR. HELLER: Good morning. Neal here. I think first of all, I think what Steve was kind of talking about, as far as the ten percent. In our case, and in the case of many of our shorter term programs we have multiple starts. We can have weekly starts, monthly starts. So, it's not based on semesters or terms. So, to try and figure out a zero percent growth would be sort of impossible as we're doing
these rolling starts.

So, anyway, that being said, we've mentioned many times the economically disadvantaged appeals process. So, I don't know if this is the appropriate time to get into that a little bit more, Greg. I know you're looking for comments as far as --

MR. MARTIN: We're fine with taking comments related to that.

MR. Heller: Okay.

MR. MARTIN: It is part of the sanction.

MR. Heller: Well, that being said, I don't know if everybody has actually looked at that rule closely. But I have. And what it basically speaks to is that if you're 70, if 70 percent of the students in that program are Pell eligible for half of the cost, I believe, you would have to show a 70 percent graduation rate, and then what amounts to basically a 44 percent placement rate.

But placement of every single student
that started that program, not just completers. That's a pretty, pretty difficult threshold to meet for any of the schools that serve that particular type of population, whether it be schools like mine, or community colleges, et cetera. Even some of the schools that Todd was alluding to in his earlier comments this morning.

So, I was going to throw out a proposal that maybe can be discussed over time, that if you meet the threshold of 70 percent Pell eligible, why not simplify it and go back to either a 15 year amortization for that program, or bump the threshold up to 12 percent, as far as the debt to earnings ratio is concerned?

PARTICIPANT: There you go.

MR. HELLER: So, I'm just throwing that out there.

PARTICIPANT: That's interesting.

MR. RAMIREZ: Okay. It looks like Daniel, Mark McKenzie, and then Marc Jerome. Daniel.

MR. ELKINS: Yes. To clarify on what
I was thinking earlier, to give an actual tangible suggestion. I know it's what you are looking for.

I think that it's the last box if you move to the right. I would just limit the expansion of enrollment, period. And then, on to the left I would say, not have it be one of the three, or ors.

But I would say, limit expansion, period. Require institutions to get special acceptance to add new programs. So, make sure it's both, pending a scheduled full programmatic review. So, that would be my suggestion there.

And, you know, obviously across all sectors. It's not a bifurcated system here.

And then the other question though that I had for the Department was, you know, I believe GE 2 was taken to court, and was knocked down due to a repayment rate issue.

Has there been consideration as to the, I don't want to say efficacy, but the calculation, and how it's being calculated, just
to avoid us doing this a fourth time?

MR. MARTIN: Yes. We have considered that. We, and these rules we're not proposing as straightforward benchmark. When we get to that section we'll discuss with you what our ideas are about that.

We didn't want to be hard and fast, because we did want to elicit other ideas from -- You are correct that we did not prevail in court on that. It was considered to be arbitrary. So, we are seeking to avoid going down that path again.

MR. ELKINS: Thanks. Thanks for that response.

MR. RAMIREZ: Okay. Mark McKenzie, then Marc Jerome.

MR. MCKENZIE: Thank you. Mark McKenzie. Greg, just a quick question. And then I've got a follow-up. Between the box that is the institution must inform students through the notification process, and then the last one in the center.
Could you talk a little bit more about what the process that you would see, or what you would envision as to how the Department would determine some of these things? I know you referenced you have other tools, compliance audits.

But it seems like this is a pretty essential time. So, things have been flagged, a program has failed both metrics, and has gone through a process. So, is that something that needs to be fleshed out more?

MR. MARTIN: Well, we're certainly, this is Greg, for the record. We're certainly willing to entertain suggestions about it. I'm not going to obligate the Department to a specific mandated schedule of escalating events here.

If you have suggestions about what you would like that to be, if you feel that these should be laid out in a more strict way, we're certainly willing to hear that.

Right now, the way we have it is that,
you know, there are -- there are certainly in 668.16 a number of measures of a school's administrative capability.

There is, to some extent, or there always has been a bit of a judgment call about when the Department would say a school lacks administrative capability. So, there's a number of things that we look at here.

I don't know at this point exactly what the -- Because we wouldn't have done it before. So, exactly how that would work when the school participation team became aware of multiple failing programs, how that whole, you know, structure would function.

It would be disingenuous of me at this point to say that. Because I don't know. This is rather a new way of approaching it. But, you know, we would look at, it gives us the option of looking at a, not just these rates, but looking at the school holistically as well.

Because the only reason why we're looking at this one failing program? Or they
have, are there multiple programs that don't meet the benchmarks, and other problems at the school? So, it gives us flexibility. And I think that's intentional.

MR. RAMIREZ: Marc Jerome.

(Simultaneous speaking.)

MR. RAMIREZ: Oh, I'm sorry. Steve, you had --

MR. FINLEY: No. I was just going to add to Greg's comments. The other thing to remember here is that we're going to be looking at a significant lag in the outcomes for the program.

And it may well be that we're going to have an institution that comes into the Department with what looks like a very bad benchmark performance, that can demonstrate that in the subsequent years since then they've done an enormous amount of work to improve that outcome, by changing the costs, or working with the businesses.

You know, it's actually,
administrative capability is as much, what have they don't to continually try to improve these outcomes, as it is about simply trying to lock in a bad outcome that's based on something that happened several years prior.

So, it's hard to pigeon hole this, except to say, there's going to be a discussion there to see if the institution is taking this seriously, and acting to improve the outcomes in that program.

MR. MARTIN: Okay. Thank you. Actually, it leads me into the next comment. Because that's my recollection of our discussion at the last session, was that these are indicators that there may be an issue.

It's not a term commonly used as bright line. If you fail the bright line you automatically get penalized. I think the discussion was that these indicate there may be an issue. And we need to take a deeper look at the particular program and/or the particular institution.
Works the same way in the accreditation process. We'll do thresholds. And we'll do three year rolling averages. Because you see, that tries to take into account both small ends, and also time lags, and things along those lines.

So, it appears to me that the thing that will need to get fleshed out is how that process unwinds, either at the Department level at that last box, as to whether it goes right or left. And I think a number of people have identified that.

And the one other issue is that I'm assuming that once they get through the three boxes on the top, that there could also potentially be a notification to the accreditor that, okay, we've gone through this, and they failed both metrics.

As a result of that, that's going to trigger a whole separate set of reviews. And I don't want people to lose sight of that, even though it's kind of outside the Department's
role.

The accrediting commissions will be looking at this and going, exactly what are the problems? And then, I think most of the accreditation commissions have elevated their level of conversation with the Department when there are issues of compliance at play.

And also with, you know, state authorizing agencies. They may also trigger a whole separate process. So, this is not just in the weeds to just these two issues that go immediately to a sanction. Thank you.

MR. RAMIREZ: Okay. Thank you.

Jerome, Marc Jerome.

MR. JEROME: This is Marc Jerome. Greg, sorry, I'm asking if, I'm calling a little time out. I'm looking at this, and I'm looking at the big picture.

I believe, and someone can correct me if I'm wrong, there's about 6,000 institutions, depending on how you do OPIDs. Does anyone know the number of total programs in the United
States? I'd say it's a couple of hundred thousand to a million.

MR. MARTIN: It's going to be a lot of programs, yes.

MR. JEROME: A lot of programs.

PARTICIPANT: A lot.

MR. JEROME: It looks to me that the way we're going, depending of course on the metric, could be administratively untenable. And to all the people sitting behind me, it's kind of like condemning them to administrative hell with the -- I'm serious though, with the number of programs.

So, I'm asking my colleague, Chad Muntz, who we've been discussing, as we go forward, and we start seeing how this plays out, to reconsider looking at the metrics at an institutional level, to find a way of being effective.

Because I've lived through gainful employment, with all its ups and downs. And taking this to a programmatic level for all
institutions across the entire country, given the breadth, and depth, and complexity, seems to me to be administratively untenable.

And so, I'm going to ask we reflect on that as we move through until Thursday. And I'll end with that.

MR. RAMIREZ: I want one clarification here before we move on. This is what, and I, everything that was said, good points. With a look at administrative capability though we are calculating these rates by program. That is true.

An administrative capability assessment is of the institution. So, you'd be looking at the institution, looking at the programs the institution has. So, to the extent that there is an assessment of admin capability, that is at the institution level.

MR. JEROME: So I guess, and just to talk it out. We've had some discussion. I'm just trying to imagine how it's playing out though.
So, you know, if you have an institutions with 100 programs, and two fail both compared to an institution with a few programs. Are you looking at the enrollment size of the programs?

Again, looking at the Department's capabilities, and looking at just the complexity of this, it feels like it's going to be very difficult to implement it without some more structure.

And I take, you know, comments from people who know the landscape of higher ed a little better than me. But I'm just having that sense that this is still untenable.

MR. RAMIREZ: Okay. Let me get Jennifer, Kelly, and then Ahmad.

MS. BLUM: So, I just have a couple of questions. So, Greg, to your point on the administrative capability, I was going to ask that. I assumed it was not on some new programmatic level administration. Because I was at the school level. And I, if I, I'm not that
familiar with the economically disadvantaged appeals process. But I believe that's at the institutional level as well, isn't it, round CDRs?

MR. MARTIN: Well --

MS. BLUM: Or, I mean, the way it's used today, anyway.

MR. MARTIN: Yes.

MS. BLUM: Is that the --

MR. MARTIN: I'm sorry. The way it's used today.

MS. BLUM: So, you would get out -- That's not the right word. But you would potentially be using an institutional level appeal, which I agree is hard to, really hard to meet anyway. But you would be, I'm just wondering about the application of value. Okay?

(Simultaneous speaking.)

MS. BLUM: Steve can answer this anyway. So, I just want to understand the economically disadvantaged appeal, even though I do think it's really hard to meet, regardless of
whether it's at the institution level or the program level.

But are you, is the suggestion in this section, and I think in the other section where it's mentioned, that a program that has an issue, the institution could then use the economically disadvantaged appeal at the institution level to not have the applicability of the metrics? I just, that was a question I had.

MR. FINLEY: So, the proposal would be to use those appeals done at the programmatic level.

MS. BLUM: Okay.

MR. FINLEY: But if there's conversation around the table saying, if there was already a successful appeal that's been used recently on that, and you want us to consider that as an alternative way for the program to meet it, the answer, it's up for discussion.

MS. BLUM: Okay. So, that was one question. And then the other point that I just wanted to make, because I know Daniel mentioned,
a lot, a number of people sort of mentioned, sort of the mandatory program, not mandatory, but the sort of like jump, you know, ensuring that there was a program review.

And I did just want to emphasize what I said earlier, and also what Jeff said earlier. That with the, what Marc just said, with the volume of programs that we're talking about I feel like there needs to be something written in about what the norm is, so to speak.

So, whether it's that, you know, it's an outlier, like whether there's a standard deviation, or whether there's some ability for the Department to not jump into this if every single bachelor in X is a problem in this country. Or even some sort of, you know, significant number of programs across the board.

Because I can't even imagine a world where the Department is doing, you know, a literally, you know, potentially dozens of program reviews at the same time on a particular --
So, I just, I do feel like there needs to be language written in somehow that allows for that standard deviation. That was a interesting idea that Jeff had.

Or something that allows that if there's, if it's, because you are, like I said, you're going to learn a lot about the marketplace, in terms of professional, you know, different types of professions. And it may be that some are, you know, have lower results than others.

I mean, I expect that business degrees are going to do okay. It's like what we already, kind of already know. So, I just think you need some sort of caveat there.

MR. RAMIREZ: So, I have Kelly, Ahmad, and then Johnson.

MS. MORRISSEY: This is Kelly. I just wanted to circle back to Neal's discussion about the economically disadvantaged appeals. And just looking at the grad rate requirement of those appeals.
In looking at the average graduation rate of community college students, which is my own sector. According to Clearinghouse data that grad rate is 57 percent.

So, holding an appeal to a standard of 70 percent at an institution with a high percentage of economically disadvantaged students, you won't have any schools that are able to demonstrate that benchmark.

So, I think that there should be some further consideration if we're using those same standards for an appeal under these program specific metrics. I think perhaps we should look more carefully at the grad rate requirement in that appeal.

MR. RAMIREZ: Okay, thank you. Ahmad.

MR. SHAWWAL: Ahmad here. Philosophically I can understand the idea that we ought to let the accreditors do their job. And I feel like a lot of people agree with that.

And to that effect I would support a requirement that the accreditors ought to be
notified if these benchmarks are not met. And I'm curious if anyone disagrees with that.

MR. RAMIREZ: Daniel.

MR. ELKINS: I second that. I think that that's absolutely a necessity. I think that should a program essentially not meet both of these benchmarks, then I think that there should be an automatic notification to the accreditor.

MR. RAMIREZ: Johnson.

MR. TYLER: I just want to revisit an idea, people, for the last time, last session, which was a letter of credit. And if it was specific to the program it might address what Marc was talking about, if there are 100 programs, and only two programs that are having problems.

The Department of Education wouldn't have to get involved in looking at those programs. It would just be an assessment of what the potential tax payer hit would be on those failing programs.

We have, the idea here is we are now
having two metrics that will look at gainful employment and repayment rates. If you fail both of those you're in a bad place from both a borrower's perspective, and from a tax payer's perspective.

And that might be a way to let the marketplace better police some of the bad apples here.

MR. RAMIREZ: Sandy.

MS. SARGE: This is Sandy. To Kelly and Neal's point, I agree. I just read through the standards on which you would win an economic disadvantage appeal.

And I agree that it would be very, very difficult, especially if you were to count, look at years of the Great Recession where people weren't getting employed. That would be another piece of it.

So, perhaps for the sake of this we would define economically disadvantaged, or underserved maybe would be a better word. And that we say that, we leave it at the 70 percent,
or whatever the standard is. It might say two-thirds.

So 67, if 67 percent of your students are receiving more than half the level of Pell eligibility you would be considered serving an underserved or economically disadvantaged group. And therefore, this. And leave off, for sake of what's the next steps. Leave off the completion and placement.

At that point, not that those aren't out there, and accreditors look at those, et cetera. But just to move through this discussion. That would be one of them.

And then to Mark's point earlier, with regard to the volume that we're thinking about here, I agree with that as well. This will be difficult.

So, when you're looking at whole numbers, and not in context of a comparison, so therefore, percentages, you could end up in just this untenable situation for yourself.

So maybe, to Mark's point, we add
something that says, and is equal to some percentage of the student population of that school, or number of, or percentage of programs offered.

So, if you're at a school like Pamela's at, two programs out of 10,000 programs, or 1,000 programs may not be very many. And it may not represent a large percentage of her students. So, overall they're okay.

It may mean that they have to go on because of their accreditor, and look at other things. Or they may want to sit as an administration team and say, do we really want to be offering this? Are we the best group? But it's a very, very tiny population that we impact.

Two out of another school, like Jessica's, that could be 100 percent of her students, right, if two of them are failing. So, that would be a much different response.

So, numbers are always better if it's compared to something. So, utilizing percentages at that point might be valuable. Thank you.
MR. RAMIREZ: Laura, then Tony.

MS. METUNE: Laura Metune for the record. I've been thinking about where to insert this comment. And I was going to wait until Issue Paper 2. But I'm so confused about which direction we're going, I'll just say it now.

I'm really disheartened by this idea that colleges that serve low income students should not have to meet an outcome standard. I think the purpose of financial aid is to be an equalizer, and to give underserved student populations the opportunity for upward mobility.

And I don't think that we should be looking at eliminating programs that primarily serve low income students from that same expectation. So, I just say that broadly.

And then, I do want to say that I support continuing program level data. I realize there will be some administrative burden there. And I realize that the sanctions have been largely eliminated. But I do think this data can be valuable to states, to system offices, and
ideally to institutions too.

I hope that we all come to this wanting to know whether or not our programs are really serving students. And if they're not, wanting to make changes to make sure that they do. Thanks.

MR. RAMIREZ: Thank you. Tony.

MR. MIRANDO: Thank you. This is Tony. Try to keep this short. So, I appreciate that the accreditors should be brought into this conversation. Institutions that have bad D/E or bad replacement rates.

If you remember, back in Session 1 one of the concerns that I had was that if we're going to use these rates, then the metrics should be metrics that effectively show whether or not we have a good program.

And I think if we continue to use the rates that I'm hearing that we're using, and originally agreed that we could go down this route, because I thought we were going to have the second tier, that you could still have good
performing programs, providing students great
gainful employment.

But because of the metrics that are
being used for both D/E and repayment rates, that
good schools are going to get penalized. And so,
I just think that, again, we need to really look
and be focused on, what are we trying to
accomplish?

And I can say from my 1,300 plus
schools, which it appears that you all are going
to be sending me information about these schools,
I'm going to be very uneasy about requiring them
to provide more information, when I'm looking at
them already and saying, well, I think these are
good schools, providing great programs.

But because of the metrics that are
being used on them, they're getting this negative
outcome.

MR. RAMIREZ: Okay. Thank you.

Whitney.

MS. BARKLEY-DENNEY: Yes. I just
wanted to follow-up on what Sandy said. Because
I think it's actually a pretty powerful point, which is, you know, I first of all, just stipulating that I'm concerned about the idea of letting any one program, even if it only enrolls ten borrowers, to fail, and continue to fail without sanction.

But I do think if we're going to be looking at, you know, one program versus two program, we do need to be considering the percentage of students who are enrolled.

Because certainly that might be more reflective of the institution as a whole, and of the performance of those programs if, you know, they account for 50 percent of borrowers who are actually enrolled in the school.

MR. RAMIREZ: All right. I know that, from the conversation that we were having here there was quite a few ideas that surfaced. And then, also even on the chart that was shared with us. There were a couple of modifications or clarifications to the chart.

And let me ask you all. How do you
feel, as far as the conversation on sanctions, knowing that we're probably going to have to make some revisions to the language that was already proposed, based on what we just heard here?

Do we want to give the Department some time? Maybe we could put this back on the agenda for tomorrow, and then go on to the next paper after lunch? Sound okay to everyone?

All right. So, we'll take 90 minutes -- Jennifer, do you have something on that?

MS. BLUM: Well, I mean, we only did one paragraph of the paper.

MR. RAMIREZ: Okay.

MS. BLUM: And, I mean, it was a good conversation. But there are other pages, and other -- I mean, I know, I see Steve nodding his head in agreement. But the notification language and, I mean, there is, there are other issues in the Issue Paper.

MR. MARTIN: Yes. I don't mind, Javier, if they want to continue, you know, discussing it.
MR. RAMIREZ: Okay.

MR. MARTIN: We're not going to be able to get new language together tonight, I don't think. So, I would rather actually hear a more holistic discussion of it before we go back. One thing we do have to do that was very remiss about this morning was, we have our data person, Sarah Hake (phonetic), who's been waiting patiently in the back for me to probably bring this up, when I haven't.

We should have her come up and discuss the data papers with you. So, I think I'd like to start with that after lunch. Take a hiatus from this, and then have a discussion of that. Then come back to the Issue Paper 4.

MR. MARTIN: All right, 90 minutes.

(Whereupon, the above-entitled matter went off the record.)

MR. RAMIREZ: All right, so just a quick announcement. The -- at the end of the day, as far as security goes, we are asking that as soon as we conclude that folks gather stuff so
that way the escorts could get you out of the building as quick as possible. So no hanging around. But then the other thing is, I understand that some of you discovered the cafeteria on the seventh floor. We are being asked that that remain for the employees. I think part of the issue is that this is a building that's also shared with ICE and there's security concerns. So, escorts would have to take you to the seventh floor as well. But they are asking that we just keep that as -- for the employees. So if anyone has to get anything, we have to go outside and -- and grab that.

So I guess a note for tomorrow as well, right? Make sure you come with your Camelbacks and be fully hydrated. All right, so as far as logistics, that's all I have for now. And then we are going to start off with some of the data.

(Pause.)

MR. RAMIREZ: Okay, Greg (phonetic), we are ready.
PARTICIPANT: Okay, welcome back. Hope you found some place to eat and I hope it was not quite as circuitous as the route I had to take to find something. We made our way to this cafeteria which -- just felt like something from the Lord of the Rings. You need to have a number of different interpretations before you get there. But anyway, but before we continue with Issued Paper 4, I -- I had intended to have Sarah come up a little earlier this morning and I had neglected to do that. So I am going to have Sarah Hake come up and discuss a couple things with you, including this paper we just handed out on repayment recalculation. So if she'd be kind enough to join us, I will move over.

MS. HAKE (phonetic): Good afternoon, everyone. It is good to see all of you again. So I wanted to start out with a couple of items. After the previous Neg Reg, we did go back and investigated the MOU and looked at it. And I got a copy and read it for myself. As a result of that, we have started investigating whether
there's anything we could do before the existing MOU expires. We are also in discussions about future MOUs and our ability to match with the new MOUs. So relative to data requests, we did receive a few data requests. But we have very few data scientists here at the Department. And incredibly limited resources. And there's also an intensive data validation process, and so unfortunately we are not able to bring any data to the table today.

So in lieu of that, I thought that because we were contemplating adding repayment rate, that it would be good to have a discussion about how one might set thresholds on repayment rate information and, generally, how in the realm of mathematics and statistics the different methods work for identifying outliers. And, sort of, an honest discussion about what are some of the pros and cons of each of them. So one of the most common ways is using box plots. Before we get into that intensively -- because that sort of is the meat of what I am talking about there
-- if you would turn over to the back and look at the bottom of page two, there are other ways to do this. And I have heard a lot of people at the table talk about setting it at, you know, the mean minus two standard deviations -- or at a particular percentile within the data.

So the difficulty with that is that you are, by definition, saying that your population has outliers. Because if you use the mean minus two standard deviations, you then have four percent of your population with a lower repayment rate than that threshold. And so you are defining the bottom four percent of repayment rate as outliers. And so that's -- to me, is a concern because it could be that in other -- in other mathematical or statistical methods, they might not be identified as outliers. And what I heard really clearly during the last meeting from you guys was that you really wanted a way to identify, in your own words, the bad actors. And so I am not sure that that necessarily gets you to where you want to go, but I think it's one of
the valid ways that statisticians do use to identify outliers in process control settings and in other environments, okay?

Another method is using statistical tests. And when I had information, I did include some references there to the literature -- or to the people who developed those methods. The ones that are sort of recommended are cited below. But with statistical tests relative to outliers, what you usually end up with in the test is, does my data contain outliers or not? Yes or no? Which doesn't really help us in this context, right? Does our data have outliers, yes or no? Okay, now what? Yes, we have outliers. Right? Or, no, we don't have outliers.

Or you could test, does my data have -- my data contains five outliers -- yes or no? You can set an upper threshold and test for how many outliers you think there are, but you're still assuming that there's outliers. And so, if what you're trying to do is actually pinpoint where are the outliers given the distribution of
the data, my recommendation is box plots. So let's go back and talk about them. And before we go too far in, there are some open questions where -- when -- we welcome your input, but where we would have to make some decisions around how we do it, or how we group it. So let's just talk through some of those. And I want you to think about it as we talk about box plots.

So, should outliers be identified at, say, the individual CIP and level? So for example, I can't even think of it. Someone give me an example of that. A CIP and a level.

(Simultaneous speaking.)

PARTICIPANT: Zero-one-zero-one, computer science.

MS. HAKE: Okay, so 11.0101, and what would be the level? Like what would make -- a bachelor degree relative to, say, a CISCO certificate or something with the same CIP code?

PARTICIPANT: Sure.

MS. HAKE: Okay -- all right, does that help, sort of? So, if we were to group at
CIP code and level, you would have differences between CIPs and also between levels. So theoretically, right, then we're just talking about the different options that could be done — knowing we have to make choices. So in that situation, theoretically there could be a different threshold for bachelor's, computer science, than there might be for a certificate IT program than a master's degree computer science program, okay? So that's one option. Another options is throw the entire population of all programs into the pot, and run one threshold, right, that applies to everybody? Regardless of your program type or what area it's in or what level it is, okay? And I am not advocating for one or the other. I want you to think about which one you think is most appropriate. Okay?

Other ways that we could do it would be trying to find demographically matched student populations, or other ways of grouping the data where we see statistical significance, or statistically significant differences where when
you do that kind of research, we usually ask people, well, where do you think the differences are? And then we test and see, you know, is there a statistically significant difference if we separate the population there? Or in that way? Okay? So those are some of the decisions we would have to make if we were to use box plots and a repayment rate metric trying to set a threshold in this way. So that's question -- open question number 1, okay?

Open question number 2, we've sort of already covered, how should thresholds be selected? Well, there's lots of different methods. And I am going to talk about box plots. But if other people feel strongly about a different method for identifying outliers, we welcome that discussion. And I would be interested in what your thoughts are. The third is how frequently should thresholds be reassessed? So if we are using a mathematical or a statistical method, and we compute them, would you want us to compute them on that year's data
so that you wouldn't necessarily know what the thresholds are before you are held to them? Or would you rather we set them on last year's data and then you would know what the thresholds are for the next year's data? Or would you rather you set them, say, once and say that if we need to set them -- based off of drastic changes in the economy or things like that, that we would reassess in those sorts of situations?

So there's different ways to do that and different ways that those are handled in different circumstances. And I think we'd be open to that, knowing that if you want us to do it every single year, it will probably cost us money. So -- because there's more work to doing it every year. But that doesn't mean that if you -- you know, like, if it really needs to happen, we'll probably find a way to do it. I can't -- I shouldn't commit anything, sorry.

But I think that -- that sort of is where that question is. How often do you think, knowing your own industry, we reasonably would
want to reassess them? My experience with these sorts of things is that when you set a threshold, and you start paying attention to who is above the threshold and who is below the threshold, that behavior changes. And then you see -- you know, and it takes time, right? Particularly when you're only computing once a year. But that behavior does change. And that -- you know, theoretically, that could be one of the goals of this group is to change that behavior and to try and identify the bad actors and either make them better or make them go away -- however you want to think about that. And when you set a threshold, agencies and institutions are likely to start acting against that threshold. So that's another thing to think about also when you think about how often should we consider reassessing thresholds?

The last one is how should we make the methods and thresholds available to the public? There's lots and lots and lots of ways to do that. But think about what kinds of information
would you want to know about the thresholds? Right? How would you like us to tell you? How would you like us, not just to tell you, but to make that information available to other constituents in the public or general people who are, you know, surfing the web?

Okay, so let's talk about box plots. Box plots were developed by Tukey, and it's a method for looking at the distribution of data. And we talked some about these last time. Erin (phonetic), can I get you to go to the previous page? The image on the previous screen? Perfect. So I may actually take the walking microphone and go and point up at the screen.

Are we working? Okay, so you guys are all going to get a little glimpse into my previous career as a high school math teacher. Okay, so when you construct a box plot, imagine the first thing a student would do would be to draw -- like, this is the number line, and it's going vertically, which isn't necessarily the way we think about it normally. That's the way this
one has been drawn. So there's a number line going vertically and zero somewhere. Infinity is up there. The negative infinity is down there, okay? And then you just draw a whole bunch of dots on their number line.

Then they compute where is the mean? And the mean is here. They compute where's the median, which is the middle number, which is here. They compute, where is the line where I have 25 percent of my dots below it? That's here. Where's the line where 25 percent of my dots are above it? Or, 75 percent of my dots are below it? That's here. So the median is splitting at 50 percent of the dots. And the 75th percentile is splitting where there's 25 percent of the dots above, and 75 percent below. Okay?

So the box, then, has the middle 50 percent of the data. Okay? And we call that the interquartile range, or IQR for short. And then how do we draw -- these are called whiskers because they look like little kitty cats.
Okay, so this actually represents a dot. So the threshold, theoretically -- and the way it normally would be done when trying to identify outliers -- is you would put the threshold at -- if you're looking for a lower threshold, right, it would be the 25th percentile, or the 1st quartile, minus one-and-a-half times the interquartile range, which falls here, right? And it's a dotted line because you don't usually see it in the box-and-whisker graphs. The upper one is here. So what is that?

That means, like, you take this distance and you multiply it by one-and-a-half. So there's one. There's a half. That's your threshold, okay?

Well, why is this drawn here? That's the dot that's as close to the lower fence as exists in the data, but that doesn't go below the lower fence. Okay? So this represents a real piece of data in your data set, okay? So this one only has upper dots. But Erin, if you would move to the next page. We've already covered how I don't have real data for you, okay? No
throwing spit wads. So I created synthetic data, and I made a bunch of assumptions. One, I assumed the data are normally distributed, just so we could talk about it. And I assumed that the median -- no, sorry -- I assumed that the mean repayment rate was 46-percent, which is roughly where it falls for all institutions. And then -- so that we didn't have a whole lot above 100 and a whole lot below 100 -- I think what the paper says, as I assumed, either 12 -- or 15-percent standard deviation.

And then I had SAS draw me a picture. Those of you who have not used SAS before, it is an analytic software. You're required to cite it, so that's there. Okay. So, using these data, we do have -- and you can see them -- two outliers, okay? And notice that dotted line where the threshold got set is not graphed. Okay? It's not here, it's somewhere in between this dot and this line, okay? Let me pause. Are there questions?

(No audible response.)
MS. HAKE: You mean I made sense to everybody? That's marvelous.

PARTICIPANT: I have a question, actually.

MS. HAKE: Okay, yes.

PARTICIPANT: Sorry, I had to ask other people just to make sure I wasn't the only one not understanding this. Why are we talking about this? Are we -- is this, like, for the purposes of what the student disclosure would look like?

MS. HAKE: Right. So, relative to repayment rate, how might we set a threshold for repayment rate that would be valid and useful and stand up in court? Okay? So would not be determined to be arbitrarily -- arbitrary and capricious, right? But that would be data driven and based upon the actual situation -- and meaningful to this situation.

All right. All right, good. Are we all on the same page again? Anyone need me to go back and reexplain something? Yes?
MS. SARGE: So, this is Sandy. So when you said that -- just that least piece where you said here's the line -- so that's where the minimum observation is? And then the dots are falling below. And you're saying, basically, the lower fence is not on this? Is that right?

MS. HAKE: Exactly. So you -- when you usually draw box plots, you don't draw that lower fence.

MS. SARGE: Don't do the -- got it.

MS. HAKE: But that's why I included that first picture, because I think for the purposes of discussion, that's important to realize -- where that might fall. And it could be on this one that it's really close to that line. Or it could be really close to that dot, but we don't really know, right? Obviously, we'd need to tell you where it would -- where it is, okay? Yes?

PARTICIPANT: So the idea of this is that we'd basically be setting the threshold
around the place where the outliers are? Is that
the rationale?

MS. HAKE: So you are -- you would be
setting a threshold based off of the distribution
of the data. And so, if the data are very
centrally clumped, right, with just a couple of
outliers -- like, maybe just that one and just
these two, your whiskers might be much shorter,
but that doesn't move where those are located.
So what it's looking for are those that are
statistically different from the rest of the
population -- and so much so that they are one-
and-a-half times farther from the middle 50
percent of the data than everyone else.

PARTICIPANT: Sorry, I am still
confused.

MS. HAKE: That's okay.

PARTICIPANT: So you set -- what I
guess I am asking, is, the reason why you
pictured the number of 1.5-times farther from the
central -- from the mean and median and the
interquartile range is because that shows us what
outliers are? Is that right?

MS. HAKE: Yes, and -- so, 1.5 is sort of the industry-standard in statistics for one layer of fence. There is another one for really, really, really extreme outliers, which is three times the interquartile range. But that sort of is standard. If we had been doing this for a really long time and we had lots and lots of data, we could assess where maybe a different value might fall. And in industries where their data behaved really differently than all the other industries, sometimes they do that. But this is the standard. And so I showed this one because that is sort of what you find in all the text books as the recommendation. Yes?

PARTICIPANT: So, again, the lines you have at the top and the bottom -- the little ones -- those represent the maximum observation below the upper fence?

MS. HAKE: Exactly.

PARTICIPANT: And the one on the bottom is the lower --
(Pause.)

MS. HAKE: The minimum observation above the lower fence.

PARTICIPANT: Above the lower fence.

MS. HAKE: Yes. Yes, Jordan had his hand up first. Sorry.

PARTICIPANT: Jordan, give it a -- I'm sorry. Go ahead, Mike.

PARTICIPANT: I might have just missed your answer to Whitney, but can you explain again where the 1.5 comes from? It's --

MS. HAKE: So, if this is the middle 50 percent of your data, well, it comes from Tukey, who is the man who developed box plots. But at that (telephonic interference) all of the literature, Jordan, but from sort of the why behind that. The idea is that this tells you about how spread the middle 50 percent of the data is. Okay? And then, if you multiply that by 1.5, you are essentially saying that you're going -- you're taking the spread of that and you're going 1.5 times farther out from that
middle 50 percent of the data than your central spread.

PARTICIPANT: I think -- is it working now? No. It's shorting again. So I guess what I am wondering about is just whether there's a justification for 1.5 that Tukey gives? Or if -- if that's kind of a good number in -- under some, like, circumstances? Like, given some distribution of the underlying data. Or -- or whether that's, you know, in essence just kind of a rule of thumb that exists in the -- the literature that was applied to a particular instance, which may or may not be well justified in this case? Just if you could give any more background.

MS. HAKE: Thank you. Yes, sure. So it is the rule of thumb. I read Tukey ten years ago, so I don't remember. But we certainly could go back and see what Tukey used as his justification. I do know it gets used across industries. So I used it at the Census Bureau when I was doing the economic census. I used it
in Food Safety when I was doing some clustering stuff with the CDC. So I am not saying it necessarily is the perfect number, but given the fact that we don't have the data in front of us, I figured for the purposes of discussion we would use the rule of thumb. Okay? But if you -- if you have data that would support a different number get used, we certainly would welcome that and would be interested in seeing it. Okay?

PARTICIPANT: So my question is actually a little bit for Steve. Remind me -- about eight or ten years ago the Department invested in a 35-percent repayment rate that didn't pass some standard. And was it because it -- there was a median and then it chose an amount away from the median and that's what this group has to stay away from? Just so you can direct us a little bit? Because the Department did the research on this and has already addressed it.

MR. FINLEY: So what the court said is -- is that the repayment rate was struck in the
first GE (phonetic) regulations because we failed in the final rule to provide an adequate justification for setting it where we did. And if you look at the regulation, I think the only justification you might even find working backwards would be what we had included in the REA (phonetic) which kind of came up with a suggestion that about 25 percent of the programs might have failed that threshold.

PARTICIPANT: So it was kind of the bottom-up approach -- the lowest performing program is just by saying the 25 percent are the lowest performing? That -- that was defined as arbitrary? Just so we understand what we can't do.

MR. FINLEY: Right. And it was the failure to provide the explanation for how we came up with that rate.

PARTICIPANT: Sorry, I think I am not more confused than I was at the beginning of that conversation. So basically what you're saying is, we could come up with that, we would just
have to justify it to a greater extent than it was justified in the last -- in the rule that was struck down. Is that right?

PARTICIPANT: So there's two things, right, of -- the first prong is, you want to be able to explain -- we want, very much, to be able to explain the justification for whatever rate we select now. And the other thing is the context is also probably significant since this is not the kind of sanction that was at issue before. And it was an integral component of preserving eligibility that was removed.

PARTICIPANT: So, I am sorry, just one more for myself. So it is not that you set it up, like, the bottom 25 percent of performers. It's that that wasn't explained well enough, or justified well enough. So we could theoretically set it there, we would just have to justify and explain it better than it was done previously. I'm not -- I don't know if that's possible or not, but I am just asking if that's the distinction that you are making.
PARTICIPANT: Yes, that is the challenge.

PARTICIPANT: Mark, did you have something?

(No audible response.)

PARTICIPANT: Jennifer?

PARTICIPANT: This one is also for Steven, I think. Can you remind me on debt-to-earnings back in the -- and I know they never really got to it, if I remember correctly, in the court decision, but I can't remember that for sure. But the thought occurred to me as I was listening to this -- and obviously I have already said this morning that before we get to sanctions we -- there ought to be some consideration of whether it's the norm to be, you know, below a benchmark. Or, you know, if it's a norm for a particular program. So I appreciate the good work here and it's certainly helpful. But of course the thought did occur to of, how come we wouldn't do this for the debt to earnings one too to understand what debt to earnings looks
like on -- on a norm basis? Like, why is this conversation just around loan -- I mean, I get the lawsuit reason. But from a policy standpoint, why wouldn't this be relevant for looking at debt to earnings as well?

MR. FINLEY: So there are different ways you can substantiate using a threshold. And we used -- we relied on recommendations in the literature for setting the debt to earnings levels. And that -- the courts have consistently upheld that as being an appropriate thing to rely upon.

MS. HAKE: I would add that I did read that research recently. And it relied upon loan-based standards -- so, standards in the loan industry. And -- that were created by actuaries and I, you know, the court probably rightly said why should we redo the work of all of the actuaries in the United States? But yes, that -- that's the reason behind it. We have looked for similar things in repayment rate and we haven't found them. But if someone else has and
you'd like to provide us a citation, we would be interested in seeing that as well. Okay? So we are not opposed to setting one based off of peer-reviewed literature either.

PARTICIPANT: Johnson?

MR. TYLER: Hello, Johnson here. So -- just so I understand the chart here. So is the -- the group that we might want to identify as bad apples is below the bottom whisker? So it's somewhere around the 14th percentile?

MS. HAKE: Well, that was all fake, made-up data. But yes, in my fake, made-up, magical world, yes. Okay? And another piece to sort of think about as you're thinking about some of the other open questions is that when you have a really large population and you run one box plot against all of them, you are likely to identify fewer outliers, or a lower proportion of the population as outliers, than if you group it into, say, 20 different groups and run 20 different box plots, each with their own thresholds. You're likely to identify a higher
proportion of the population in that situation. Generally, the way box plots work is that the smaller the population against which you are drawing a box plot, the higher the likelihood is that you will identify outliers and more outliers. So that's just one thing to think about.

PARTICIPANT: Okay. Tim and then Sandy.

MR. POWERS: I am sorry, I am just having a little bit of a hard time grasping the numbers. So could we just walk through what I -- I think I have it, but could we just walk through what would be --

MS. HAKE: Sure, absolutely.

MR. POWERS: Again, using fake data, fake numbers. So let's say your 25th percentile is 80, your median is 90.

MS. HAKE: Is 80?

MR. POWERS: Just -- just -- yes, yes. Is just the number 80.

MS. HAKE: Yes, yes. Okay.
MR. POWERS: Your median is 90 and your 75th-percentile is 100. So 80, 90, 100. So that would be -- it would be your Q1, so your 25th percentile, 80, minus 1.5 times your interquartile range. Your interquartile range being 20.

MS. HAKE: Yes.

MR. POWERS: 100 minus 80. So -- sorry.

MS. HAKE: No.

MR. POWERS: 1.5 times 20, which is 30, would be subtracted from 80.

MS. HAKE: Exactly.

MR. POWERS: Meaning that anything south of 50 would be your outlier.

MS. HAKE: You've got it.

MR. POWERS: Okay.

MS. HAKE: Good job.

MR. POWERS: Thank you.

(Laughter.)

(Applause.)

PARTICIPANT: Tim gets a star.
MR. POWERS: I think I got it. Okay, I appreciate that. Thank you.

MS. HAKE: Absolutely. Thank you for walking us through an example.

PARTICIPANT: Oh, I am sorry. Sandy and then Chad.

MS. SARGE: I am going reserve because I have to -- I got so engrossed, that I --

PARTICIPANT: Chad.

MR. MUNTZ: Chad Muntz. So I get that you're using a statistical method, which I applaud. And you're asking ideas from other industries. So just out of curiosity, what is a repayment rate that would cause a business to not exist anymore? Like, if 10 percent of their customers didn't pay, would they go out? Is there another industry like that? When does the Federal Government -- when would they break? If they had 10 percent -- 20 percent not repaid? What?

MS. HAKE: You would need to ask somebody in the Treasury Department that
question. But I -- I hear your point. Yes, I don't know the answer to it, though.

PARTICIPANT: Sandy?

MS. SARGE: Okay, I remember now. This is Sandy. All right, Sarah, so -- so when you were going through -- if we have a broader definition of the group, you -- your point is we would have fewer outliers because you're covering a bigger proportion of them in essence, right? And if we go tighter, we could theoretically end up with everybody almost appearing like an outlier at first. It would seem very scattered.

But the way, then, you would put your box around it would catch a bunch of them. Right? Because you do have to put a box around the scatter of dots. So if you were -- so if you had CIP code -- six-digit CIP code and level, they may be kind of all over the place. But then you would put the 50 percent around it, right? Of where they would end up -- and then still get outliers? So it's really balancing that. It's balancing how precise do we want to be in the
definition of the group, versus what we lose by becoming a little less specific and therefore maybe missing some of those that are truly outliers and deemed -- and would be deemed bad players, potentially.

MS. HAKE: Yes, yes.

MS. SARGE: Okay.

MS. HAKE: It's a choice to be made.

MS. SARGE: Right, okay. Got it.

MS. HAKE: I did -- I forgot to mention something. Because you're setting -- in -- in this example, you would be setting thresholds statistically or mathematically, right? So there may be a situation where you would get a negative percentage, right? Which doesn't really jive with common sense. So, our proposal might be that we would decide in any cases where it was a negative number, that we set it at zero. But that's something to be aware of and think about as well.

PARTICIPANT: Mark, are you back in the queue here? Okay, Mark and then Tony.
MR. MCKENZIE: So, I am following up on the other metric. And this may be for Steve more than you. If -- I am a believe that the 8-percent debt to earnings is going to be -- is going to prove to be too broad and affect too many institutions. Do we know, was the bound research only identifying 8 and 12 as appropriate metrics? Or was it a range in between? I just don't remember.

MR. FINLEY: Yes, I don't recall either, I am sorry.

MR. MCKENZIE: But theoretically, if that happens and we conclude 8 percent is inappropriate, we could use this similar approach to debt to earnings, as Jennifer said, so that we have a -- a, I guess, equal approach to the two metrics?

(Pause.)

PARTICIPANT: Could you use your mic?

MS. HAKE: Yes, so I was saying I've reread the bound (phonetic) research before the first session. So this was obviously in
December. But if I recall that paper concludes with sort of a, what we would see now as kind of an income-based repayment chart. And so the 8 percent is based off of a certain -- a certain salary that you make. So it actually moves up and down a scale, depending on the salary that somebody makes, with eight percent kind of being where -- right where the mean is.

PARTICIPANT: So you're interpreting, though, that the Department would have -- the research would give the Department some flexibility to move it? And be considered rational by the court?

MS. HAKE: So I haven't read it in-depth enough to make -- or, recently enough to make a decision on that. But I will say that majority of folks, if you look at the earnings post-graduation from a GE program fall in the 8-percent or lower threshold of what she recommends.

PARTICIPANT: Okay, Tony, Jordan and then Johnson.
MR. MIRANDO: Okay, I have gotten a little -- I have gotten more confused, now. When you -- the last thing you mentioned -- I think you saw my face, I was kind of like I had question to ask. And I want to get -- I've tried not to pay attention too much of what everybody said between that time because I didn't want to forget what I was going to ask you.

(Laughter.)

MR. MIRANDO: So, can you go through that last little piece again where you say if you go with the one group it's less specific? And -- can you go through that again one more time? Because I think I understood, but I am not positive.

MS. HAKE: Right. So if you throw everyone together in one set of data, there's --

MR. MIRANDO: And I apologize -- and this is -- for question number one. So this is when you were first explaining to us that we can do this in two different ways, or maybe three different ways.
MS. HAKE: Right, yes.

MR. MIRANDO: So that's what you were explaining? Okay, go ahead.

MS. HAKE: Right. So if you throw it all together, you likely will identify some outliers, just like we do on the board behind us. But you've got a lot of data. And when you have that much data, you're going to have a fair amount of variation, which is going to make your box larger, which is likely going to make your whiskers larger, but will certainly make your fences larger. Okay? If you start breaking it down into smaller groups of data, you might pull out a set of, say, 100 where there is just a lot of variation. And -- or, where you have, like -- what did I say, 100? Where it's really central, but, like, maybe 10 of them are behaving really differently than the others. And those 10 might all be identified as outliers. Whereas, if they were smushed in with the rest of the, I don't know, 100,000 -- I am making up numbers,
right? They likely would all get mishmashed in with potentially the middle 50 percent. But that's -- that's one argument for identifying populations that behave differently from each other, and doing it in meaningful ways. So it could go either way.

MR. MIRANDO: So -- if I may?

PARTICIPANT: Yes, go ahead.

MR. MIRANDO: So -- just so that I can get some clarity in my own brain, which -- not saying too much, but -- so there's a benefit to having the larger group only because the spread is a lot bigger?

MS. HAKE: So, I think it depends on what your goal is, right?

MR. MIRANDO: Okay.

MS. HAKE: Yes.

MR. MIRANDO: But if you -- what you're saying is that if you go with a smaller group, which is -- let's say a group that I accredit, could be a group that's either here or here on the bigger chart. And so then you're
getting more specific to your group of people, which could be beneficial or not beneficial. But again, it's more specific to your people.

    MS. HAKE: Right.

    MR. MIRANDO: Okay. That's what I just needed to understand.

    MS. HAKE: Exactly.

(Pause.)

    MS. HAKE: Right, could go either way.

    MR. MIRANDO: And that's fine, I just wanted to understand.

    MS. HAKE: Absolutely.

    MR. MIRANDO: The smaller the group that's specific to a specific program could range, is what you're trying to say?

    MS. HAKE: Right.

    MR. MIRANDO: So an IT group versus a cosmetology group could go -- if we put them all together, it would be a larger scale. But that scale, for let's say, the cosmetologist may be up here, which now gets spread out in the full group versus mixing it into the puzzle -- mixing it
into the whole pie.

MS. HAKE: Yes, exactly.

MR. MIRANDO: I think I understand it, thank you.

MS. HAKE: Okay, good.

PARTICIPANT: Okay, Jordan, Johnson and then Chad.

MR. MATSUDAIRA: So I -- I guess, just one question that I have is whether we want to get into some of the substance of how the metrics should be defined in -- you know whether this kind of -- thank you. In whether this kind of more relative metric as opposed to, like, setting an absolute standard -- whether that's preferable in the overall scheme of things? Or whether we should just focus on the -- understanding the details of the analysis that had been presented? So just a question -- I have a question about the latter, and then a lot of things to say about the former part of that question.
The -- the thing that I have to say about the latter is just, you know, I suspect this parameter of, like, 1.5 interquartile ranges away from the 25th or 75th percentile is a method is -- is a pretty arbitrary kind of multiple to use. And it might be, you know, kind of accepted as a standard in some cases, but I -- I just wonder about the applicability here. Just to get -- and I worry that here, it sets up a very conservative standard for identifying outliers. And I just wanted to make sure that I'm, like, thinking about it the right way. So if the underlying distribution is normal, then you can kind of figure out what fraction of observations should fall more than 1.5 interquartile ranges below the 25th percentile. And I think it's about 0.4 percent. So 4 out of 1,000 programs -- the bottom 4 out of 1,000 programs would be the ones that would be targeted. And I imagine that if we look at the distribution of repayment rates, you know, we would think that there's still quite a bit of really low and absolute
level repayment rates above that, kind of, 0.4th percentile in the distribution that don't strike us as good outcomes for students. So -- so I worry that it's overly conservative. But just as a check on my math, did -- did you say there are 1,000 programs here? And is it -- am I eyeballing it right to say that there are about -- are there two that are below the bottom whisker?

MS. HAKE: There are two. They were randomly generated. And if I remember correctly, I generated 1,000 random numbers. But I am not -- I don't remember exactly, sorry.

MR. MATSUDAIRA: And maybe -- are there six dots above? I just can't quite make out the graph from --

MS. HAKE: Maybe.

MR. MATSUDAIRA: So my concern is just that it -- it's, like, overly conservative. So like in this example, only 2 out of 1,000 -- the bottom 2 out of 1,000 judged as failing. So just, my general comment about the former part of
this, about whether this is a desirable way to go
-- determining outliers just purely in a
relative sense -- has to do with just, you know,
when we divorce this from kind of some norm
about, like, an absolute level of repayment being
a really bad outcome, then I worry that we can
have just a lot of programs being deemed
acceptable because they're not outliers in the
distribution even though they're really low
overall.

PARTICIPANT: Okay -

MS. HAKE: Yes, so just playing
devil's advocate -- because I hear your
argument, right? But this is what mathematicians
and scientists do, is one person presents one
side of the argument and then someone plays
devil's advocate, so we're -- it may not be my
actual perspective on the issue. But the other
side of that is, theoretically, if you throw
everyone together into one distribution, and you
create one threshold -- theoretically it is
possible that a particular CIP and level, all of
those programs would fall below the threshold. And is that something that you want to do?

PARTICIPANT: (Inaudible.)

MS. HAKE: So -- or, right. Or, for

a certain demographic, or however you decide to
group them. So that's the other side of that
argument. Okay?

PARTICIPANT: I totally agree. And --
and, you know, I think one thing that a lot of
people would endorse is, if we have the data,
we'd get a sense for whether that's a real issue
or not. You know, earlier, Todd in response to a
question was saying, you know, if there's a -- a
-- some program out there with a 50-percent
default rate, that program ought to be shuttered.

I mean, that reflects some kind of absolute
sense that there is some level in absolute terms
that's just, you know, not acceptable.

If we have a program where nobody is
repaying their loans, you know, that feels like
that should be unacceptable. So I worry about
just giving up -- like, entirely punting on any
sense of kind of absolute acceptability in the rule.

PARTICIPANT: Let me get Chad and them Mark.

MR. MUNTZ: This is Chad. So just a question, I guess. How many groups would we look at for this measure? And would it be a different group for each program? Would we do it by demographics? Would we do it by sectors? I mean, kind of -- what would you think about with this? I mean, we've all along been moving towards one standard. Now this sounds like we might be introducing multiple standards.

MS. HAKE: So I think, actually, that's one of my questions to you guys. If it were me sitting on my sofa with my cup of cocoa and my kitty can on my lap with my slippers on, my answer would be, well, let's let the data decide. Because I am a mathematician and I would look for statistically significant differences, and that would be my groups. But you guys have the opportunity to make some of these decisions.
And -- and so, we welcome your thoughts on how you think we should approach that problem. If you think we should approach it with my kitty cat and cocoa method, then -- then that certainly is something we'd want you to express. If you think we should do it differently, or look at the problem entirely differently -- I mean, I've heard Jordan's thoughts on it. And -- and I will take them back. But we really -- we are open to your thoughts. This is meant to be sort of a discussion. We want you to understand the different possibilities. And the one that to me seemed like it would be the most fruitful is the one I've talked you through. But that doesn't mean that that has to be decision that this group makes if you come to consensus.

PARTICIPANT: Let me get Mark and then Jennifer.

MR. McKENZIE: Actually, it's for both Department and for Jordan. I recall -- because we have looked at this now twice. Once, GE-1, when there was a 35-percent rate. Then the
second time in (unintelligible) Defense when there was a 50-percent rate. What I recall from looking at the data both times was that there was a clear and direct correlation between percentage of Pell students served and repayment rates, with the proportion being inverse. So, all I would say is, is in my mind, to approve an appropriate repayment rate -- and I think there's much less research around this -- there's no way to avoid the issue of student demographics. And so, I am going to hold. But at some point, I think I am going to throw out, again -- even though I propose putting the repayment rates in, I brought the recent data on student default -- where it's about a little over half a million, and I actually believe this group, if we consider this, the research is much more robust. It may be much easier to come up with an absolute number.

And, if we move to this, it meets one other requirement I think of good policy, which is the rule, institutions could have -- could undertake actions that positively impact
students. Whereas, with repayment rates -- and I do want to address this -- I am -- I am of the belief, especially with low-income students, there is almost nothing an institution can do to affect the outcome. So you had a little conversation about when a data comes out, there's something you can do. But in my mind, for low-income students, I am choosing a non-amortizing repayment plan is often the right thing for them. And therefore, you'd have a regulation that's almost at odds with what's sometimes right for students. And I am happy to have discussion on it, but at some point I am going to ask the group to formally look at this. Because I actually think, if this group looked at -- this is the Department of Education recent release on three or (unintelligible) default rates. And I actually think we could come up with a policy that lowered the number of people that default in the United States by a significant amount.

PARTICIPANT: Jennifer?

PARTICIPANT: So I am harking back
again to -- a lot of us have been at this for a long time. So I am thinking about Gainful 1 and I am thinking about the fact that the Department had a year where they disclosed data before they, you know, sort of -- and of course, then the court came in. But -- but the idea of -- and again, I am sort of looking at Steve for a confirmation on this. But if I remember correctly, there was a year of published data that was not -- you -- nobody was really subject. It wasn't -- it was not year one, if you will, of the -- and -- and I again, this goes back to something I said this morning, too, and I keep sort of saying, which is I feel hard-pressed to sit here and create a threshold, even on a -- even with this good work on data that we don't have. So if it's the kitty cat scenario, perhaps, I just think that there's a strong argument for getting the data -- releasing -- I am not suggesting it be hidden or anything. But in terms of the sanctioned piece, and in terms of the -- understanding what a benchmark is, it
feels like we ought to know what the data looks like and then be able to make -- and when I say we, it might not be -- be the Department, probably -- but there could be language written in about figuring out, you know, what those benchmarks should be.

But it -- it feels really difficult -- and if my mother were alive, she'd say I can't believe my daughter is sitting at the table doing anything mathematical because that doesn't work. She was a math major, and I wasn't. So I just feel like this is something where it's a -- we are little hard pressed to make those types of decisions about, you know, is it by CIP code that we want to create benchmarks? Is it by demographics that we want to create -- I think it's hard without understanding the data and having it in front of us. And so, I just do, I hearken back a little bit to that year one of GE where we all had the data and it was helpful to have that. Of course, and then it stalled out, but -- but it was helpful.
MS. HAKE: And I -- I hear your concern. This is the situation we're in. And we don't have the data at the table. And so to the extent that you could provide guidance or thoughts, we would appreciate it. But I -- I hear your concern.

PARTICIPANT: Let me get Laura and then Todd.

MS. METUNE: Laura Metune. I want to agree with Jennifer, that it's really hard to do this without having data in front of us. And so I guess all I can do is provide feedback conceptually on the policy that you're seeking. And so, in my mind, when I look at this document about the process by which any sort of action might someday ever be taken, I think -- if the argument for why the current GE metrics are insufficient is because they don't calculate things like income that's not claimed for tax purposes, then it seems like -- and you have to fail that in order to even have this checked, wouldn't -- shouldn't we not be looking at the
people who also fail at the very lowest levels of repayment? Shouldn't that somehow be made up for by the fact that there's some level of income that they're getting that's not being claimed on their taxes? So I just sort of make that point because I'm also not somebody who should ever be allowed to look at math. But it just -- principally, it seems that it's a little bit backwards and that we shouldn't be saying if you're at the bottom of one, you also have to be at the bottom of the other in order to ever, someday, have a sanction.

MS. HAKE: So I think the idea behind adding repayment rate is that debt to earnings and repayment rate in the data that we have available to us are not correlated. And so when you have one measure and you fail one measure, if you apply or make it possible to pass under a different measure that is not correlated, you're measuring a different behavior, for lack of a better word. Okay? And so there may be situations -- and I have been in one. I just
told you guys earlier that I was a high school math teacher. And there are a lot of teachers out there that have high debt to earnings. But I didn't meet a teacher I worked with who wasn't able to repay his or her loans. So I think that's sort of the thought process behind this. And now, whether you agree or not -- or whether you have a different reason for considering repayment, rate -- and folks may have really different reasons for why you want to include different things, but that's one. As I was sort of thinking about it, I could see that from my own previous career as one way that my school might have been able to protect themselves. And I certainly got a good education. Just -- you know.

PARTICIPANT: Thank you. All right, let me get Todd then Johnson.

MR. JONES: This is one of those instances where we are in a less than ideal position for rulemaking because the lack of data makes the decision about whether to have an
absolute standard one that is, in some ways, foreclosed. I would love to have some sort of useful, absolute standard -- even if there were multiple absolute standards -- because that would be based on data we know and it would be based on some reasonably identifiable criteria for what constitutes harm or a problem that we can make a judgment. But, we are big boys and girls and there really isn't that option here. And we have to make a choice. And I am going to say, guardedly, I think this is unfortunately one of those situations where this is the -- I don't want to say least bad because it makes it sound like this is a problematic option.

But the last comment you made touches on one of the appeals in my mind of this. And that is, we have a problem with certain -- for -- we have a problem for purposes of this conversation with certain forms of employment in this country that are traditionally low wage or low entry wage. Teaching, because of how contracts are negotiated, is not helpful for
those who are in their first years of teaching, but aside from the personal reward it is richly rewarding at the back end with pensions and with long tenure in teaching. Theology and being -- spreading the Word of God as you know it -- is not a highly compensated position. But there is other ways that debt is relieved or supported in many cases. Social work is another one which is a desperately needed occupation but is not high compensation, but it has some of the similar characteristics, once you have some experience, of teaching in that -- in telling you have a job.

The value of this structure makes the calculation relative for types of education that gets us beyond the limitations of an absolute standard calculation that would inherently have -- when we don't know how that will affect particular kinds of work that we know to exist and that are socially valuable. So, for my mind, this is -- I -- I mean, I don't embrace it because I know with certainty this is going to be
a great working standard. I share some of
Jordan's concerns that there will be those who
are not within it. On the flip side, it's far
more likely to withstand judicial scrutiny from
an arbitrariness standard because we are adopting
something that is relative to data that is
currently unknown going forward. And we could
revisit this in a few years, or the Department
can, when data is known.

MS. HAKE: Are there any more
questions about math before I hand it back over
to Greg?

PARTICIPANT: Yes, I think Johnson has
one, right?

MR. TYLER: Yes, I have a math
question. So if -- if that box is really big --
because that's where 50 percent of all the
scores are -- then that whisker's going to be
outside -- it could be below zero, right? And
so this could not work out.

MS. HAKE: So my -- my suggestion
would be that if the lower fence is negative,
that we would set it at zero.

MR. TYLER: So -- so --

MS. HAKE: Because it is a mathematical calculation.

MR. TYLER: But no one will have a zero -- I don't think anyone has a zero repayment rate. I mean, I am pretty sure no one has a zero because I have looked at the data. It is not that bad. It is like, you know, people have 0.05 percent. But no one has zero.

PARTICIPANT: But, Johnson, if that happens the whole box would be low, theoretically. The whole box would be saying that everybody is not above a certain percentage of repayment. So, you know, remember that too. It moves in conjunction with where the mean and median is and where the box is. So if we are getting that low, everybody is pretty low. And so we have to rethink what is really -- what is really the standards? Maybe only two percent at that particular time in the history of the world would be appropriate. So, it moves in
conjunction. We have to keep minding that.

MS. HAKE: Did I answer your math question? Okay.

PARTICIPANT: Okay, I think that's it, then. Thank you, Sarah, I appreciate your time.

MS. HAKE: My pleasure.

PARTICIPANT: Okay, so a question I have for the group then is that was interesting information as well as dialogue. Did you want to continue on this one? Or did you want to go to the -- continue where we were at as far as sanctions go?

PARTICIPANT: I just want to point out before we make that decision that we will be talking about the -- Issued Paper 3 does have a discussion of the repayment rate. So with what Sarah talked about, maybe we should talk about that in context of Issued Paper 3.

PARTICIPANT: Okay.

PARTICIPANT: That may make more sense.

PARTICIPANT: All right, then -- then
let's do this. Let's take quick, ten-minute break. And then let's come back in and then we will pick back up with sanctions.

(Whereupon, the above-entitled matter briefly went off the record.)

MR. RAMIREZ: All right. So we're going to go ahead and pick back up with sanctions. And where we left off before lunch was with 668.16, where the Department will look at that and make a few little tweaks based on some of the discussion we had and reviewing that flow chart.

So the next area is 668.409. And let's see if we could focus on (a)(1) and (2) and see if we can make some tweaks or see what we need to do in order to make that one acceptable and move on to the next section. Sanctions, Issue Paper 2. And it's really top of page 3.

PARTICIPANT: Four.

MR. MARTIN: Okay. Well, before we get started I just want to thank Sara for coming up here and doing -- that was very nice. And as somebody mentioned, I think it was Jennifer, I wish she had been my math teacher. I had an algebra teacher who's way of teaching algebra was to kick your chair every time you couldn't answer a question.

(Laughter.)

MR. MARTIN: And that was arguably somewhat less effective. It was the 1970s. He was a huge man, and he wore clogs. It was the strangest thing.

(Laughter.)

MR. MARTIN: And he was a very angry person. I just remember every time he asked me a question, I just froze and, bam, my whole -- because the chair was hooked to the desk and it was --

MR. RAMIREZ: Greg, it sounded like you had your chair kicked a lot.

MR. MARTIN: Yes, it was a very
triggering event and that's why to this day I --
the math is -- I would have been like Sara, but
for that man.

(Laughter.)

MR. MARTIN: So I went down the
literary path. The English teacher didn't kick
anything, so that's why.

(Laughter.)

MR. MARTIN: Yes, so, okay. I
digress.

So we're looking at 668.409. Starts
at the bottom of page 2 in Issue Paper 4. Going
over to the top, this is the -- just pointing out
the notice of determination. The only thing
that's different here is the addition of the
Secretary, "For each award year for which the
Secretary calculates D/E rates and a loan
repayment rate for an undergraduate program, the
Secretary issues a notice of determination
informing the institution of the D/E rates." And
it gives you the appropriate area for how that's
calculated and also the final loan repayment
rate, which we'll go over after this paper, which is in 406. And the final determination by the Secretary as to whether the program meets benchmarks or does not meet benchmarks.

And then we move down to No. 3, whether the institution is required to -- to require notifications under 668.410. And we talk about the effective date of the Secretary's final determination.

So I guess we'll entertain any comments on those two areas before we move on.

MR. RAMIREZ: Is there anything controversial in those, or is that something that the groups feels that they could approve and move on?

(No audible response.)

MR. RAMIREZ: So let's see a show of thumbs of if the group is okay with (a) and (b) under 668.409. The top of page 3. Actually it's pretty much all of page 3 and then the top of page 4.

So let's see a show of thumbs if
everyone's okay with that language.

(Show of thumbs.)

PARTICIPANT: I've got four up, and I don't see any down.


Greg, what's the next section?

MR. MARTIN: The next section would be 410, 668.410. This talks about the notifications for programs that did not meet the benchmarks. You'll note that we did change "low-performing" to "benchmark" there. And for any area in which an undergraduate educational program is determined to not meet the benchmark under the D/E rates and loan repayment measure, the institution must provide a notification to students and prospective students. You'll see there the content of the notification. So unless otherwise specified we can -- you can look at that under (b).

What the notification must state and
the way that language is worded is, "The performance of this program is below standards established by the U.S. Department of Education regarding the debt-to-income ratios and loan repayment performance of prior graduates. The Department based these standards on the amount students borrow for enrollment in this program, and -- excuse me -- earnings that were reported to the Internal Revenue Service. These graduates are not making sufficient payments to actively pay down the balance of the loans. Students should take into account when selecting a program for enrollment or determining how much they should borrow to complete the program based on likely earnings upon completion.

And then I do want us to consider as part of this as well in (2) right below that, an institution if appropriate may include the following notification: "Please note, however, that the institution believes the earnings may be affected by a significant number of students who completed our program and did not report all
their income, such as tip income, or who were self-employed and had business expenses that reduced the earnings being reported, or who selected to work in part-time or -- to work part-time or take time out of the workforce, including care for dependents or other family members;" and an institution may also include: "The institution believes that the data here may not reflect the earnings potential in your geographic location because the institution enrolls students nationally and wages can vary significantly from one part of the country to the other."

MR. RAMIREZ: Okay. So, again, just focusing on 668.410, starting at the top of page 4 to the middle, I guess, of page 5, looks like we have a few comments there. So we'll start off with Jennifer, Laura, then Whitney.

PARTICIPANT: So one, just I guess I would qualify it as sort of technical, the Department in its language flips a little bit back into the word "standards" and not "benchmarks," and so I feel like one thing that
the Department ought to consider is that when -- instead of -- if you're going with the word "benchmark," then be consistent with the word "benchmark," because you used the word "standards" in a couple of places. And so I think just for ease of understanding I would be consistent. It's either standards or it's bench -- but you should pick one. And I think it sounds like it's benchmark. So that was one just sort of grammatical, if you will.

And the other one is actually sort of along the same lines. But on top of page 5 I'm a little bit concerned about "these graduates are not making sufficient" -- some of them will be. It's a percentile. So I was thinking along the lines of could you say; and I'm just really grasping here, but, "an insufficient number of graduates are making payments to actively pay down," or something that -- it's not all graduates. Some of the graduates will -- I mean, on the loan repayment rate in particular. It's like somebody -- I mean, unless it's really,
really bad. But, so it's just not completely accurate to say "these graduates." So I feel like there needs to be a little bit more clarity around that sentence.

And "actively pay down" is actually a little bit controversial because you can be sort of in active repayment and not satisfy. We'll get that -- we'll get to that in the calculation section, but you can be in active repayment and not necessarily -- I mean, in my view, you can be in good standing with your repayment and not be in positive -- in the numerator under -- so I'm a little bit concerned about the word "actively" paying.

And then finally, I would suggest at the end of that same sentence, the one that's highlighted the "these graduates," I would put a comma and say something along the lines of "according to the Department's established benchmarks," especially if you're going to leave it as "these graduates."

MR. RAMIREZ: Okay. So can I -- let's
go ahead and make sure that we're capturing your suggestions up there so we could take a look at that.

PARTICIPANT: So the most important one is actually at the end of the sentence in my view. It's the adding a comma and saying "according to the Department's established benchmarks," because it's based -- it's judged based on the Department. And there will be some graduates who are making payments, so that's why I think the last -- that clause at the end -- if you don't do anything else, the clause at the end of saying "according to the Department's established benchmarks" makes sense.

MR. RAMIREZ: Okay. So --

PARTICIPANT: We don't know what the threshold is.

MR. RAMIREZ: So, Jennifer, does that capture it accurately, the changes up there on the board?

PARTICIPANT: You have to -- it's now a double-negative, so you have to say -- I think
it would be "an insufficient number of graduates are making payments." And you could say "sufficient." I guess you could keep the "sufficient." "Are making sufficient payments."

And then I guess I'm throwing it out there for conversation, this "actively pay." I think "actively" is kind of a trip word.

MR. RAMIREZ: And what would be the recommendation there?

PARTICIPANT: I mean, you could just leave it as "an insufficient number of graduates are making sufficient payments to actively pay down the balance of their student loans according to the Department's established benchmarks."

PARTICIPANT: So these -- in the first few years they're repaying their loan?

PARTICIPANT: I mean, you could do that, too. Again, I sort of -- I mean, I purposely didn't like come up with the exact language because I thought that this was a good sentence for conversation, but those are the -- the last clause, like I said, is the most
important to me.

MR. RAMIREZ: Yes, I know there are some people in the queue, but let's see if we could -- no, Mark, go ahead stay there if you have a suggestion on this sentence.

PARTICIPANT: I think this reflects what is out there, especially from the scorecard:
"More than 50 percent of the students in repayment are not reducing the principal on their loans over a five-year period." I believe that is factually accurate.

MR. RAMIREZ: More than --

PARTICIPANT: But we haven't established 50 percent as the threshold here, so that's why -- I mean, this is meant to be -- right, this is meant to be according to whatever benchmarks yet to be established, which is part of the reason why I'm hesitating on what the language should be, because we don't quite know, you know, but --

MR. RAMIREZ: Yes, let me get Sandy then, then Whitney.
MS. SARGE: So where she has "an insufficient number of" maybe we say "this indicates that a number of graduates are not making sufficient payment to actively pay down."

Take out the first part. Start the sentence with, "This indicates that a number of graduates are not making sufficient payments to actively blah, blah, blah."

MR. RAMIREZ: Whitney, you had a question on that?

MS. BARKLEY-DENNEY: Yes, I have a technical question. When we're discussing a repayment rate, are we discussing graduates or all borrowers in the program?

PARTICIPANT: All borrowers. It's not limited to graduates.

MS. BARKLEY-DENNEY: So therefore it should not be "this indicates that a number of graduates." It should be "this indicates that a number of borrowers borrowing for this program."

PARTICIPANT: That's good. Can I respond to that?
MR. RAMIREZ: Yes.

PARTICIPANT: So actually -- so, Whitney, I have the same thought, because the problem with this -- there's a little bit of a problem with this paragraph in that the paragraph is tying debt to earnings to and loan repayment together.

And so it's a little bit of a problem. So I hear you and I agree with you, but it's also a little bit of a problem because the debt to earnings is complete or -- so right. So that's the -- there's a little bit of -- it's a little messy.

PARTICIPANT: Had we determined that the loan repayment is on all borrowers as opposed to just the graduates?

(Simultaneous speaking.)

PARTICIPANT: You make a good point. And it's true, I think that's an omission here that -- because we -- this language was originally key to debt to earnings. And so with the addition of the repayment metric the
notification language is -- has I don't think been sufficiently tweaked to deal with the fact that it could be repayment as well. It's key to debt to earnings. So we're going to have to take a look at that.

PARTICIPANT: I mean, it could be something like "this indicates that a number of those" -- I don't want to say like examined, but I mean some way to say that we're talking about the class that we looked at, whether they were graduates or not graduates.

(Simultaneous speaking.)

MR. MARTIN: I mean, in thinking about the way that the chart works, so if you have a program that fails; and, Steve, correct me if I'm reasoning incorrectly here -- but if you have a program that fails, that does not meet the benchmark for debt to earnings and then met the benchmark for repayment rate, you wouldn't get here, right? So you're only going to get here if you have a program that -- and you wouldn't get here either if you had a program that didn't meet
the benchmark for repayment rate, but did meet the benchmark for D/E. So you're only going to get here if you have a below-the-benchmark on both.

So I don't think it's technically incorrect because you're still -- you're just referencing one -- you're referencing the one metric. And I don't think it's incorrect because if you got to this point, this would be the case. It's just that it doesn't reference the -- it doesn't reference the other metric which the program also failed to meet the benchmarks on.

Would that be accurate, Steve?

MR. FINLEY: Yes, I mean, Greg's right. I mean, the other -- the anomaly here is if that's the only required disclosure, there are other programs that won't be required to make that disclosure for which that statement would also be true, right? It would be the programs that didn't meet the standard, meet this benchmark but they did in turn not meet the repayment rate requirement either.
MR. MARTIN: Well, I guess our question would be to the group would it be necessary then to say something beyond this, that not only did they not meet this, but there are repayment rate --

MS. SARGE: I have a suggestion.

MR. MARTIN: That is there though, yes. I don't know.

MR. RAMIREZ: Yes, Sandy, you have an idea on that?

MS. SARGE: I think that the point is a good one. It's almost like we need two sentences. So the first part of it says, "The Department based these standards on the amounts students borrowed for enrollment in this program. The earnings that were reported" --

MR. RAMIREZ: I'm sorry, Sandy. Where are you reading off of?

MS. SARGE: I'm sorry, the end -- the bottom of page 4. The earnings. So first we're talking about basically the components of D/E reported to the IRS. We could finish this little
piece right here before the "Students should take into account."

MR. RAMIREZ: On the top of page 5?

MS. SARGE: On the top of page 5. "This indicates that students may not" -- I'm trying to say find employment that would sufficiently allow them to pay down their debt that they borrowed. So it's really sticking with employment, you know, the income that they're going to make in that and then say, "In addition, the amount of debt borrowed by students," you know, the loan repayment. Have it two different sentences, in essence. Finish the thought about debt to earning and then speak separately about the loan.

PARTICIPANT: I think that line where we kind of just --

MS. SARGE: Yes.

PARTICIPANT: -- kind of both concepts are there, but they kind of get amalgamated together and not clarified. So I think we can take a look at that and clean that up.
MR. RAMIREZ: Okay. So then the Department will take a shot at cleaning up that piece.

And let me just back up before we continue on with the queue, because we do have Laura, Whitney, Sandy, and Jeff. But Jennifer had raised the clarification of replacing "standards" for "benchmark." Is everyone okay with that? Let me see a show of thumbs if everyone's okay with replacing "standards" with "benchmark."

(Show of thumbs.)

MR. RAMIREZ: Okay. Laura, what's your thinking on that?

MS. METUNE: My general comment was going to be about the usefulness of the term "benchmark" when I think about my teenager reading a disclosure, but --

PARTICIPANT: Yes, so let me just be clear that I'm not a big fan of actually the term "benchmark" either. My point was though stick -- like if that's the direction the Department's
going, then use that term --

MR. RAMIREZ: Use it for consistency.

PARTICIPANT: -- or use standards, but be consistent. But I actually --

PARTICIPANT: So are we voting on consistency? I'm all for consistency.

MR. RAMIREZ: Yes, that --

PARTICIPANT: Right. That's what I thought we were --

MR. RAMIREZ: Yes, that's --

PARTICIPANT: -- that's what I wanted --

MR. RAMIREZ: -- that's what I understood that Jennifer was saying, that there were some inconsistencies in the terminology. There was flip-flopping back and forth on the two. Pick one. Stick with it.

PARTICIPANT: That's what I was saying. So I was all about consistency. I'm actually kind of with you on the term "benchmark."

MR. RAMIREZ: Bob, you have a thought
on that?

MR. JONES: Yes, I think earlier today Jeff raised the issue of changing this to — away from either of those words to averages: above average, average, and below average. And I think those terms communicate much better to both students and other people about what's going on here.

When you're saying students in this program are having difficulty paying their loans back below the averages of other people, or earnings, or below the average of what would be expected in this field. And especially since we're aligning this now as more of a disclosure model, then I think saying -- using that kind of language is much more descriptive.

MR. RAMIREZ: Any thoughts on that? Johnson?

MR. TYLER: Yes, with all due respect I think average and below average -- they're too kind to the schools, frankly, that aren't serving the students. A lot of my clients, if you said
"benchmark" to them would not know what you're talking about. And then to just say "below average," a lot of their lives are already very below average. I'm not sure that's a warning sign.

And I think that's what the original idea was here: fail, red. I remember Dan mentioned that. Department of Veterans Affairs has a red sign for things. I mean, I think it has to be a warning, not soft-pedaling. You've already failed two metrics here, if we ever figure out what the metrics are. But we already have a safeguard in the second metric. So --

MR. RAMIREZ: Any other thoughts on that? Sandy?

MS. SARGE: I think you're right, Johnson, when you say "below average, above average," it does -- can get muddied. That's everybody's interpretation. But if we say "the average established by the Department," or something along that -- we're more specific, I think we could clear some of the muddiness in it
with the intent of getting somewhere we could be close to. I think the student could -- a student could presume that the Department is trying to find some -- a measure that you can say, okay, did the school fall below it or above it and come up with some thought process. So maybe just the word "the average" would help that.

MR. RAMIREZ: Johnson?

MR. TYLER: We've moved away from what a lot of us consumer advocates came here to do, which was to find a way to get rid of the bad apples, to get rid of the people who are making a lot of money off of taxpayers, at the expense of people who are not very sophisticated in their educational choices. And now to dumb -- if we're now just going to have a disclosure that's meaningless, I mean, that just is preposterous.

MR. RAMIREZ: All right. So I want to try to -- what I'm trying to do is seeing if we could give some additional guidance to the Department to -- when they're going to clean this up a bit. What's the terminology that would be
— stand a greater chance of being accepted?

And so there was both "benchmark" and "standards," and we heard the "above average" and "below average," but the feeling that it may be too soft. Is "standards" the word, or is there another term that folks could agree to?

Whitney?

MS. BARKLEY-DENNEY: Yes, I like the "standards" term. I think that everybody understands what meeting a standard or not meeting a standard is. And my concern with averages is just that that's not really what we're doing. I mean, yes, if we put "the average" in front it, it would make a little bit more sense, but just from a perspective of what we're actually doing around the table here we're really talking about standards and not averages.

MR. RAMIREZ: Let me see a show of thumbs for "standards," the terminology "standards."

(Show of thumbs.)

PARTICIPANT: There's one down.
MR. RAMIREZ: All right. One down. Tony, is that down?

PARTICIPANT: Two down.

MR. RAMIREZ: Okay. And understand, really quick again, consensus is the -- and the middle could be live with. But, Bob, what's your thinking on not using "standards?"

MR. JONES: I think "standards" is at absolute contradiction with everything we're doing here. Number one, there is no standard. Number two, if we were setting standards, that would be a whole different agenda than what's happening here. It's completely misguided. The issue we're trying to do is explain to people that some programs pay off; some programs don't.

If we want to get rid of bad actors, that comes under the program review role of the Department to take action on people who are in trouble, not this process. So I think we have to be very clear about what we're setting out to do and use language that communicates the fact. And we are not communicating a standard, let me tell
you.

MR. RAMIREZ: Okay. Thank you. Tony?

MR. MIRANDO: Yes, so I feel because I said no I want to just kind of say I agree with what Roberts is saying. Just the whole issue with standards -- first of all, from a creditor's point of view, I work with standards every day, and this is very far from black and white standards. There's so much gray here.

And, again, you've heard me say this more than once, and so I feel like I'm getting crazy here, is that these metrics just are not -- they don't fit everybody. And so to say a school is not meeting a standard when indeed they may be meeting a standard is, again, I think, very confusing to a student.

And, again, I'm all about making sure students understand this. To me this -- if a student is saying, well, they don't meet a standard from the Department of Education. Wow. That really sounds serious. When indeed a school could be a great school with a great
program, but because of where the school is located the student may not be repaying back their debt and the debt to earning because of their own personal situation may not fit. How is that a standard? In my opinion it's just not a standard.

MR. RAMIREZ: All right. Someone needs to crack out a thesaurus, but -- all right. Jessica?

MS. BARRY: Yes, I just wanted to say I think where I feel confused right now is I think we're not all clear of why we're here. Are we developing some sort of metric that will eliminate bad actors, or are we developing a metric that will identify the bad actors and then let the Department do their job? And I think that -- I don't know if we need to talk about that, because it seems like we just keep coming back to that problem.

MR. RAMIREZ: Okay. Daniel?

MR. ELKINS: To the people around the table that had their thumbs down, would you care
to offer a word or phraseology that you feel comfortable with?

MR. RAMIREZ: I think Sandy -- do you have one you want to throw out?

MS. SARGE: Yes, there are several. This is Sandy. Measure, criterion, gauge, norm, example, pattern, reference. Those are just on the first page. Device.

MR. RAMIREZ: Bob --

MS. SARGE: I'm looking at a thesaurus, literally looking --

MR. RAMIREZ: Bob or Tony, you got one?

PARTICIPANT: Yes, I mean, I said -- without having a mic on, I mean, I've been saying all along metric. Below the Department of Education's metric. I mean, it explains it's their metric which could mean nothing or it could mean everything, I mean, depending on the school.

MR. RAMIREZ: Daniel?

MR. ELKINS: Can we vote on that right now?
PARTICIPANT: Below the metric? Norm?

MR. RAMIREZ: Let's see a show of thumbs for "metric."

(Show of thumbs.)

MR. RAMIREZ: What are you thinking, Laura?

MS. METUNE: I thought voting no was the way to get called on. No.

(Laughter.)

MS. METUNE: Finally. So I just think that I came to be a part of these negotiations because I believe that there are requirements that institutions should have to meet to participate in the Federal Financial Aid Program. And I think that weakening those metrics, standards, whatever we want to call them, to the point where very few people ever get sanctioned really undermines what I thought I was coming here to do in the first place.

Putting that aside, if what we're saying is that a disclosure is going to give any sort of reasonable bit of information to a
student to make a decision, these fall far short
of that. So we might disagree about whether or
not these actually evaluate something that a
student should know, but if we believe that they
do, then we -- it doesn't matter whether you call
it a standard or a metric. The school either
passed or failed. And it needs to be that simple
for a student to have it be meaningful at all to
them.

And then the other thing I was going
to add, since I have the mic, is it seems to me
that if you fail one or the other, there should
be some level of disclosure that goes to a
student. And then if you fail both, it should be
very clear to that student that now the
Department could actually take action, as limited
as it might be. But some action could happen
that could affect the viability of that program,
and the student should know that.

And then finally with regards to these
sort of -- and maybe our student -- the two and
three about students who maybe the data doesn't
incorporate their income, it just seems like I --
when we were here last time we talked about an
institutional -- an institution's responsibility
to verify that these circumstances are actually
true before they put this kind of disclosure.
And I was wondering whether or not the Department
thinks this language accomplished that goal that
was expressed last time or if they just didn't
incorporate it at all.

PARTICIPANT: I think to respond to
that when the institution makes this -- this is
an assertion they're making about their program.
And they -- if it's -- we're not going to set up
a -- I don't even know how we would do that, set
up something in advance where we would vet every
time an institution does this automatically
whether or not they had made this assertion in
earnest.

However, as with any other assertion
an institution makes, it is subject to review by
the Department. If in the context of a program
review or some other evaluation -- well, it would
certainly be, I should say, acceptable for a
reviewer to ask an institution to justify having
made that statement. So I think we have that --
we certainly have that authority. We would
expect that an institution would make this
assertion in good faith and not just be slapping
it onto every program.

But I don't know if the -- if the idea
is to have some sort of a vetting process for
that specific statement, for that specific
program every time a school uses it, I don't know
what that would be other than going back to the
-- something similar to the old appeals process,
which we very much wanted to move away from.

MS. BARKLEY-DENNEY: Can I respond to
that?

MR. RAMIREZ: Yes, go ahead, Whitney.

MS. BARKLEY-DENNEY: Thank you. So
this is Whitney. I guess I'm with Laura on this.
I mean, as somebody who drafts legislation I got
hives when I read the words "if appropriate,"
because it also doesn't give the institution very
much guidance as to when it's appropriate for
them to use this or not. And if we're not going
to be doing program reviews, then I would imagine
-- or not -- we might do program reviews, but if
we're not going to be doing appeals around this
issue, then I would imagine that "if appropriate"
needs to be fleshed out more so that institutions
know whether or not it is appropriate for them to
use this.

And maybe that's a certain -- I mean,
I hate threshold, standard, average, whatever of
borrowers who are in jobs that -- where they
would have tipped income who are graduating from
that program might be one way of working at it.
Or if they look through their numbers and a
certain threshold of them are self-employed, that
seems more appropriate than one borrower being
self-employed in that program and the other
relying on tips, which you could say, sure,
that's appropriate because we have people in this
cohort who rely on tips or rely on self-income.

So I just -- I really think this needs
to be fleshed out more if we're even going to consider it.

MR. RAMIREZ: Let me get -- let me go back here. I have Jeff, Jennifer, Tony and Sandy.

MR. ARTHUR: Yes, I just had a quick comment on the clean up of the language. I think we -- when you read it, I think when you just state they aren't repaying loans or not paying down loans, it sounds like that's pretty final. So I think you do need to identify the time frame in the first X years, some way to identify that this doesn't mean that they never do.

MR. RAMIREZ: What's the X that you think would be appropriate?

MR. ARTHUR: Whatever the rule is.

MR. RAMIREZ: I see. Okay.

MR. ARTHUR: When we decide what that is.

MR. RAMIREZ: Yes. Jennifer?

PARTICIPANT: Well, I'll keep with the theme. I think one of the reasons that where I
put my thumb sideways on standards, I actually did like Tony's of below the Department's metric, but let me just qualify that I think part of the struggle here is is that if we walk away from here either us deciding what a threshold -- what the metrics are, what the metric amount is, or the Department later on decides what the metric amount is on their own for each of them, then I think "below the Department's metric" makes sense, because we don't know where it fits in relative to anything else.

If, as I have been saying, there were a framework where the Department took for a year, or maybe more, but a year and took the data and then did understand where different programs fit in relative to other programs, then I think you can get into a conversation about standards and benchmarks because then it is a comparative model where there is sort of a quote/unquote "standard."

But without understanding what it is relative to anything else, if the Department's
just going to set -- or I shouldn't say the --
but if there's just going to be a metric set,
then I actually think Tony's makes some sense,
because it's just a fact-based statement. It's
below the metric established by the Department
without judging where it is relative to anything
else. That's I think the quandary right now.

I hear Laura and I'm with Laura
actually on the I thought we were creating some
sort of a -- you know, I don't even want to use
the word "standard" or "threshold," but without
understanding where it is relative to anything
else, I think it's hard to use those words.

MR. RAMIREZ: Okay. Tony?

MR. MIRANDO: Thank you. So, yes, I
absolutely agree with you, Laura. I listened to
what you said and I agree that's what we're here
for, but when I hear the word "standard," I
associate that with something that's going to
work for everyone. It's a standard. It's a
standard for which everybody can live by, and in
this case this metric is not a standard for which
everyone can live by. So it's "the Department's" -- and maybe another word you might want to look at is maybe "established criteria." So it's "the Department's established criteria."

And so it's another alternative word, but the word "standard" just has a strong connotation to it that just turns my stomach upside down, especially since I know that this established criteria doesn't work for this sector of schools that I accredit, and I know they're good accredited schools and they do provide a great education to a lot of inner city schools. And these students don't necessarily fit this.

And so I just -- I have a hard time with that one, but I do -- we are here for -- to get the bad apples out, and I agree with Johnson we've got to do that, but this doesn't get to it as written.

MR. RAMIREZ: So I have Ahmad, Johnson, Bob, and Daniel.

MR. SHAWWAL: Ahmad. I would push back a little bit on saying it's above or below
metric or a threshold, because depending on how you do the calculation who knows if it's good to be below the threshold or if it's good -- or if it's bad to be below the threshold. I'm not sure what the disclosure language is currently. It might be helpful to say, hey, this passes or fails this metric as defined by the Department of Education. And you could include language that says these are metrics which the Department believes to be a -- I don't want to say "effective," but effective measure of program outcomes.

So maybe go a little bit more in depth as to -- so that students have an idea of where these metrics are coming from rather than just saying it passes or fails. So you could add in something like "this passes or fails a certain metric which we have established on our own which we believe to be indicative of X, Y, and Z." So that way students don't perceive it as an objective, pass or fail objective indicator of the quality of a program's outcomes.

MR. TYLER: Yes, I'm kind of beating a dead horse here, but I think if "pass" and "fail" are words that people understand and whatever you want to call it, a standard, a metric, whatever it's modifying, that -- those should be the verbs, because if we're going to have a disclosure statement, if that is what the administration wants, equal playing fields for for-profits and non-profits and all these institutions where the better entity comes out at the end, people need to understand what's being said. So pass or fail, that gets people's attention.

MR. RAMIREZ: Bob?

MR. JONES: Yes, I think probably we're all basically in agreement around whether it's "metric" or some language like this, but I want to go back and repeat that I think the system we're here today talking about is not the regulatory solve. It is the disclosure to
everyone of performance and where people are, where the schools are, so that students can make decisions.

Now whether or not the lowest performing institution is actually failing or in fact they're -- it's a very good program but the students are not succeeding well because of the culinary market or this market or where they live or something else, that's a determination the department has to make in the management process, not made by this process here.

So that's why we argue I believe for language that's more descriptive. I want to make a clear statement to the student that says students in this program are having difficulty paying back their loans. Students in this program are not earning as much over time to pay their loans as other people are. And we have to be that clear. And I think "metric" is a fine way to get there.

MR. RAMIREZ: Daniel?

MR. ELKINS: I was curious if the
people who put their thumbs down for "metric" could offer maybe a potential alternative?

PARTICIPANT: For the record we like "benchmark."

PARTICIPANT: What about voting on "benchmark as established by the Department of Education?"

PARTICIPANT: It's not about that -- that's not the word that matters. It's the did you pass or fail it is the piece that we're arguing over. Or did you go above or below? So I think that's where the disagreement is. It's not actually about "metric" or "benchmark" or "standard" as much.

MR. RAMIREZ: Yes, Sandy?

MS. SARGE: This is Sandy. The last time we were here we had a lot of discussion about this concept of what does the words "pass and fail" mean? And they're very definitive in that. This is -- to me this is an indication that there may be issues within other issues that the Department would then have a mechanism to
which they could explore and continue down their ability to -- it gives the Department an opportunity to dig deeper, which that's really what we should be using this for because of all the other reasons we've talked about.

I think if we said, "This program at this university falls below the benchmark, we deem" -- I liked your language -- "that the Department deemed to be appropriate, whatever, and further Department processes may be required," something like that. Or it would -- what I want to do is I -- this in and of itself can be explained away, right?

If we come in there, we can argue about earnings and the right and wrong about how debt and earnings are calculated and repayment, all that stuff, but if they get the ability to go in and dig deeper into a school, you're going to find other things. You're going to find things like whether or not there's a going concern paragraph in their audited financial statements.

You're going to find out whether or not their
composite score -- they're looking at the audits. You're going to go in and find out whether or not they're maintaining records appropriately. You're going to go in and investigate in a program review tell me how you gather your employment information. You're going to find out a lot more.

What this does is gives them a tool to open that box and dig deeper. But I think standing alone debt to earnings isn't going to be the one metric that's going to determine whether this program is hurting students or not. But I want to give them every opportunity to get digging.

MR. RAMIREZ: So there was -- elsewhere in the paper it talks about meets and not meets. Is that something that would be strong enough versus pass or fail? Ahmad?

MR. SHAWWAL: I mean, I was going to say -- so I'm a big fan of brevity, and I'm not sure what the disclosures look like, but I think it's totally reasonable to say something like,
hey, it passes or fails by this test that we've developed, but -- and take it with a grain of salt because not all -- like no calculation is perfect. This is what we just believe to be an indicator of such and such problems. Like, I -- is there any pushback to something like that? Like what is the current disclosure language?

PARTICIPANT: First of all, we should make a clarification here. These are not disclosures. These are notifications. What currently -- what replaced warnings. I can -- if you want the current -- you want the current language for the warning?

It states "the program has not passed the standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for this program and may have to find other ways such as private
loans to pay for the program." And that was key to the loss of -- to the current loss of program eligibility. But that's the way the warning is currently worded. So the notifications replaced warnings. Disclosures are a separate thing.

PARTICIPANT: So maybe we did a full 360 here, right?

(Laughter.)

PARTICIPANT: Pass, not pass the standards, right?

PARTICIPANT: Correct. It never said "fail." It said either -- it did not pass and then if it does not pass in the future.

MR. RAMIREZ: So let me see a show of thumbs if everyone's okay with pass or did not pass the standards.

(Show of thumbs.)

MR. RAMIREZ: Okay. So actually there's quite a few thumbs down. So did you want to add something to that?

Okay. At this point I'm going to --

PARTICIPANT: I will add what I think
David's concerns have expressed to me in the past; and feel free to jump in, but part of the issue is that if you're at -- if you end up falling in at 8.1 versus 7.9, that failing or not passing is very -- is still somewhat -- as you get in more finite with math, it -- one little thing can move you above or below that. And I think that's been part of the issues is that preciseness can be triggered by so little of a flip. One student could flip you technically. And I think that's been some of the issues of that.

MR. RAMIREZ: Okay. So what I was going to say was that at this point I think we'll let the Department take this conversation under advisement. And there's a couple of other areas that need to be cleaned up in this as well, so we'll let them clean up and then we'll take another look at this.

So before we move on to the next portion, is there anything that, Ahmad or Tony -- you're the last two left. Is there anything else
PARTICIPANT: I'm just trying to think of ideas that could lead to consensus. I don't know, maybe green, yellow, red zone. I'm not sure how effective that would be.

MR. RAMIREZ: What was that? I didn't hear that last one.

PARTICIPANT: Like having a green, yellow, and red zone.

MR. RAMIREZ: Oh.

PARTICIPANT: I'm not sure how that would play out though. I'll have to think about that.

MR. RAMIREZ: I thought we were getting rid of zones, but --

PARTICIPANT: Spaces.

MR. RAMIREZ: Okay.

(Laughter.)

MR. RAMIREZ: Tony?

MR. MIRANDO: So I have another question, but it's prior to that section, so I just want to make sure before we move on.
MR. RAMIREZ: Okay. Thank you.

MR. MIRANDO: So, yes?

PARTICIPANT: Yes.

MR. MIRANDO: Okay. So on page 4; and this is to you, Greg, I just want to make sure that I'm understanding it, and I think I do. I just want to make sure before we move on. So on page 4 under I guess it would be No. (b)(1). So the last paragraph. It says, "The notification must state that the performance of the program is below standards established by the U.S. Department of Education regarding the debt-to-income ratio and loan repayment performance of prior graduates." And that's because you have to fail both in order for the sanctions to occur, right?

MR. MARTIN: That's correct.

MR. MIRANDO: Okay. Even though it's one or the other, if you're good in them, you don't need even get to this section?

MR. MARTIN: Right.

MR. MIRANDO: Okay. I just want to
make sure I understand.

PARTICIPANT: And I think there you could just strike "of prior graduates," right? Just leave it there, "regarding debt-to-income ratios and loan repayment performance," period.

PARTICIPANT: That's true. That would answer Whitney's issue.

PARTICIPANT: Yes.

PARTICIPANT: Could you repeat that so Erin can get --

PARTICIPANT: Yes, right at -- what I was just stating, so right at the end of that sentence just take out the words "of prior graduates" and just put a period after "performance."

PARTICIPANT: It could refer to the institution, their debt-to-income ratio. I think you have to put in "graduates" or "borrowers."

PARTICIPANT: Well, it says "program."

PARTICIPANT: It does say "program" though.

PARTICIPANT: But what is a program?
I mean, we're talking about students here who are reading that.

PARTICIPANT: Well, the reason -- the only reason they were deleting "of prior graduates" is to resolve the Whitney -- Whitney's good point that some of -- that on loan repayment it's not graduates, it's all borrowers. So they were -- there was just a proposal to try to cover the -- both bases on the discrepancy that -- or not discrepancy, but the sort of issue that Whitney highlighted before that loan repayment rate is all borrowers, not just graduates. So that's the only reason they were -- I think. Not to speak for Tony and -- but I think that's the reason they were deleting it.

PARTICIPANT: But "prior borrowers" would work as well.

PARTICIPANT: I mean, it could say "borrowers." But period? Why? I'm not sure what's not clear about just ending the sentence.

PARTICIPANT: I think it needs to say that students are not doing well.
PARTICIPANT: Oh, something about this -- well, I mean, we continue --

PARTICIPANT: Yes, rather than the program.

PARTICIPANT: The performance of this program --

PARTICIPANT: Well, it continues on. I mean, the paragraph then continues on to talk about the students, so it's just an introductory sentence.

PARTICIPANT: -- students borrow based on --

(Simultaneous speaking.)

PARTICIPANT: Well, just put -- yes, just put -- how about putting "students" in the front of -- "below standards established by U.S. Department of Education regarding student debt-to-income ratios and loan repayment performance?"

PARTICIPANT: That works.

PARTICIPANT: There you go. Boom. Done.

PARTICIPANT: So you just put
"students" in front of the debt to earning.

PARTICIPANT: I like "students" better.

PARTICIPANT: Does that work?

PARTICIPANT: Is that -- you see what I'm saying, Johnson?

MR. TYLER: Yes.

PARTICIPANT: That gets to the students.

PARTICIPANT: I think I'd prefer people knowing that even if they complete the program, they may have trouble because of they've failed in this category repaying their debt.

PARTICIPANT: Then the sentence needs to be split apart completely because the loan repayment rate is not just graduates.

PARTICIPANT: I think if we say "students," everybody knows it's them. I mean, I think that would refer to anybody. They're getting this -- hopefully they're seeing this when they begin the program, so hopefully they're being positive they're going to make it through.
Its' better than having no -- nothing in there with students, because I understood what you were saying.

MR. RAMIREZ: Johnson, does that work?

MR. TYLER: I think people need to be -- I think when you put in "prior graduates;" and the debt-to-income ratio is for completers, it's not inaccurate to say that graduates, you complete this program and you're -- those people are still failing to meet these metrics. I think it's important that it be there.

PARTICIPANT: How about "regarding the debt-to-income ratios of prior graduates and loan repayment performance of the school's -- or the program's borrowers," or something like that? Then it's accurate.

PARTICIPANT: Can you say that again?

PARTICIPANT: Yes, I mean, and I'm making -- well, I'm not making it up, but I'm doing this on the fly, so it might not be the same twice. "Regarding the debt-to-income ratios of prior graduates and loan repayment performance..."
of the program's borrowers," or something like that. So then it's clear who the cohorts are for each of the metrics.

PARTICIPANT: That's fine.

PARTICIPANT: Okay.

MR. RAMIREZ: So what was the last word, performance of?

PARTICIPANT: Just qualify each section.

PARTICIPANT: Yes, "and loan repayment performance of prior borrowers."

MR. RAMIREZ: Okay. Yes, I like that.

PARTICIPANT: Does that -- I think I just made it slightly different, too, so that's why I said you're not going to get the same answer out of me twice. It's not intentional.

PARTICIPANT: Yes, I think it's up on the board. I think Erin did a good job of grabbing that.

MR. RAMIREZ: All right. Let me just see a quick show of thumbs on that revision. Is everyone okay with that? It's up on the board.
(Show of thumbs.)

MR. RAMIREZ: So, okay. I don't see any thumbs down, so it looks like we're good.

All right. And then, again, as far as those other items are concerned, the Department will take that under advisement. Then we'll move on to the next section here.

MR. MARTIN: So the -- thank you, Javier. This is Greg for the record. So we'd be looking on page 6 at (c), Alternative Languages. So we did make some revisions there. You can see that the language states, "Programs that are not taught in English or that use non-English promotional materials must provide notifications in the language of the program instruction or the promotional materials."

MR. RAMIREZ: Okay. Any questions on that one? Yes, Tony, you --

MR. MIRANDO: You forgot to say Mark before you moved to this section.

MR. RAMIREZ: Oh, Mark, go ahead.

MR. McKENZIE: Thank you. Mark
McKenzie. I was listening to the last conversation. I just want to note we spent probably 45 minutes debating the term "benchmark" versus "metric" versus "standard." We're in a third session and have a couple of days and some major, major issues. So with all due respect, I think not getting into the weeds about debating particular terminology when it's kind of irrelevant in some ways, the difference between "benchmark" and "metric" -- so I just caution us to not get into the fight with -- at that level.

The other thing in this particular thing is the concern; and I think the transition from -- in the sequencing that was given to us is that I left the last session understanding that there were these two items: the debt to earnings and the loan repayment, and if there were -- if an institution or a program failed both, then there would be a discussion to see what was going on.

In this sequence there's automatically a notification. So a notification is now going
before there's been a review or a consideration
of, okay, do these two flags actually indicate
something that needs to be -- there needs to be
some intervention? And one of the challenges
here is that -- and I think Jessica said it
earlier, is that there's a difference of opinion
in how we're -- how the groups are kind of coming
at this.

And I think it's extremely important
that there not be a lot of collateral damage in
the application of any regulation or any --
whatever set of metrics we end up agreeing to or
that the Department goes forward with. And I
think right now based on the earlier conversation
it's not even clear that the new metric is going
to be a good metric yet. It's not until the
metric's in place and has been there for a year
or two or three that you then look back and see
what the impact of that metric is going to be.

So to automatically go to something
that's going to start penalizing institutions
and/or students attending those institutions --
because it's not just the students that are attending bad institutions. If you close down a good performing institution, those students get penalized as well. Those faculty members get penalized. So there are a lot of issues at stake here and I think making sure that we're thinking about that on the front end rather than on the back end. Thanks.

MR. RAMIREZ: Okay. Thank you.

All right. So going back to (c), Alternative Languages, are there any questions on that one?

MR. MARTIN: I just want to make a point of clarification; this is Greg, regarding notifications. The notifications are not new per this session. Remember that the chart we handed out that went through the various steps that we always -- even going back to round one, our first proposal was when we proposed this as a disclosure-only regulation, that we still had disclosures and we still had notifications involved.
Now what this one does is introduce the concept of or the possibility of sanctions. That's what new. But notifications was there. The notifications don't key to any -- in and of themselves don't key to any type of action. It's just if the benchmarks are not met, then the notification is necessary. But the notification doesn't go to anything other than making the notification.

MR. RAMIREZ: Okay. Thank you.

All right. So let me see a show of thumbs for alternative languages.

(Show of thumbs.)

PARTICIPANT: I don't see any down.

MR. RAMIREZ: Okay. Yes, I don't see any thumbs down.

All right. And one of the reasons -- I want to get that one done, but one of the reasons I wasn't necessarily going back on the issue of the notifications, the flow chart, because I understand that we still have to make some tweaks to that language and there's probably
going to be some additional discussion at that point, right?

So, Greg, what's the next section?

MR. MARTIN: The next section is (d) at the bottom of page 6. That's delivery to students. And remember, this is not delivery -- I'll be honest with you, when I first got involved with GE, always with -- just keeping the disclosures and notifications separate was always a difficult thing to do because you start saying "disclosures" when you mean "notifications." So -- well, at that time it was "warnings," but we had to keep notifications and disclosures separate.

So this is delivery to students of notifications. "An institution must provide the notification required under this section to each -- in writing to each student enrolled in the program, but no later than 30 days after the date of the Secretary's notice of determination." And "Hand delivering the notification" -- by hand delivering "as a separate document or sending the
warning -- the notification rather to the primary email address used by the institution."

Again, we have, "If the institution sends the notification by email, it must ensure that the notification is the only content of the email."

And we have, "Send the notification using a different address or method of delivery if the institution receives a response that the email could not be delivered," and, "maintain records of its efforts to provide the notification required in this section."

And then we have, "Delivery to prospective students," as well. "Provide notification required in this section to each prospective student or third party acting on behalf of that student by hand-delivering as a separate document." Again, we're again "sending notification to the primary email address."

"Providing a student a copy of the disclosure that includes the notification, because remember that the notification will be, as is currently
the case with the warning, included on the disclosure template itself.

And then we have email acknowledgement. "If the institution provides the notification to the prospective student, including by providing the prospective student or third party an electronic copy of the disclosure template, the institution must ensure that the notification is the only substantive content of the email."

And then, "Send the notification using a different address or method of delivery if the initial response could not be -- initial -- rather, if the institution receives a response that the email could not be delivered."

And then finally we can look at the disclosure template. "Within 30 days of receiving notification from the Secretary that it must provide the warning, the institution must update the educational program's -- undergraduate educational program's disclosure template to provide -- to include rather the notification."
MR. RAMIREZ: Okay. So, Steve, you have a comment or a question on that?

MR. CHEMA: I do. It's Steve Chema for the record. And I get that this is going to sound like a minute detail in the grand scheme of everything we've talked about today, but for Greg or Steve, looking at the deletion of (B) and then (i) on page 7 -- so if a school does choose to communicate the notification by email and -- whether it's a student complaint or there's some reason for the Department to question whether the notification was in fact given, would the Department accept the sent email, assuming it didn't bounce back?

PARTICIPANT: Yes, that would be accurate. We'd accept the sent email without a bounce back. Part of the -- part of what we were doing here is to try to streamline and simplify the numerous --

MR. CHEMA: No, I appreciate --

PARTICIPANT: -- some of the requirements we had here.
MR. CHEMA: I very much appreciate that simply because the read receipt capability on email is so spotty. Thanks.

MR. RAMIREZ: Any other questions on delivery of notification to students, prospective students and the template? Yes, Mark?

PARTICIPANT: Yes, just one quick easy one. Under (i) should there be an "and" or an "or" at the end of that sentence?

PARTICIPANT: Could you read the sentence, please?

PARTICIPANT: Yes, so "hand delivering" --

PARTICIPANT: (Inaudible).

PARTICIPANT: No, here. Under (i). "Hand delivering the notification as a separate document to the prospective student or third party individually; or as part of a group presentation." And should there be and "and" or an "or" that (ii) and then you also have send the notification? I'm just not sure whether that's -- does that make sense?
PARTICIPANT: So if I could jump in here, because under the delivery to students there's an "or" after it in the delivery. After prospective student there is no "or." So as you -- are you talking about after the prospective students?

PARTICIPANT: Yes, mine has an "or;" his doesn't. So --

PARTICIPANT: Yes, because I think it depends if you're looking under "students" or "prospective students."

PARTICIPANT: "Prospective student or third party individually" --

PARTICIPANT: Yes.

PARTICIPANT: -- "or as part a group presentation."

PARTICIPANT: Yes.

PARTICIPANT: Because there should be something after that, correct?

PARTICIPANT: Yes, so there is an "or" under the first one under students, but there's no "or" under "prospective students."
PARTICIPANT: Ah, prospective students.

PARTICIPANT: There is -- under prospective students there is the -- the way that's worded, yes, "by hand delivering the separate document," and then there's a semicolon, "sending the notification to the primary email address for communication, or providing the prospective student with a copy of the disclosure template."

PARTICIPANT: Right, and so under prospective student under (i) I think what Mark is saying there should be an "or" at the end of the first (i) under "prospective students."

PARTICIPANT: Do they both or do they do --

PARTICIPANT: One or the other.

PARTICIPANT: You can do one or you can do this?

PARTICIPANT: Right.

PARTICIPANT: It's any of the three there, right, so --
PARTICIPANT: So then it should be "or."

PARTICIPANT: Right.

PARTICIPANT: Just the "or" is missing.

PARTICIPANT: Oh, I see. Okay. On page 7 where it says "Hand delivering?"

PARTICIPANT: Page 7.

PARTICIPANT: "Hand delivering the notification as a separate document to the prospective student or third party individually; or as part of a group presentation" --

PARTICIPANT: Or.

PARTICIPANT: -- or sending the warning to the primary address."

PARTICIPANT: Yes, that's -- well, it's just the way you read it. It's basically -- so it says, yes, "Sending the notification." And then you can do it -- so you can hand deliver. So you're giving them a list. I can hand deliver it, I can send the notification to the primary email address, or I can provide it via the
Disclosure template, right?

PARTICIPANT: They're saying that in the previous page where you had the same wording you did have an "or," so they'd like you to put the or in this one as well.

PARTICIPANT: At the bottom of page 6.

PARTICIPANT: It goes in the clause before the last one. If it's an "and," all three apply; if it's an "or," any of the three apply.

MR. RAMIREZ: Mark, does that help?

PARTICIPANT: You don't need (inaudible) from a legal standpoint?

PARTICIPANT: No. No.

MR. RAMIREZ: Okay. Then any other discussion on delivery of notification for students, prospective students or the template?

Sandy?

MS. SARGE: This is Sandy. I just have a question and to Kelly and Andrew from -- since this falls on financial aid, would this -- is 30 days adequate?

MS. MORRISSEY: I'm not sure that it
would fall in financial aid if we're talking about prospective students because we in some cases would not be in contact with them at that point in the enrollment cycle, but I think to me 30 days is adequate.

MS. SARGE: Okay.

MR. HAMMONTREE: I would agree. And this is only for those students in a program that's not meeting a benchmark. It's not for all programs. That's what we had some concerns about before is it wasn't realistic --

MS. SARGE: Okay.

MR. HAMMONTREE: -- to do -- to include all programs. But if this is only notifying students in a program that's in danger, I think it's okay.

MS. SARGE: Okay.

MR. RAMIREZ: Thank you, Andrew. All right.

PARTICIPANT: One more thing. I just want to point out that I was informed that I erroneously suggested that -- at the top of page
7, that we were keeping substantive content. And that should -- and as is -- what's there is correct. We removed "substantive" just to make it easier. It's the only content of the email.

PARTICIPANT: That makes it much clearer.

MR. RAMIREZ: All right. Let me see a show of thumbs if everyone's okay with delivery of notification to students, prospective students and the template.

    (Show of thumbs.)

MR. RAMIREZ: Okay. I am not seeing any thumbs down, so that means we're moving forward.

Okay. Thelma?

MS. ROSS: Did we define a "prospective student?"

MR. RAMIREZ: Greg?


On page 7 you'll see, if you go back
to Issue Paper 1, the definition of a "prospective student" is there. "An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in an undergraduate educational program or has been contacted directly by the institution or a third party on behalf of the institution about enrolling in a program."

MS. SARGE: So is the intent to be going forward on that? I'm sorry. I just jumped right in there, Javier. I apologize. This is Sandy.

So it would be prospective. So if something comes out, says they're not passing these rates, we have to do notification within 30 days, and it would be notification to any student that in the future either asks for information or not and any student that's currently in the system, right, student already enrolled, we'd have to give that notification. So then I think the only question would be about the students that have not yet enrolled but began the process
before this notification.

So I think the bottom line is just make sure you're letting people know. Is that your concern, Pamela?

MS. FOWLER: We had talked before about a student -- it was much broader than that. It could be the kid that was at cheerleading camp or at basketball camp or football camp when they were in the seventh grade and never had any intentions of attending the institution. That was my concern.

MR. RAMIREZ: All right. So, but with that clarification of --

MS. FOWLER: Not enrolled? MR. RAMIREZ: Yes, okay. All right. Jeff?

MR. ARTHUR: Yes, so in that regard, I mean, "first contact" is pretty broad. And I would suggest that we make this at the time of either application or expressed interest in a particular program or a first visit to a campus. There has to be some qualifier besides just, hey, here, here's a name and address of somebody
that might be interested.

(Simultaneous speaking.)

MR. RAMIREZ: All right. So --

MR. ARTHUR: You may not even know
what program they're in. And then they're in
your system. And now at some point they identify
a program. Good luck trying to figure out what
-- when that happened. When did they actually
decide on a program that you need to disclose?
Very complicated.

MR. RAMIREZ: So we have to look at
that under Issue Paper 1 under the definition of
"prospective student." Is that where we would
make that modification?

PARTICIPANT: Yes.

MR. RAMIREZ: Okay. So we'll hold off
on that for now. I think we're still okay with
the language that you all just approved. We
would have to make sure that we are clear on what
is prospective student under Issue Paper 1 then.
Correct?

(No audible response.)
MR. RAMIREZ: Okay. All right. So we have about 50 minutes left. Do we want to go back into the D/E rates?

PARTICIPANT: 5.0 or 1.5?

MR. RAMIREZ: 5.0. And we -- and actually we need a little bit of time -- make sure there's any comments in closing, but --

PARTICIPANT: Yes.

MR. RAMIREZ: We jumped into sanctions after talking about D/E rates for a little bit. So all right. Let's go ahead and continue on with D/E rates then.

MR. MARTIN: So we're going back to D/E rates. It's Issue Paper No. 2. Just give everybody a minute to go there.

(Pause.)

MR. MARTIN: I think we already read the summary of that, and just to draw your attention again to the notes at the bottom of page 1 regarding the feedback we're interested in with respect to these ideas you see listed at the bottom.
This basically talks about adding the loan repayment rate framework. And you can see starting at the top of page 2, the undergraduate educational program framework. We have debt-to-earnings rates, or D/E rates, and loan repayment rates that's been added. And noting here that for each award year and for each eligible program the Secretary is going to calculate two D/E rates: the discretionary income rate and the annual earnings rate, using the procedures in 668.404 and 405, and the loan repayment rate, which is using the procedures in 668.406.

And you see the benchmarks for D/E rates measure. And those haven't changed; so we had those last time around, so I'm not going to review those again because we know what those are.

And again, the reference at the top of page 3 that: "An undergraduate educational program is considered to meet the benchmarks under the D/E rates measure if the institution demonstrates to the Secretary it meets the
standards for economically disadvantaged appeals in 668.213, or meets the standards appeals in 668.216 for programs with thirty-or-fewer borrowers."

All right. Okay. So can entertain comments on that.

MR. RAMIREZ: Yes, Pamela?

MS. FOWLER: Actually I would like to go back to page 1 where you talk about as a comparison tool among institutions of similar size and scope and that serve a demographically matched student population. Are you looking at -- are you talking about all three of those or are you talking about any order?

MR. MARTIN: Yes, here we're soliciting -- we're just soliciting your feedback on ideas about what you think about any or all of these. So we're not necessarily committed to one or the other. We put it out there as whether -- or as to whether or not the D/E rate should be used as a comparison tool among -- to institutions with similar size/scope or those
that serve at a certain demographic and what you
think about whether or not we should pursue that,
or which of these you think would be most
effective toward that end.

MR. RAMIREZ: Okay. Kelly?

MS. MORRISSEY: This is Kelly. I
would also like to provide feedback, but on the
second point about evaluating incomes only on the
top 50 percent of students in a program. I
oppose this both philosophically and
logistically.

First of all, I'm just wondering why
we would exclude students who are maintaining
standards of satisfactory academic progress,
therefore they're allowed to receive financial
aid, receive federal loans, why we would not be
tracking their outcomes if they in fact completed
the program.

And then logistically I'm not sure how
these rates would be calculated without
additional data points being reported to the
Department in an effort to exclude those students
from the calculation.

MR. RAMIREZ: Okay. Whitney and then Jeff?

MR. MARTIN: You are -- I'll respond to that. You are correct that we would -- it would require us to get further data from institutions. I mean, there are different ways we could do it. We could possibly do it with -- through completer lists. Schools -- only including those students who were above a C, or an A or a B. That's a possibility.

I think just the theory here is that -- behind this is that -- especially for open enrollment institutions or schools that act in that way that they take -- they basically take all applicants and that there are a certain number inherent with that. There's a greater risk to those schools than perhaps you have with a more selective institution that self-selects out those kinds of students who would have more difficulty being employed or meeting higher academic standards.
MR. RAMIREZ: Okay. Whitney, Jeff, Steve, Johnson, Christina.

MS. BARKLEY-DENNEY: Yes, so my first comment, Greg, to your last point is that we're already getting to that by using, at least in the D/E rates, graduates only. I mean, those people have made it through the program. The school has deemed them competent enough to receive the certification or degree or diploma, whatever they're getting from the school. So therefore, we should believe that those people can be hired in their field.

I agree with everything else Kelly said. I thank her for raising that because I don't even know what we're considering here. Are employers asking for your grade in your mechanics class? Like I just don't understand that — if that's even something that happens when people go out into the world, or they're just looking at the diploma.

PARTICIPANT: They ask for grades.

MS. BARKLEY-DENNEY: They do ask for
your grades? Okay. Well, I've never encountered that, so that's not something I'm familiar with.

But I still think that if a school has said that someone is doing well enough to graduate from their program, then that should really be the end of the discussion.

MR. RAMIREZ: Jeff?

MR. ARTHUR: I think I've got an approach to this that may be way simpler and actually address several concerns.

We've heard a lot of concerns about pay discrimination. We've heard concerns about people that have a percentage, good percentage of people that are self-employed that doesn't get counted to Social Security wages, about people that are good -- or a good number of students receive income through tip-based income.

And I think also if you consider the academic performance, the lowest-performing -- academically performing students is -- I think if we take the salaries and just simply base the median on the 75 percent of students with the
highest salaries, we would basically eliminate and adjust for pay discrimination, self-employment, all those factors and just chop those out, all those that maybe out and put a median on the 75 percent of the highest wages. And I think it would address all of that.

MR. RAMIREZ: Johnson?

PARTICIPANT: I'm going to have to think about what Mark said. It's an intriguing idea.

PARTICIPANT: Jeff.

PARTICIPANT: I'm sorry. Jeff.

Sorry.

So I'm concerned about the end factor here. You're already -- you have completers being smaller than the group of people that enter the program. Some of these schools, there are very few completers. And if you take that end group and you divide it in half to get the top part of the class, I think you're just eliminating more data that's out there.

PARTICIPANT: That -- but, Todd, that
does then actually adjust for some of the concerns with a really low 10 n, so it would have to -- then you'd be at about a 13 n, because if the number of 75 percent represented less than 10, then I would also propose that that doesn't meet the n threshold. So you'd be adjusting the n threshold up about three.

PARTICIPANT: We'll talk off mic.

But I also I had one more point, but I can't remember what it was, so --

MR. RAMIREZ: We'll come back to you.

Steve?

MR. CHEMA: Steve Chema for the record.

Just one small reaction point to Kelly. I think while I definitely appreciate the logic behind the comparison to SAP because they both establish a metric or a baseline around a C average, I think there is a little bit of an apples and oranges application to how -- why we use SAP the way we do and looking at outcomes for graduates. Because if you think about how SAP
works, it measures touch points during a student's enrollment.

And there's a certain profile of student that a lot of you would be aware of that struggles early on in a program maybe first couple of terms, has difficulty because the GPA cumulatively is low or credits that they complete might be low, but they kept their stride and they get out of jeopardy and they graduate well above a C average. And I think SAP exists to -- it monitors how students are doing, but also to alter their behavior, give opportunity for institutions to intervene.

But if you're looking at graduates, it's done. There's no opportunity for improvement there. And I just wanted to raise that.

MR. RAMIREZ: Okay. Christina and then Sandy.

MS. WHITFIELD: I'll be really brief because a lot of my points have already been made, but I wanted to be on the record about -- I
also -- I agree that it's inappropriate to exclude half of graduates and say that somehow even though the institution has credentialed them, they're not sort of putting their full faith and credit behind the credential that the institution itself has awarded.

I also think that on the first note I understand what age -- what an age band would look like and what Pell recipients -- who Pell recipients are, but I think socioeconomic status is pretty vague and how we would define that. We would need a -- that's another can or worms entirely to bring up.

MR. RAMIREZ: Okay. Sandy?

MS. SARGE: This is Sandy. I like Jeff's idea as we talk about so many of the issues of the, yes, but what about this, what about this. And I personally dealt with probably half of those issues as a graduating -- undergraduate student. I was part time, I had kids early, I did this, I did that. So -- and I worked for tips. And we'll leave it at that.
(Laughter.)

MS. SARGE: I would say that by dropping -- I know. No. No. I was born in Mexico. I got ICE right next door. I mean, what else are we going to talk about, right?

But if we drop the -- if we drop the bottom 25 percent of those earners in the population from the Social Security and you then get a mean on the remaining 75, you eliminate mathematically some of the noise that's been down there. So that -- I -- actually I love that idea. So I'm going to go on the record for that, for the denominator.

MR. RAMIREZ: All right. Johnson, did you want to -- do you remember --

MS. TYLER: (Inaudible).

MR. RAMIREZ: Okay.

(Laughter.)

MR. RAMIREZ: Tony?

MR. MIRANDO: Yes, can you repeat what you said? Just because --

MR. ARTHUR: Yes, I said that when
you've got -- we know and we've stated concerns about pay discrimination, we've got a number of people that have interruptions to their work early in their career because of having children, you've got people who are self-employed, you've got people that work for tips and you've got a certain percentage -- and so there's a lot of issues with a percentage of students as they start their career. And we're measuring wages somewhere in the three to five years after they complete when all this is going on.

So my proposal was that if we eliminate the 25 percent of graduates with the lowest salary, that we would remove some of that noise, or a good amount of that noise, and then median the remaining wage data. And the Department could do that extremely simply by telling the SSA instead of here's the list of Social Security numbers; tell us a median, they say here's the list of Social Security numbers; tell us the median of the 75 percent of the highest wage earners in that cohort. Boom.
Done. It's done. You got it.

PARTICIPANT: (Inaudible) median or mean?

PARTICIPANT: Yes, median or mean, whatever (inaudible).

MR. ARTHUR: Median or mean. Yes, whatever it is.

MR. MIRANDO: So basically that would get -- it would take into consideration the demographics where the school is located as also -- the whole --

PARTICIPANT: (Inaudible).

MR. MIRANDO: Yes, I like that idea, too.

PARTICIPANT: Yes, geographic. I mean, there's so many things that we've expressed concerns about that that would help adjudicate a little bit.

MR. MIRANDO: Can I follow up on that?

MR. RAMIREZ: Tony, yes.

MR. MIRANDO: Yes, so how would that work for -- I mean, I could see that working for
schools that have multiple campuses, but how would that work for a single campus in a city school? How would that work for them?

MR. ARTHUR: I don't think statically it would really matter whether it was a school of 300 students in one location or 10-20,000 students with 15.

PARTICIPANT: But it would be an indicator if it didn't move it, if -- then you would go in and there would be other reasons going on. Because if your incomes in that area of all those -- in the cohort were similar, so it didn't move the needle much, that's an issue within that geographic area potentially about -- like one school came to me and said we're a welding school in the Upper Peninsula of Michigan. Our welders don't want to leave town, they don't want to leave where they grew up, but there's only two welding jobs in the whole area.

So that -- and it would be a different indicator, but what it does is it takes away some of the noise on if they're reporting fully to the
IRS or if the amount of money that's in the
denominator is a full year of earning when the
numerator is a full year of debt repayment,
right? So it kind of averages out.

It's not going to solve for
everything, but what it does is it takes away
some of the noise. You may still have problems
in socioeconomically depressed areas where
student are trying to get jobs, and that might be
something that the school then says, listen, we
have to start working on figuring out how kids
could move out of the area, get to somewhere
where they could get a good job.

PARTICIPANT: I think it's --

PARTICIPANT: Yes, and when I looked
at the top 50 percent of academic performers
proposal, I mean, that just seemed really
complicated, unworkable and data that I think a
lot of people would object to going to the
Department of Education. But yet it did bring --
it kind of prompted that thought that, well,
there is some element here that -- okay, let's
take this to a -- let's look at this a little differently.

MR. RAMIREZ: Steve then Jordan?

MR. CHEMA: Yes, I just want to ask if part of that suggestion is then that completely streamlines the notification to remove all these other hypothetical reasons that a program might not be meeting the benchmarks or the standards or the metrics, or whatever the word --

PARTICIPANT: I'd be up for that.

MR. CHEMA: -- is, right? But -- because it sounds like that's a potentially significant adjustment.

PARTICIPANT: Yes, yes. Let's -- I would be fine with removing the -- all the excuses an institution might want to put on why the median wages -- or why the debt-to-earnings calculation may not be as effective for your institution. I mean, yes, I think it would streamline a lot of things.

MR. RAMIREZ: Jordan?

MR. MATSUDAIRA: This is Jordan. So I
want to I guess just suggest that I think this idea of trying to figure out a way of kind of risk-adjusting, for lack of a better word, or of adjusting the metrics for variation in the demographic characteristics of students across programs is probably a bad idea in this context, and I think it's -- but it comes back a little bit to what the purpose is if we view the metric as really being a good proxy of the quality of the program.

So for example, like an earnings value-added divided -- like this is how much the program causally improves your earnings as a fraction of that. Then I could see a rationale for risk adjustment. But if we're still thinking about this as protecting students from incurring unsustainable amounts of debt, which is the original rationale behind the rule, then -- and this is just a question about what the goal of the regulation is now in this kind of new world, but if we're trying to protect students from incurring like an unsustainable amount of debt,
low-income students don't get to pay back less of
the debt that they borrow.

So if we do this kind of risk-
adjustment as a function of the fraction of Pell,
for example, of students in a program, that has
the impact of making the standard softer for
programs that serve more economically-
disadvantaged students. And that has the
implication that in schools that -- or programs
that serve higher fractions of Pell students
perversely we're going to allow them to
accumulate more debt as a fraction of their
income than we would otherwise. So I think it is
really counter to the original intent of the rule
of protecting students from taking on
unsustainable amounts of debt.

You know, Jeff's idea about throwing
out the bottom 25 percent, I also -- I think it's
conceivable that this addresses some of the kind
of problems in the way that you describe. We're
basically going from looking at median earnings
to looking at the 63rd percentile of earnings.
Okay? And it's conceivable that the person, the 63rd percentile across different programs looks more demographically homogenous than the median student does, but that's not necessarily true.

Okay?

We're just kind of moving up the distribution. Most of these kinds of issues about particular programs serving more disadvantaged students, it just depends on what the fraction is. If the fraction is above kind of -- if that kind of heterogeneity across programs goes from top to bottom in terms of the students; in other words, compared to students at Cornell, students at some other college, are kind of universally shifted down in the distribution, then just picking out a different point in the distribution and comparing them across different institutions isn't going to solve that problem.

So I don't -- I basically see that as just kind of picking the higher number for earnings rather than really addressing some of these problems in a fundamental way.
MR. RAMIREZ: Sandy, Neal, Tony and Jeff.

MS. SARGE: We're trying to get -- this is Sandy. We're trying to get to a place where -- I think how I'm seeing this is we want to find a balance between not punishing schools who take the risk right from the beginning of engaging in students that are otherwise not accepted at other schools for a variety of reasons, anything from the state budget to their high school academic performance. So they're -- a lot of these students are already behind the eight ball.

And you have schools that have chosen to say, well, 30 percent of high school students get into the top tier colleges or the state colleges. There's another 70 percent of students out there that may want some sort of education and now you're going to punish them, in essence.

So it's such a fine line when we're dealing with this -- we're trying to make sure that we don't throw the baby out with the bath
water.

I think Jeff's suggestion is trying to solve for many components that have made the D/E ratio unappealing and basically disregarded in a lot of ways because it's like, oh, God, you're missing so much. It's just not even relevant.

If you try to address that part of it, we get back on a table towards consensus. If we try to take into consideration all these other things -- and we have to ask ourselves -- I mean, put it on the table, people. If we're going to allow students that come from disadvantaged backgrounds who may or may not have had any family experience with borrowing money, from understanding the excitement of a great economically-advantaging job, then we shouldn't be allowing them to borrow at all because they're -- you know, that's the real question then.

So if we're not going to take borrowing to disadvantaged students off the table; which I don't think anybody's doing, like give everybody grants for that, then we have to
start moving forward in how to get to the right
-- something that we can move forward on this.

MR. RAMIREZ:  Neal?

MR. HELLER:  Yes, Neal here.  Isn't
this better when we sit down, Jordan, because you
and I were the only two standing.

(Laughter.)

MR. HELLER:  It's much better.

I think that the comments that Sandy
made are right on point.  As we've gone around
and around and around with the debt-to-earnings
ratio, I think Jeff has come up with a very
simple solution with data that can actually be
collected rather easily and that can be
interpreted in a pretty fair way.  And I had not
heard that until he expressed it a few minutes
ago.

But one of the things that we always
looked at -- I mean, again, we're the -- we are
the sector, the cosmetology schools, under-
reported income, unreported income.  How do we
adjust for that?  I think that actually takes
care of it.

One of the things that always confounded me when the earnings and the loan data came out was zeroes count in earnings even though we have no idea why they have no income. We know that they pay rent, we know that they have a car, we know that they have other expenses and yet they have zero earnings. And that counts. And yet when we have a student; and I have a few, that actually don't take out a loan, don't get a Pell grant. They didn't count in the ratio. And to me that was patently unfair. Give us credit for having students that actually pay out of pocket if you're going to discredit us with students that, quote, "have zero income."

So actually I think that this is a pretty simple way and an effective way to take all of the stuff that we've talked about and take the language that Steve alluded to in terms of not even needing it anymore, the disclaimers, if you will, which I think are kind of worthless, out of the equation and have a very simple way to
address all of those issues with one simple way to do it.

So, Jeff, thank you. That was great.

MR. RAMIREZ: Thanks, Neal. I have Tony and Jeff in the queue, but let me ask the group here, you all want to take a temperature check on that and see where we're at on it?

So let --

MR. ARTHUR: (Inaudible)?

MR. RAMIREZ: Yes, go ahead, Jeff.

MR. ARTHUR: Yes, and just to point out, Jordan, too, yes, it's effectively the 62nd percentile, but also we're talking about a very low 8 percent debt to earnings threshold. So we're talking about a pretty low threshold.

And then when you look at the data, if you've got a less-diverse, more-lead school, I mean, that variance between the 50th and 62nd certainly I'm sure we'll see is extremely tight. For schools that are serving a diverse population and are subject to some of these things, it will be a little more meaningful.
It's not hugely meaningful on the salary, but it's enough to help mitigate some of those differences and something I think we could embrace.

MR. RAMIREZ: All right. Let's do a temperature check and let's see where we're at on that. So it would be clean this up considerably and doing 75 -- the top 75 percent of earners. Let's --

PARTICIPANT: Basically saying take the cohort, the entire -- the cohort, send it to -- those Social Security number to SSN and ask SSN to gather the data and send back the median and mean of the top 75 earners in that cohort.

PARTICIPANT: Rather than the 50 percent like the Department proposed.

PARTICIPANT: Right.

PARTICIPANT: This is a little tougher than that.

MR. RAMIREZ: Laura, you have a clarification on that?

MS. METUNE: I feel like I was
listening to two different conversations. I thought what we were taking a temperature check on was the idea that we would look at a student population beyond those students for whom federal financial aid was provided. No?

PARTICIPANT: (Inaudible) into consideration.

MS. METUNE: You're saying that it takes -- I'm sorry.

MR. RAMIREZ: Neal, could you get to a mic?

MR. HELLER: I'm sorry. I think it just cleans up all of those other potential factors in one sweep, if you will, with Jeff's alternative. And I think it is a better alternative than what's on the screen right now, which was to only include those that were the higher echelon of grades in a program.

MS. METUNE: I'm still confused. So Jeff's proposal is to take the top 75 percent of federal aid participants?

PARTICIPANT: No.
MS. METUNE: But you're -- okay. Those seem like two different things.

MR. RAMIREZ: Jeff, could you restate it?

(Simultaneous speaking.)

MR. ARTHUR: I basically stated that we're taking the median of the 75 percent of the highest earners that are sent to the Department for a median wage return.

MR. RAMIREZ: All right. So let's do a temperature check on that. Let's see where folks are at.

Tony, you have a question?

MR. MIRANDO: Yes, so again I just want to make sure. So that's in lieu of you're saying the disclosures about the tips and the -- or that's staying in there?

PARTICIPANT: I said disclaimers. Don't call them disclosures. They're disclaimers in the notification.

MR. MIRANDO: Okay. Disclaimers. You're saying that that's -- are you saying that
you would consider that? Are you saying that can
still stay in? What are you --

PARTICIPANT: We would give those up.

PARTICIPANT: Yes.

MR. MIRANDO: Just want to know before
I give my thumbs.

MR. RAMIREZ: Yes, so -- but, Jeff,
restate what it would include and not include.

MR. MIRANDO: I'm hearing -- I just
wanted to clarify it.

MR. RAMIREZ: I just want to make sure
everyone else does though. Can you do it again?

MR. ARTHUR: What it would include, it
includes everything it does now.

PARTICIPANT: No. No, no, no.

MR. ARTHUR: You explain it. I don't
know what he's asking.

PARTICIPANT: He's asking if the
proposal on the table is to -- not just on the
taking the 75 percent earners of the Title IV
borrowers. But he's also asking whether in -- as
part of this consensus or this temperature check
we would also -- you would also include the removal of the disclaimers on tips and geography, because to your point earlier in making the argument for this it would resolve those issues so you no longer need the disclaimers. That's the --

MR. RAMIREZ: It would clean everything up.

PARTICIPANT: It would clean everything up. Steven Finley made that point earlier.

PARTICIPANT: So I think our proposal is to --

PARTICIPANT: Well, he asked the question.

PARTICIPANT: Yes.

PARTICIPANT: I won't say made the point. Sorry.

PARTICIPANT: So the proposal is to exclude those as something that we're going to give up in lieu of that consideration and -- yes.

MR. RAMIREZ: Is that correct?
MR. RAMIREZ: Yes? Okay.

So with that clarification and understanding, let's -- and this is a temperature check, right, so at least the Department could get a feel for where you're at on it. So let's see a show of thumbs on that.

(Show of thumbs.)

PARTICIPANT: There are three at least --

MR. RAMIREZ: No. Yes, I got four. Yes, four thumbs down.

Okay. All right.

PARTICIPANT: I also want to say I -- I'm sorry. I just don't feel comfortable making a decision of a thumbs up or thumbs down right now without thinking through this. And it's late in the day, my brain is kind of fried, so --

MR. RAMIREZ: All right. So it's not necessarily a no, but -- and understand, that wasn't a formal (inaudible). That was just a temperature check.
Greg, you wanted to add something on that?

MR. MARTIN: Yes, just one question for those that proposed it. So we would be taking 75 percent, the top 75 percent of earners, right, in that cohort? And is there any disconnect between still using the debt for 100 percent of the cohort but not the -- you don't see any?

PARTICIPANT: No, because it's average on average.

MR. MARTIN: Okay.

PARTICIPANT: (Inaudible).

MR. MARTIN: But the intent was -- your intent -- just to clarify, your intent was to maintain the debt the same way, right, just to take the top 75 percent?

PARTICIPANT: Yes, I think -- yes, I should say that this top -- the lowest 75 percent of debt, but I mean, how do you disconnect that? I think it's -- your median debt is your median debt of your cohort. I don't see any other way
to look at that, I guess.

PARTICIPANT: So debt of 100 percent --

PARTICIPANT: Yes.

PARTICIPANT: -- of the borrowers?

PARTICIPANT: Yes, the debt's the debt.

MR. RAMIREZ: All right. So I have Johnson, Thelma, Neal and Laura.

MR. TYLER: Just very quickly, I think the repayment rate was a way to deal with some of these irregularities in terms of the debt-to-earnings ratio and to -- for example, David was -- David Silverman was saying how his group was -- his school was poorly affected. And in fact his repayment rate is almost at the median level of the school. And that would have gotten him out of that.

So I would like to see some more data about this idea which is -- was thrown out today. I really have to echo that debt is debt and there is yet another metric out there that is
designed to -- or the purpose here was to insulate those people, those schools that may have been incorrectly put in this group.

MR. RAMIREZ: All right. Thelma?

MS. ROSS: Thelma. I am not in agreement with the 50 percent, using 50 percent of the students completing a program. I think that if we're going to look at them, we look at everybody. But I also -- in this context.

But I am curious to hear more, Jeff, and to get a better understanding of what you proposed, because I think it has some merit. I appreciate the rationale behind what you're attempting to do, but I do want to hear some more. That's why my hand -- my thumb was sideways.

MR. RAMIREZ: Okay. Neal?

MR. HELLER: Yes, Neal. Yes, I just want to again remind everybody -- because our issue from a cosmetology school standpoint -- and again one of the reasons we're all gathered here for this wonderful exercise is because of the
lawsuit that the American Association of Cosmetology Schools brought against the Department. These are real issues. The under-reported income, the unreported income, the demographics, the type of students that we serve and etcetera, etcetera, etcetera, that you’ve heard me talk about for the last three sessions are real issues.

How we address them, everybody has kind of a thought. I mean, we obviously don't like the eight percent threshold. We'd like to see some sort of factor, some number factored into income which would increase the income to make up for what is clearly under or unreported income.

And now for Jeff to come up with something like this which sort of wipes that all clean in one fell swoop and we don't have to deal with all of those issues individually or try to deal with it by articulating it in the written word and using real data and using real numbers, I think it's an opportunity. I think it's a real
opportunity for us to actually come to consensus on something and at least address what is a real issue.

And it's not going to be addressed by a disclaimer. What does that do? We all pretty much know that students aren't going to read the disclaimers any more than they're going to read the disclosures or the warnings or etcetera.

So here's a chance to actually have a -- data that means something and have numbers that actually mean something. And I just think it's an opportunity for us to come to consensus on something that actually makes sense and addresses a lot of the issues that many of our schools, and certainly the schools I'm here representing have. And they're real issues. Thank you.

MR. RAMIREZ: All right. So we have Kelly here closing out and then I'll make a quick comment.

Kelly?

MS. MORRISSEY: I just wanted to
expand on why my thumb was down. I certainly can get behind the simplicity of what Jeff is proposing; I really enjoy that part of that, but I'm just wondering why 25 percent? I mean, I just want to know in the data where does it make sense to eliminate a certain floor of students and under which point would it even make sense to exclude them? Because when we're looking at an incomplete cohort, at what point are we really addressing the root problem by not including those students?

I mean, I know from looking at some of the data from the students I work with we have many, many students who just opt out of the workforce entirely. And this would be a way to address that issue, but I'm just not sure that the 25 percent point is the way to do that without seeing the data to inform that decision.

MR. RAMIREZ: Okay. And I think that's a good segue for what I was going to say. I think that this is a good place to end, right, because I think that the reason that
there were quite a few thumbs down is more just that there's a lot to think about with that. It was an idea that was just thrown out there for the first time.

So we could pick this up again tomorrow, give you a chance to really think about it and see where we go from there.

So to close out, are there any additional comments from any of the negotiators before we open it up to the public?

(No audible response.)

MR. RAMIREZ: Okay. Any public comment?

(No audible response.)

MR. RAMIREZ: Okay. No public comment.

And then what I would leave off with is that this week we want to try to leave with as many agreements as possible, if not a full kind of agreement. And I agree with what Mark was saying, is that we don't want to rehash arguments that have already been made, right? Either we
could make it work or we can't at this point. It's kind of hard to tell when we're going to end up going down a rabbit hole.

But we are going to have to take some clear votes and in as much detail as we can on this language. And you did get some of that stuff today. So bear with us. Hopefully we get through the entire agenda by the end of Thursday.

Reminder about security. You might want to come in a little bit earlier tomorrow. It seems like it does take a little bit longer than anticipated. Seventh floor closed off. And we're going to ask folks to allow the Department staff to move you through to the bottom floor as quick as possible. So Amy's back there waiting to take the first round, so if you're ready --

PARTICIPANT: (Inaudible).

MR. RAMIREZ: I'm sorry?

PARTICIPANT: (Inaudible).

MR. RAMIREZ: Oh, yes, and please take your trash.

(Whereupon, the above-entitled matter
went off the record at 5:09 p.m.)