

UNITED STATES DEPARTMENT OF EDUCATION

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GAINFUL EMPLOYMENT
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 3

+ + + + +

Monday,
March 12, 2018

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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, Rozmyl 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.

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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
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CHRISTOPHER GANNON, Vice President, United
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ROBERTS JONES, President, Education & Workforce
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JOHN KAMIN, Assistant Director, The American
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KIRSTEN KEEFE, Senior Attorney, Consumer Finance
and Housing Unit, Empire Justice Center
CHRISTOPHER MADAIIO, Assistant Attorney General,
Office of the Attorney General of Maryland
JORDAN MATSUDAIRA, Nonresident Fellow, Urban
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MARK MCKENZIE, Executive Director, Accreditation
Commission for Acupuncture and Oriental
Medicine
LAURA METUNE, Vice Chancellor of External
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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

1
2
3 MR. RAMIREZ: Okay, so for the record,
4 we are starting the Department of Education
5 Gainful Employment Session 3 and I want to
6 welcome everyone. Just a quick note on the
7 security; that's how it's going to be all week.
8 It looks like we're probably going to have to try
9 to get here a little bit earlier to get through
10 that. And the other thing is to get in and out
11 of the building, you're going to need a
12 Department of Education escort, so smokers good
13 luck. You may be stuck out there for a little
14 bit getting back in because you're going to have
15 to wait for that escort. So that's why we
16 allocated 90 minutes for lunch, a little bit of
17 extra time for folks to get down and get back up.
18 So if you can, be sparing on the number of times
19 you have to leave the building so that we could
20 try and minimize the number of escorted trips.
21 That being said, restrooms are on this floor; men
22 are just straight out the hall; women's, if you

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1 go where the sign-in desk was, you go behind that
2 way, the hallway, and then to the left. That's
3 where the women's restrooms are.

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

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

20 On discussions, you all have been
21 doing great as far as keeping it professional. I
22 know that we've had some hard issues that we've

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1 had to discuss; I hope that we can continue that
2 professional dialogue, be hard on the issues, not
3 on the people. Let's do our best not to single
4 out any specific organization or institution.
5 And asking again for your help with the elmos.
6 If we're beating at the horse enough, let's move
7 on folks, let me call that.

8 So we'll do an agenda review and then
9 when we're done with that, we're going to
10 approve, ask for an approval of the summary from
11 Session 2. Hopefully you've had a chance to look
12 at that. Then we'll see if there's any member
13 comments, followed by public comments. And then
14 we're going to jump right into the issues after
15 that. And what I'm going to do, we're going to
16 go in order 1 through 8, and I'm going to ask
17 Greg to give us an idea of some of the
18 modifications from our last meeting to what was
19 distributed, and then we'll go through each one.

20 Erin is going to be kind enough to try and
21 capture up on the screen there as we go any
22 suggested changes and approvals. So I would ask,

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1 if you do have any changes, just repeat a few
2 times so Erin can get it correct up on the board
3 there. Or if you have a paragraph you want to
4 throw up there -- Erin, could you raise your
5 hand?

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

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

17 Daniel?

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

20 MR. RAMIREZ: No. I was going to
21 comment that it looks like that's the only group
22 that's not represented at the moment. It looks

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1 like all the other groups have a representative
2 present, but we -- I should probably check my
3 emails and make sure before I say that we have
4 not -- but I have not seen anything yet.

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

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

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

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

16 Okay, so no thumbs down on the
17 summary. Then I guess we're going to quickly
18 jump into the issue statements here, issue
19 papers. Greg, if I could ask you to lead us off,
20 give us any rationale or any guidance that you
21 can, as well as hitting on what the modifications
22 were.

23

1 MR. MARTIN: Thank you, Javier. And
2 good morning, everybody. Nice to have you back.

3 I had hoped that we would have more spring-like
4 weather, but I guess it was not to be. So each
5 paper as we go through it -- we'll start with
6 Issue Paper 1 -- but each paper does contain a
7 summary of the changes since Issue 2, and then a
8 summary provided before Issue 2. I don't think
9 that there's a radical departure here, but when
10 we finished the previous session, there was
11 interest in, I think maybe two areas that were
12 paramount, and one was the issue of potential
13 sanctions where programs consistently performed
14 poorly. And we took that back, we do have a
15 sanctions paper; we discuss issues related to
16 that. So that's definitely a change from last
17 time that reflects what was discussed at the
18 table. Then the other major issue, I think,
19 you'll see reflected in these papers is the
20 addition of a second metric. As you recall the
21 discussions in the last session, there was the
22 issue of whether or not DE rates were the only

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1 metric and then whether it'd be -- remember we
2 had taken out appeals from DE metrics, appeals to
3 DE alternate earnings appeals, so there was the
4 issue of something else besides DE rates that a
5 program could use to show its outcomes. And I
6 think we had a lot of discussion around the fact
7 that perhaps DE rates were the only thing we
8 should be looking at, that a program could have
9 DE rates that didn't reflect the two outcomes of
10 the programs. So we took that back.

11 We have introduced a second metric
12 here that is repayment rate. I don't want to go
13 into great detail with that now, but we will be
14 discussing repayment rate. And I think when we
15 look at the repayment rate and where the
16 Department is with that and where we're going to
17 solicit discussion around the table is around
18 what threshold should we use. So the protocol
19 we've introduced here is one where an institution
20 would have DE rates calculated for it in the same
21 way we proposed initially, and you would also
22 have repayment rate. And we're referring to the

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1 threshold as benchmarks, as having met a
2 benchmark and not having met a benchmark. And so
3 we have it so that there would be both, a school
4 would be measured by a program rather, would be
5 measured by both benchmarks, repayment rate and
6 DE. We have the DE thresholds in place; we have
7 not proposed an actual benchmark as of yet for
8 repayment rate. We have some ideas, we'll put
9 those forward, and we'll also entertain any you
10 might have and see where we can go with that.

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

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1 wanted to go with this.

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

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

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

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

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

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

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

21 MS. BLUM: Okay. Like I said, I was
22 just -- okay.

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1 MR. ELKINS: Yes, I'm sorry. I just
2 want to go numerically; it's just a personal
3 preference.

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

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

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

16 So Greg, you want to walk us through
17 it?

18 MR. ELKINS: Yes. Sure, Javier. And
19 again, as you just pointed out, there are areas,
20 obviously especially with scope and purpose,
21 where we're going to see some, raise some things
22 that will be discussed in more detail in other

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1 papers. But just to get you familiar with that.

2 I don't have any problem with people discussing
3 those now. Maybe we should try to keep our
4 comments about those things from a higher level
5 with this paper and then get more into the
6 details as we move along.

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

14 So just to review what these papers
15 did initially; we proposed to change the focus of
16 these regulations for programs that prepare
17 students for gainful employment and recognize
18 occupation to all educational programs.
19 Significantly, we proposed to remove the
20 provision of Section 68-668401 that provides that
21 Sub-Part Q establishes procedures under which the
22 secretary determines whether a program is

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1 eligible for Title 418 program funds. We will
2 discuss the substantive changes to definitions
3 and issue papers that correspond to topic of the
4 defined term.

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

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

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

20 On Page 2 668-406, note that the debt,
21 the DE rates alternate earnings appeal, has
22 changed to calculating and issuing loan repayment

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1 rates. So what you'll see when we get there, the
2 loan repayment rate metric has been inserted and
3 moved into what was formally DE alternative
4 earnings appeals, so that there are no DE
5 alternate earnings appeals.

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

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

22 And you'll note at the top of Page 3

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1 where the secretary calculates the programs debts
2 to earnings rate and loan repayment rate. And we
3 note that actions may be taken on the program's
4 rates, and that there are program level and
5 disclosure and certification requirements as
6 well.

7 668-402 is just definitions. I do
8 want you to take a look at the cohort period. We
9 will discuss this in a little more detail -- this
10 does represent a change over what we proposed at
11 the last session. So let's just read through
12 that.

13 The two-year cohort period, I think we
14 had eliminated the four-year period previously,
15 so that is not a change. The two-year cohort
16 period during which those students -- this is the
17 definition of a cohort -- during which those
18 students complete an undergraduate educational
19 program are identified in order to assess their
20 loan debt and earnings for the purpose of DE
21 rates. And you'll see here that the look-back
22 period is changed from third and fourth year, on

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1 the top of Page 4, to rather the fifth and sixth
2 award years prior to the award year for which the
3 DE rates are calculated in 668-404. For example,
4 DE rates are calculated are for '16, '17, the
5 two-year cohort period is award years 2010 to
6 2011, and 2011-2012.

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

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

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

20 MR. ELKINS: Yes, correct.

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

1 Go ahead.

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

6 MR. ELKINS: Sure.

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

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

21 MR. RAMIREZ: Okay, let me get Sandy,
22 Jennifer and then Laura.

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1 MS. SARGE: So could you go through
2 the -- you guys use an example in here -- I'm
3 sorry; this is Sandy for the record -- so the
4 cohort of '16, '17 and then you go back '10, '11,
5 '12 -- could you define for me which would be the
6 cohort of students you would look at?

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

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

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

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

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

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1 '11-'12.

2 MS. SARGE: Okay, just making sure.

3 MR. ELKINS: Completed, yes.

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

6 MR. ELKINS: Yes.

7 MS. SARGE: Got it.

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

12 MR. RAMIREZ: Okay, Jennifer?

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

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1 wait until we get to the real conversation about
2 the metrics.

3 MR. RAMIREZ: Okay. Laura and then
4 Kirsten.

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

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

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1 thank you.

2 MR. RAMIREZ: Okay, Kirsten?

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

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

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

17 MR. RAMIREZ: Chris and then Daniel.

18 MR. MADAIIO: Chris Madaio. So my
19 concern is about the elimination of graduate
20 programs. I guess when I look at it, clearly one
21 of the things the Department articulated was an
22 interest in including more students and that was

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1 the basis for including the public's and the non-
2 profits. So it seems odd on one hand to want to
3 give more students information about their debt
4 and their earnings and then not want to give a
5 certain set of sub-students information about
6 debt and earnings. So I guess, maybe I'll just
7 start with that; Greg, can you tell us the
8 rationale for the elimination of that?

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

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1 afforded, that you needed for undergraduate
2 students.

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

10 PARTICIPANT: Okay, thank you. Yes, I
11 mean, I do disagree with that; I think on one
12 hand a student could go from a certificate to an
13 associates to a bachelors and that student will
14 have gone through multiple levels of education,
15 yet still is deemed by this rule as it's drafted
16 to have needed that information at the level of
17 each program. But on the other hand, a student
18 could just go straight to a bachelors and then to
19 a masters and only have gotten the debt to
20 earnings information the one time. So I guess to
21 me those two students almost are at an equivalent
22 level of need for what the program they're about

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1 to enroll in, how it's going to perform compared
2 to the amount of debt they're going to take on.
3 And especially graduate programs are often more
4 expensive certainly I would think than
5 certificate level and associates programs. So
6 they're taking on a substantial amount of debt,
7 more debt, than they would otherwise.

8 So understanding the outcomes in this
9 metric I think is important, especially if we're
10 assuming that they're all savvy and mature, then
11 they should be able to -- then more information
12 for such a student would be good because often a
13 complaint is too much is going to confuse them,
14 they won't understand this, but a graduate
15 student would understand this metric and might
16 find it very useful when shopping around for
17 programs. And then of course, there is the need
18 for this in the schools with the bad outcomes.
19 The school in the capital of North Carolina that
20 was a law school, \$337 million in loans in a
21 course of five years, whereas one in five
22 students were graduating, passing the bar,

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1 getting a job and taking on massive debt. So I
2 would think that students going to a school like
3 that would have desperately wanted to know how
4 much debt they were going to take on versus the
5 earnings that people at that school were
6 obtaining.

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

21 MR. RAMIREZ: Let me get Daniel, Jeff,
22 Jordan, Todd and Sandy. Daniel?

1 MR. ELKINS: This is just for
2 Jennifer. Don't worry, I asked to make sure that
3 you were here -- or I'm sorry, Whitney -- that
4 you were here on time and I was going to hold
5 everyone back until you got here.

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

8 PARTICIPANT: Jeff.

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

11 MR. ARTHUR: Yes, first of all, I do
12 agree with Chris on this. I do think that our
13 purpose here is to provide information to
14 prospects. We know that 38 percent of the debt
15 is at the graduate level, so it's meaningful
16 information that can be made available. Now, I
17 don't necessarily -- and I think the sanctions
18 that are proposed here are very meaningful
19 despite what some might think, I think they
20 really are meaningful. And I would suggest that
21 possibly for grad programs, that maybe we
22 wouldn't need to necessarily impose sanctions.

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1 And then my last fallback on that is, even if we
2 do continue to exclude them, I would strongly
3 urge the Department to at least include the data,
4 as they can all types of data in the college
5 scorecard. And that the information at least be
6 available out of this process, even if it's not
7 part of the actual writing of this regulation.

8 MR. RAMIREZ: Okay, Jordan?

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

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

14 MR. JONES: This feels like deja vu
15 all over again. I mean, we had this discussion
16 last time, there was a consensus. I want to say
17 that I believe that there's been a reversal of
18 some parties here as to where they stood at the
19 end of last negotiation and where we stand now.
20 The reason we had a change to exclude graduate
21 education was not that it couldn't be useful, not
22 that this couldn't be relevant to someone's

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1 thought process; the presumption is that if
2 you've achieved a baccalaureate level of
3 education, you have a sufficient maturity of
4 thought and self-interest to weigh complex
5 decisions such as whether to attend graduate
6 school. And the federal regulatory system should
7 not be a catch-all for protecting everyone
8 against bad decisions that they may make. That
9 is what we talked about last time.

10 Also, to pretend that this is somehow
11 -- merely disclosure comes without cost, without
12 burden, without further difficulty is to ignore
13 one of the bigger pieces of regulatory burden.
14 We all talk about there is a cost to students;
15 there is a cost to students if you regulate to
16 the nth degree that's incorporated back to the
17 cost of higher education. I'm not going to pull
18 into the bigger discussion, but it's a real one
19 that the expansive federal and state regulatory
20 regimes have increased the cost of higher
21 education. Some of these are for very valid and
22 legitimate reasons, we can go through them. But

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1 the end of the day, every incremental increase is
2 cost, and that is borne not by institutions, it's
3 borne by students. And let's stop pretending
4 that it's not. The reason we excluded this was
5 that it was a prophylactic measure. I actually
6 offered it may be appropriate for baccalaureate
7 students; there was broad disagreement, that's
8 fine. But the reason we're including it for them
9 is as a prophylactic measure. We're possibly
10 over-including people for programs that are below
11 graduate level on a prophylactic basis; we're
12 doing it to protect those that could need
13 assistance, even though some don't.

14 But we all agreed last time that there
15 was a cut line here, and now some folks seem to
16 be troubled by that. I don't know what has led
17 to the reversal; maybe it's the recognition that
18 we seem to be headed toward no consensus here so
19 let's everyone stake out the position that causes
20 us the least discomfort, I don't know. But
21 whatever it is, it changed, and I think that we
22 ought to recognize that and stick with where we

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1 were at the end of last time for at least some
2 modest change in the original draft.

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

5 Okay. Go ahead, Jordan.

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

18 And on the cost of regulatory burden
19 and all those kind of things, my understanding
20 still is that we're kind of contemplating a world
21 where the Department is going to create all these
22 numbers with their own data without requiring

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1 additional reporting and so on. So I can see the
2 kind of, there's a little bit of added cost in
3 having to monitor these kinds of things and so
4 on. But I'm skeptical of that. You could craft
5 an argument that the additional burden that that
6 would require would really outweigh the value of
7 providing that information to students.

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

10 MS. METUNE: This is Laura for the
11 record. I just wanted to say that there were a
12 lot of areas where I was willing to express my
13 openness to compromise, and I feel like all of
14 those areas that weakened the rule were accepted
15 into this draft. And so I don't think it's fair
16 to hold people accountable for the areas they
17 were willing to compromise with the understanding
18 that there would be a larger conversation about
19 meaningful oversight and regulation of the
20 Department. So I just think we should remember
21 that as they're referencing things that may have
22 been an area of agreement at the last meeting,

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1 understanding that there were things that we all
2 proposed that weren't incorporated here that
3 affect what we're willing to compromise on.
4 Thank you.

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

7 MR. JONES: Well, I think it's only
8 fair to respond on both counts. I understand
9 that people compromise. I compromise too; I
10 compromised on things that I didn't agree with
11 but that I thought would go forward for the
12 consensus and it'll move things along. In fact,
13 the very discussion about baccalaureate degrees
14 is one with which I expressed disagreement at the
15 time, but I saw as a compromise we'll go forward.

16 After regulatory regret in this process is not a
17 rationale for change. And I have to go back to
18 the comment about whether this is only data
19 collected by the Department. There are other
20 competing interests here and larger social
21 questions as well; access is an important part of
22 what goes on. I think there are institutions

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1 that cater to individuals diligently who would
2 not otherwise have access to careers in, for
3 example, law or medicine, that we'll see higher
4 rates of student loan default based on the fact
5 that they are attempting to serve individuals who
6 may be from under-represented communities, who
7 have under-represented areas that need additional
8 assistance.

9 Appalachia is a good one; part of
10 where I represent is Appalachia where we have
11 graduate education levels in the 1 and 2 percent
12 range. I think it is important to understand
13 that there are social costs when you stigmatize
14 institutions on the basis of data, that creates a
15 perception that there's something wrong with the
16 institution related to things like a higher than
17 average default rate, when the relevant
18 comparison may not be -- when you have a program
19 that is a -- a type of institution as a 2 or 3
20 percent default rate and another institution has
21 6 -- well, that's double or triple, but in
22 reality that institution may be serving

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1 individuals and serving them in an area that has
2 an important social consequence, and there are
3 other ways to address that.

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

15 MR. RAMIREZ: Okay, let me jump in
16 real quick. Greg, are there areas in this scope
17 that you think we could reach consensus on, a
18 scope and purpose issue paper, or would it make
19 sense to get into the details of now that we have
20 the overview, get into the second issue paper and
21 go down the line and see what areas we can
22 actually get consensus on.

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1 MR. MARTIN: I would think that for
2 the purposes of seeking consensus, we should
3 probably wait until we get to the more detailed
4 papers.

5 MR. RAMIREZ: Yes, okay.

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

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

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

18 MR. MARTIN: Sure, glad to do that.
19 For the record, this is Greg. So looking at the
20 summary of changes since Session 2, this paper
21 Issue Paper 2 deals with debt to earnings rates.
22 So mentioned earlier, we proposed to add a loan

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1 repayment rate into the framework for
2 undergraduate educational programs. We also
3 proposed to refer to a program as one that meets
4 benchmarks, if it meets the established
5 standards. And a program as one that does not
6 meet benchmarks if it does not meet established
7 standards. Again, the summary of changes that
8 were provided before Session 2, we proposed to
9 amend 668-403 so the programs are no longer
10 considered passing or failing based on debt to
11 earnings rates. We proposed to refer to those
12 programs as acceptable. I just want to point
13 out, this is before Issue 2, so now that's not
14 going to change the benchmarks.

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

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1 disclose the rates for the previous year.

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

7 So we are interested in the feedback,
8 and the feedback in using the DE rates as a
9 comparison tool among institutions of similar
10 size and scope that serve a demographically
11 matched student population, which could include
12 socioeconomic status, percentage of recipients
13 and percentage of students over the age of 25.
14 We also seek feedback on an option that would
15 evaluate outcomes based on only the top 50
16 percent of those students completing a program.
17 The rationale here being that while a C student
18 meets the Department's requirements for
19 satisfactory academic progress, and may complete
20 the program. Employers may be reluctant to hire
21 other students and they may be less successful on
22 the job. The top 50 percent of students would

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1 demonstrate the capacity or not of the program to
2 adequately prepare students for success, whereas
3 outcomes of 100 percent of completers may
4 inappropriately hold institutions accountable for
5 low-performing students who can't be expected to
6 enjoy the same outcomes as A or B students.

7 As we move through the paper itself,
8 moving onto Page 2, you'll note that the earnings
9 rate framework has changed in undergraduate
10 educational program and that we have the
11 framework is debt to earnings and loan repayment
12 rates. And for each year undergraduate education
13 program is offered by the institution, the
14 secretary calculates the DE rates and
15 discretionary income rate and annual earnings
16 rate using the procedures in 668-404, 668-405.
17 And you'll note loan repayment rate using the
18 procedures in 668-406, we talked about that
19 earlier in Issue Paper 1. You note that the
20 outcomes have become benchmarks and that we have
21 a program either meeting a benchmark, or at the
22 bottom of Page 2 we have an undergraduate program

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1 not meeting benchmarks.

2 The debt to earnings rates, the
3 thresholds have remained unchanged from the
4 previous paper. And we do have the addition on
5 Page 3, you'll note at the top there, number 3,
6 an undergraduate program in considered to meet
7 benchmarks under the DE rates if the institution
8 demonstrates to the secretary that the program
9 meets the standards for economically
10 disadvantaged appeals in 34CFR668-213 whether
11 each program meets the standard appeals, in
12 668.216 for programs with 30 or fewer borrowers.

13 We did add that in to respond to some of the
14 issues that came up at the previous session with
15 respect to programs that serve a different
16 demographic, perhaps a lower socioeconomic
17 demographic, and for those programs with few
18 borrowers participating in it.

19 Those provisions you see there, 213
20 and 216, are already in regulation and those are
21 related to the necessity for a short-term program
22 to demonstrate that it has, I believe placement

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1 rate is 70, and the completion rate of 70 percent
2 as well, 70 percent I should say. So we took
3 those, we took the concept from that portion of
4 the regulation and just incorporated it here as a
5 way of addressing those issues that came up
6 previously.

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

14 And then you'll note that we have the
15 benchmark, just to point out again the benchmark
16 for loan repayment measure, an undergraduate
17 educational program is considered to meet
18 benchmarks under the repayment measure if the
19 loan repayment is greater than or equal to --
20 nothing is there -- that is something that we've
21 been knocking around and thinking about the past
22 couple of weeks and wanted to get feedback from

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1 the table about that. And when we talk about
2 loan repayment rate, we will discuss the
3 benchmarking for loan repayment rates; as I said,
4 we do have some ideas and we'll be interested to
5 hear what you have to say about that as well.

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

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

16 MS. BARKLEY-DENNEY: Sure. I hope,
17 Javier, this is what you want us to do. But I
18 was just going to respond to the feedback
19 questions. You know, I've noted throughout this
20 that we've talked about the Department's goal of
21 streamlining regulation and it seems like with
22 both of the questions in which you're asking for

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1 feedback, we're actually making the room more
2 complicated; particularly with the idea that
3 we're going to somehow compare demographically
4 matched student populations. I'm not even sure
5 how that would work, functionally. Would there
6 be a different rate for people who fall into a
7 different demographic area? Would there be a
8 different scale by which we judge them to be
9 failing or passing a program?

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

18 And I would also just note, I think
19 the same thing applies to 50 percent of students
20 completing a program; we're already only
21 contemplating -- and correct me if I'm wrong --
22 looking at graduates, and so we already have

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1 people who have done at least well enough in the
2 program that the school says that they can
3 graduate and be employed in their field. So it
4 doesn't seem to me like we also need to only take
5 the top 50 percent of that. Certainly if we
6 looked at my high school, my math scores would
7 not put me in that region, so I think most of
8 this will unnecessarily complicate what we're
9 trying to do here.

10 MR. RAMIREZ: Sandy?

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

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

22 MR. MARTIN: I'm sorry; could you

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1 repeat that again? I'm sorry.

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

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

17 MS. SARGE: Okay.

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

21 MR. RAMIREZ: Let me get Jeff's
22 comment and then we'll come back and we can see

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1 if we can clarify that.

2 MS. SARGE: Okay.

3 MR. RAMIREZ: Jeff?

4 MR. ARTHUR: Yes, Jeff Arthur.

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

21 I guess that's all for now.

22 MR. RAMIREZ: Okay. Erin, could you

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1 put up Issue Paper 1?

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

5 PARTICIPANT: Besides programs? I
6 mean --

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

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

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

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

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1 graduate students.

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

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

11 MR. RAMIREZ: Okay.

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

21 MR. RAMIREZ: Sandy?

22 MS. SARGE: So I think that -- I'm not

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1 ready to do consensus by any stretch of the
2 imagination -- this is Sandy -- however, I do
3 want to make some points about, or throw on the
4 table some conversation to Todd's points. I
5 think you were spot on and I appreciate the fact
6 that you made the points you did.

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

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1 you're like, I don't think I really know that
2 means until you're in it and realize what's
3 happening.

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

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1 undergraduate, then they do need it. Kind of
2 keep it in mind from that perspective.

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

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

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

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

21 All right, so I want to try and find
22 the areas of agreement and that's why I wanted to

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1 go into the issue paper, so that way Issue 2, so
2 that way we can start getting into some of the
3 details of this instead of just arguing broadly
4 over scope. So I know there's some table tents
5 up, but are those in regards to graduate or are
6 those in regards to Issue 2?

7 Issue 2?

8 PARTICIPANT: Scope.

9 PARTICIPANT: Scope.

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

12 MR. MARTIN: But --

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

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1 sense to come back when we're actually taking the
2 consensus vote on scope? Greg?

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

8 MR. RAMIREZ: It looks like it.

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

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

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

21 MR. RAMIREZ: Okay, Kelly, Johnson,
22 Jennifer, Todd and Tony. So let me get Kelly.

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1 MS. MORRISSEY: So my comment's on --

2 MR. RAMIREZ: Mic. Sorry.

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

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

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

21 MR. MARTIN: Well, first of all, I
22 think that the scope -- and again, I'm not asking

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1 you to -- I'm not saying you have to agree with
2 this, obviously -- but the thrust of debt to
3 earnings, no longer DE, debt to earnings, is
4 primarily publishing these rates as disclosure
5 informational for students to make decisions
6 about choosing programs. The prior, or the
7 current I should say, regulations, which call for
8 an automatic loss of program eligibility if
9 certain thresholds are not met, is not included
10 here, nor was it included at all from the get-go.

11 So I think though you may disagree with that, I
12 don't think we've been very up front about the
13 fact that it's not there.

14 With respect to what sanctions there
15 are and that we're going to discuss in Issue
16 Paper 3 -- no Issue Paper 4 -- Yes, I'm sorry,
17 Issue Paper 4 as sanctions -- we discussed at the
18 table last time -- remember we came with our
19 original position was there would be no sanctions
20 at all, there would simply be disclosures. So
21 that's what was in Issue Paper 2. So we hadn't
22 put anything on the table with respect to

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1 sanctions, so I respectfully disagree with the
2 assertion that what's in the sanctions paper here
3 is not reflective of what we talked about, it's
4 reflective of the discussion we had in Section 2.

5 There was interest in having some type of
6 administrative sanctions and there seemed to be
7 some compromise on both sides about that, so this
8 paper reflects that.

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

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1 Paper 4.

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

4 MR. JONES: I'm sticking with the
5 issue of graduate studies because I think it's a
6 red herring; 38 percent of the debt is held by
7 graduate students, but graduate students have a 5
8 percent loan default rate. The majority of
9 students with more than \$100,000 in debt are
10 students who went to graduate school, but they
11 have letters after their name like JD, MB, MD and
12 MBA, DDS. I mean, these are people who can pay
13 their debt. There is no -- it is federal policy
14 to encourage the taking on of debt for expensive
15 programs that lead to successful outcomes. Yet
16 make no mistake, there is a cost associated with
17 having to explain these kind of disclosures. I
18 mean, why do people take on \$100,000 in debt?
19 Because they have a 3 percent loan default rate.
20 So all those people taking on large sums are
21 people who are not having a problem. Yes, there
22 are individuals that have problems, yes there's

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1 schools and we can trot them out, but you do not
2 impose an entire, full-scale federal regulatory
3 regime for the purpose of curing a handful of
4 issues. And I simply will not accept the idea
5 that there is not a social cost and an
6 operational cost associated with the imposition
7 of these new reporting requirements and
8 disclosure requirements. They create more.

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

17 MR. RAMIREZ: Okay. Tony?

18

19 MR. MIRANDO: Thank you, good morning.

20 This is Tony. Once again I just sit here and
21 I'm kind of contemplating if we're going to do a
22 temperature check, where I would go with this.

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1 And I find myself on the fence, thus I needed to
2 get some clarity here. So when we were here last
3 time I asked the Department to explicitly give us
4 what our mandate is, and so I sit here as an
5 individual who has several degrees, both
6 undergraduate and graduate, I can see the benefit
7 and I hear both sides of the equation, but I find
8 myself debating as to whether or not this mandate
9 is to ensure clear notification to students prior
10 to enrollment as to what their debt to earning
11 will be after they graduate. I'm struggling to
12 understand why a graduate student would be
13 different from an undergraduate student? So
14 again, I'm looking at you, Greg, and I'm hoping
15 that you can give me some clarity as to, again,
16 what is our mandate here? We all have personal
17 opinions, we come from different sectors, we're
18 here to hopefully help provide the Department
19 with some clarity on which direction to go. But
20 I'm sure I'm not the only one sitting here who's
21 sitting on the fence truly not understanding what
22 it is we're supposed to get to, so if you could

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1 just give me some clarity, that would help sway
2 which direction I can live with.

3 MR. MARTIN: Well, I mean, obviously
4 our -- I don't know if I'd call it our mandate, I
5 hate to use the word mandate -- but I think our
6 defined task is to try to reach consensus on a
7 new package of regulations attending to what
8 previously was GE but now encompasses a much
9 broader scope. I mean, I think it's obvious in
10 the fact that we're back here on the table, and
11 I've pointed this out before, that if the
12 Department's leadership had determined that the
13 existing regs were what was wanted, we would not
14 be here. So we're definitely here to change that
15 particular protocol. However, and I think as
16 we've proposed in going back to the initial regs
17 we proposed, that the, that what we're looking at
18 is primarily an informational regulation, a
19 disclosure-based regulation. We have introduced
20 the concept of sanctions as a result of the
21 discussions we had previously, but if asked to
22 characterize the thrust of these negotiations, it

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1 would be to establish a mechanism for providing
2 students with information, with requiring
3 institutions to disclose information about their
4 programs. And now as an addition based on what
5 we talked about before, having some programmatic
6 consequences associated with a continued failure
7 to meet those established benchmarks.

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

13 MR. RAMIREZ: Yes, go ahead follow up.

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

21 MR. MARTIN: Our reasons for this, if
22 I can go back to what I stated previously and

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

21 So I mean, that's where we came at it;
22 we didn't approach this from the standpoint that

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1 there would be different, that we were reluctant
2 to put in place -- I should say we weren't
3 looking at this in such a way that we would say
4 that, that whatever sanctions there were, that we
5 didn't want to apply those to graduate school
6 programs as well as other programs. Whatever
7 sanctions there are would be applicable to all
8 programs covered by the reg. We weren't trying
9 to shield graduate programs from that; that was
10 not our intention.

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

13 MR. MADAIIO: Thank you, Chris Madaio.
14 My issue, I think, is simply because a certain
15 sector is arguably better on outcomes; I don't
16 think that means that we shouldn't be disclosing
17 something to those students. I think if that was
18 the case, I think then why are we disclosing
19 anything to public schools or non-profits. I
20 think generally you're going to have less debt
21 because a lot of them charge less, or they have
22 better outcomes than the for-profit sector, which

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1 brings us back to where we were in the beginning
2 of the first session. So I think that's kind of
3 my first point.

4 And then the second; to me it's not
5 about that a student understands they're taking
6 on debt. I mean, I get some students may not
7 even understand that a student loan is in fact
8 debt compared to a grant, certainly a financial
9 literacy concern. And I get that a graduate
10 student may fully cognizantly understand that
11 this is debt and I'm going to have to pay it
12 back. But it's not just that they're taking on
13 debt; it's about being able to shop around at
14 comparable schools and being able to say this
15 school has a lot of debt but their average
16 earnings are really high, so that's a good value
17 for me. Or this school has very low debt, not so
18 good outcomes, but that's an okay value for me.
19 So that to me is the essence of what this metric
20 is trying to do, I mean especially if there's no
21 sanction to give someone a shopping tool, we're
22 just taking away from the students who we think

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1 are the most savvy and able to shop just boggles
2 my mind. We say some students may not
3 understand, so we throw some information at them,
4 and then other students would, so we take it
5 away. I mean, that is completely flies in the
6 face of everything we're talking about here.

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

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

22 MR. RAMIREZ: Whitney, Jordan and

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1 Ahmad.

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

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1 to pay back.

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

11 MR. RAMIREZ: Jordan, Ahmad, then
12 Mark.

13 MR. MATSUDAIRA: Thanks, this is
14 Jordan. I just want to make a couple points; so
15 one is just about the default rates for graduate
16 students with graduate borrowers being low. The
17 default rate is low but they're defaulting on
18 really large balances, the balances are much
19 higher, so from a taxpayer standpoint if we care
20 about being good stewards of public investments
21 and the loan program, the information could
22 really be more beneficial to the extent that it

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1 helps to guide students to better programs. So
2 even though the default rate is only like 5
3 percent, given that balances are significantly
4 higher, it could be the case that graduate
5 student loans make up closer to the 40 percent to
6 the overall outstanding debt that they comprise.

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

11 I agree with everything that's been
12 said about just the benefits of providing more
13 information overall, but one thing I wanted to
14 say about the complexity involved in calculating
15 DE rates for graduate students, the same argument
16 doesn't apply for earnings. I would argue
17 earnings is something that currently graduate
18 students don't have access to that; there's no
19 other way that they can get information about the
20 labor market outcomes with people entering
21 different programs. So even if the Department
22 ends up kind of going away from reporting DE

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1 rates for graduate programs, I urge you to
2 consider keeping that information available,
3 again, just for information for students to be
4 able to use, because that's something that's
5 straightforward to calculate and students don't
6 have other ways of getting it.

7 MR. RAMIREZ: Thank you. Ahmad?

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

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

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1 for graduate students, for graduate programs
2 rather?

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

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

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

16 MR. JONES: No, what I was saying is
17 as a matter of equity there are areas of our
18 country that are deeply underserved, some rural,
19 some urban, but I would never say something like
20 50 percent default rate which would be a school
21 that should be shuttered. That's nowhere near
22 what I'm talking about. I'm talking about

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1 creating a perception that an institution creates
2 a debt burden by judgement against its peers, and
3 to use law as an example, some rural law schools
4 which have slightly higher default rates but
5 where they are certainly more than reasonable
6 ensuring that there is a supply of attorneys in
7 an area where people's rights are run rush,
8 something I think consumer groups would
9 understand. And yet what we see is by having
10 that be the driving force around disclosure, it
11 creates a deterrent for people being interested
12 in rolling.

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

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

22 MR. RAMIREZ: Okay. Thank you, Ahmad.

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1 All right, so we'll get Mark and then we'll take
2 a break, and then we'll go back into the DE
3 rates. Mark?

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

20 And the difficulty I want to bring out
21 is the single metric debt to earnings clearly
22 doesn't do it. I've been doing this seven years

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1 on debt to earnings and when I go to just the
2 government offices and ask the employees who have
3 graduate degrees would they like their debt to
4 earnings to be measured on which the old GE rule
5 was they're earning 18 months after graduation,
6 and the answer was no. And I think if the data
7 was run, we would find law schools and other
8 graduate schools that are considered high quality
9 where the student's going to public service or
10 government the first few years, take a lot of
11 debt, and they would fail debt to earnings.
12 That's why last session I was adamant about
13 putting in a balance which is a repayment rate or
14 something else that tries to not capture good
15 performing programs but still capture poorly
16 performing. And I guess at some point you've had
17 a discussion, I have run a lot of the data, I
18 think I have some data, I'm willing to share
19 tomorrow morning that should shed some light.

20 But I guess to Todd, I think the
21 current proposal with an either/or almost may
22 exempt almost all graduate programs anyway,

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1 especially if we come up with a certain repayment
2 rate. So I think this group, we're still talking
3 theoretical, we need to figure out a way of
4 bringing a discussion to do what we came here
5 for, which was to find a metric that actually
6 identifies the programs that we think aren't
7 serving students well, and addresses them. And I
8 think Jordan and I have been together on this,
9 when we finally get some good data, it's going to
10 help a lot and I'm hoping I have something to
11 offer tomorrow.

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

21 And so last comment, and this is back
22 to administrative capability for the Department,

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1 and I'm aware of this, but there are graduate
2 schools that essentially -- I don't want to be
3 inflammatory -- but have no admission standard
4 and are close to open admissions. And it's
5 possible there's another way of going around this
6 to find how to address quality, and I know it
7 from my own student's experience where they're
8 admitted to institutions where it's clear to be
9 they should not have been admitted and they're
10 going to be taking debt they should not have
11 taken. And so maybe there's another way to go
12 around this, and I'll open it up to my fellow
13 colleagues who know more about graduate school
14 than me.

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

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1 consensus.

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

6 So let's take 15 minutes.

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

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

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

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

21 And in going back to my original
22 rigidity as regards to what paper we're going to

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1 discuss, my colleagues convinced me that perhaps
2 I was a little extreme in that regard.

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

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

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

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

22 MR. MARTIN: I'm sorry. It's

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1 sanctions, yes.

2 MR. RAMIREZ: Okay.

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

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

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

18 MR. MARTIN: Okay. That sounds a good
19 way to proceed. So, let's talk about what
20 happened since issue, since Session 2. And I
21 just want to reiterate that with, our initial
22 proposal did not contain sanctions. So, what we

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1 had originally was not a sanctioned environment.

2 But based on what we discussed in Session 2
3 we've come back with what we propose here.

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

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

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

22 And you'll note, just going back as a

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1 reminder, before Session 2 we proposed to
2 eliminate the loss of eligibility to participate
3 in the programs as a possible sanction.

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

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

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

19 We would also like additional feedback
20 on an additional threshold, on an appropriate
21 threshold rather, for taking administrative
22 action against a program.

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1 There are many factors that the
2 current regulation does not take into account,
3 such as demographic and economic variables that
4 may account for a student's success, or lack
5 thereof.

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

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

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

20 You see here, we've moved the
21 sanctions over into a measure of administrative
22 capability. So, that is the 668.16. And those

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1 are, that's a longstanding regulation which most
2 of you are probably familiar.

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

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

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

19 And may limit an institution's ability
20 to expand programs that do not meet benchmarks by
21 more than 10 percent, or to start new programs
22 that share the same four-digit CIP code to the

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1 programs that do not meet benchmarks without
2 prior approval of the Department or schedule of a
3 program review.

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

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

11 (Simultaneous speaking.)

12 MR. RAMIREZ: I'm sorry. Okay.

13 MS. BARKLEY-DENNEY: Thanks, Tony.
14 So, I'm just a little concerned about the use of
15 the term may. It seems to me that if we're going
16 -- I understand allowing some discussion in
17 determining whether or not a program doesn't meet
18 these thresholds, particularly if appeals are
19 involved.

20 But it then seems like, particularly
21 in what we were contemplating last time, it's
22 more of a shall situation. Once you have decided

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1 that a program no longer meets, is not meeting,
2 or does not have the administrative capability to
3 meet the thresholds, then we really should be
4 moving towards concrete action, and not, you
5 know, possible action if the person reviewing it
6 feels like doing so that day.

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

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

15 MR. FINLEY: So, this is Steve Finley.

16 I think we want to hear comments from a number
17 of people before we start kind of responding
18 generally to this topic.

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

21 MR. MIRANDO: Thank you. This is
22 Tony. So, in just reading through this, is it my

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1 understanding that the Department has abandoned
2 the primary and secondary tiers of meeting the
3 D/E student repayment rates?

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

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

12 MR. MARTIN: First of all, I don't
13 think anything's been abandoned. As Steve said
14 earlier, we're open to any discussion about this.

15 As far as why we came to this, we did discuss
16 the --

17 And I know that at the previous
18 session we had a fairly involved discussion about
19 what other measures there might be besides D/E.
20 And obviously repayment rate's not the only one
21 one could potentially use. There's completion
22 rate, placement rate, all these other things.

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1 I think the main reason we didn't go
2 down, as far as establishing some type of a
3 protocol where we'd have all these various
4 considerations.

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

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

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

22 So, how to allow for another metric

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1 that might show that, while sticking with our
2 intention that this rule not become maddeningly
3 complicated. So, we settled on debt, on
4 repayment rate.

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

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

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

22 But the, but so, if you say, so, if

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1 the school doesn't meet, a program rather,
2 doesn't meet the benchmarks established for D/E
3 rates, then where do you go?

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

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

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

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

22 MS. SARGE: This is Sandy. Whitney, I

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1 see exactly what you mean. It's a little bit
2 ambiguous. So it, we have some concerns.

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

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

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

21 And then, that would be where we go
22 into completion, and maybe graduate rates, and

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1 licensure, pass rates, and things like that, that
2 others have brought up, to be an alternative way
3 to say that their students are being well
4 educated.

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

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

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

19 And you get confused halfway through
20 it. And you're like, wait a minute, which box
21 goes where? But this one drops down very nicely
22 for you.

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1 So, let's take a look at the first, at
2 the upper left together. Did your program meet
3 the debt to earnings benchmark? So obviously the
4 preferred outcome there for everybody involved
5 would be yes.

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

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

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

20 And then we go down to the next step
21 there, the NCIs (phonetic). Does your program
22 has fewer than ten borrowers? If the answer to

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1 that question is yes, then you note there off to
2 the side that there's no additional actions, no
3 notifications.

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

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

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

20 And then at that point you see, are
21 there multiple administrative capability issues
22 for the institution? Multiple failing programs,

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1 or one failing program, and other administrative
2 capability issues?

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

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

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

21 MR. RAMIREZ: Okay. Thank you.
22 Jennifer?

1 MS. BLUM: Thanks. This is Jennifer.

2 So, this flow chart helps answer one of my
3 questions. And it was along the lines of what,
4 where Whitney was going too, in terms of sort of
5 the Department's options.

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

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

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

19 And then, I did have one question as
20 well, which is a much broader question. And I
21 completely agree with talking about sanctions
22 first. Although I think we'll agree that this is

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1 all like a muddy mess at this point, in terms of
2 like how you get into.

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

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

19 But I would say, and I think you sort
20 of posed the question up above, when you're
21 seeking feedback about sort of the dynamic of a
22 program, both as it relates to demographic too.

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1 Because you could also say, what
2 happens if every program that has a majority
3 population that's, you know, X, and they're all,
4 right, and all those programs are sub-par, are
5 you penalizing all of those programs?

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

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

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

21 And so, allowing the Department, or
22 just all of us, or whatever, some dynamic that

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1 allows for the ability to judge, you know, on a
2 comparative basis before, I mean, I don't even
3 know how you would handle a bench --

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

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

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

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

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1 and look at that.

2 MR. RAMIREZ: Okay. Thank you.
3 Johnson.

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

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

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

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

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

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1 be higher.

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

9 MR. RAMIREZ: Laura.

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

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

22 In regards to the ten percent. I

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

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

9 MR. RAMIREZ: Daniel.

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

13 MR. RAMIREZ: Yes. Go ahead, Ahmad.

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

18 Okay. So, it was like my
19 understanding that people -- Okay, I get it.
20 There's opposition to the idea of immediate
21 enactment of the removal of Title 4 funding. I
22 get it.

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1 But given the course of the
2 conversation during the last time around, people
3 were generally receptive to having a system in
4 which, okay, if you didn't meet D/E, if you
5 didn't meet the repayment rate, you know, you
6 don't meet the standards for economically
7 disadvantaged appeals, then we'd have a process
8 by which there would be some sort of consequence,
9 including, and potentially up to the loss of
10 Title 4 funding.

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

17 Who even does that in a year. I can't
18 think of any programs that can expand by ten
19 percent, especially not any that don't meet D/E
20 benchmarks, or repayment rates, and any of these
21 other metrics that we have before that process is
22 even considered.

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1 I don't know, this seems kind of funny
2 to me, this entire flow chart. Or is that out of
3 the question? Are we not, are there no
4 consequences for institutions that don't meet D/E
5 or repayment rate, and don't have standards for
6 economically disadvantaged appeals?

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

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

16 (Simultaneous speaking.)

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

21 But I just, I'm literally going
22 through the audit right now. So, I've seen the

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1 increase. And also, if they merge with another
2 small school with it, then they've grown. So,
3 there's lots of ways to do it. I think if you go
4 beyond just thinking of the 20,000 --

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

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

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

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

19 MR. SHAWWAL: Okay. Understood.

20 PARTICIPANT: Yes.

21 MR. SHAWWAL: And --

22 PARTICIPANT: That's accreditation

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1 rules.

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

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

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

19 (Simultaneous speaking.)

20 PARTICIPANT: I'm wondering if the
21 Department's thought was, if you find, if you
22 schedule a full program review, and you find

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1 other things, then it definitely could. I'm
2 thinking that may have been. But I'll let them
3 answer.

4 MR. RAMIREZ: Yes. Could you, Greg?

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

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

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

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

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

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1 supportive of that.

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

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

11 MR. RAMIREZ: Okay. Thank you.
12 Jordan.

13 MR. MATSUDAIRA: Thanks. I just
14 wanted to ask for a little bit of clarification.

15 I share Ahmad's concern about the lack of teeth
16 to the sanctions.

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

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1 actions.

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

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

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

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

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

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1 like that?

2 PARTICIPANT: Yes.

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

9 (Simultaneous speaking.)

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

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

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1 more extreme actions.

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

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

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

15 MR. FINLEY: Yes.

16 MR. RAMIREZ: Okay. Jeff.

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

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1 begin with.

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

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

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

21 And then I do think, and then, do not
22 underestimate the power of a program review, and

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1 what, the actions that can be taken there. And I
2 also even point out that I wouldn't be surprised
3 if the compliance -- Every institution has to
4 have compliance audits on a regular basis for,
5 our institution's is every year.

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

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

19 And then the last thing, does the
20 program have fewer than ten borrowers? I think
21 that's your first box. Because I don't think
22 you're doing a DTE on programs with less than

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1 ten.

2 So, I think you move that to the
3 beginning. Because if that's no, then you're
4 stopping right there, and you're not doing a DTE
5 rating.

6 (Simultaneous speaking.)

7 MR. RAMIREZ: I believe you're
8 correct.

9 MR. ARTHUR: Yes. All right.

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

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

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

22 MR. MARTIN: Yes. On those appeals, I

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1 misspoke earlier. Those are, my brain's a little
2 fried. I've not been feeling too well the last
3 couple of days.

4 But those appeals are -- So, you have
5 213 and 216. And there are appeals for if you've
6 been notified of a loss of eligibility to cohort
7 default, right. So, there are two cohort default
8 rate appeals.

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

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

19 MR. RAMIREZ: Okay. Kelly.

20 MS. MORRISSEY: This is Kelly. I
21 think in looking at this flow chart, the bottom
22 box in the center needs to be further parsed out.

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1 I believe that it would be impossible to, well,
2 it may not be possible to determine if there are
3 other administrative capability issues for the
4 institution unless a program review is invoked.

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

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

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

21 So, I mean, if there -- So, you're
22 asking if it's just -- I'm not sure what your

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1 point was.

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

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

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

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

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

18 MS. MORRISSEY: Right. Just to make
19 it clear that that would be an immediate concern
20 if there are multiple failing programs. Because
21 some of these other things may not be immediately
22 obvious.

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1 And then, beyond that I do believe
2 there was somewhat of an agreement that a lack of
3 administrative capability generally does trigger
4 LS&T, which is what we were seeking to gain by
5 putting this under administrative capability.

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

13 PARTICIPANT: Kelly, could you define
14 LS&T?

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

17 PARTICIPANT: Got it. Thank you.

18 MR. MARTIN: I just want to clarify
19 one thing about that. First of all, I, there are
20 ways the Department has of knowing if a school
21 has administrative capability issues besides
22 program reviews.

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1 We regularly review audits, looking at
2 program, looking at cohort default rates. So,
3 there are other mechanisms we have of knowing
4 that.

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

13 MR. RAMIREZ: Neal.

14 MR. HELLER: Good morning. Neal here.

15 I think first of all, I think what Steve was
16 kind of talking about, as far as the ten percent.

17 In our case, and in the case of many of our
18 shorter term programs we have multiple starts.

19 We can have weekly starts, monthly
20 starts. So, it's not based on semesters or
21 terms. So, to try and figure out a zero percent
22 growth would be sort of impossible as we're doing

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1 these rolling starts.

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

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

10 MR. HELLER: Okay.

11 MR. MARTIN: It is part of the
12 sanction.

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

22 But placement of every single student

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1 that started that program, not just completers.
2 That's a pretty, pretty difficult threshold to
3 meet for any of the schools that serve that
4 particular type of population, whether it be
5 schools like mine, or community colleges, et
6 cetera. Even some of the schools that Todd was
7 alluding to in his earlier comments this morning.

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

15 PARTICIPANT: There you go.

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

18 PARTICIPANT: That's interesting.

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

22 MR. ELKINS: Yes. To clarify on what

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1 I was thinking earlier, to give an actual
2 tangible suggestion. I know it's what you are
3 looking for.

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

9 But I would say, limit expansion,
10 period. Require institutions to get special
11 acceptance to add new programs. So, make sure
12 it's both, pending a scheduled full programmatic
13 review. So, that would be my suggestion there.
14 And, you know, obviously across all sectors.
15 It's not a bifurcated system here.

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

20 Has there been consideration as to
21 the, I don't want to say efficacy, but the
22 calculation, and how it's being calculated, just

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1 to avoid us doing this a fourth time?

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

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

13 MR. ELKINS: Thanks. Thanks for that
14 response.

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

17 MR. MCKENZIE: Thank you. Mark
18 McKenzie. Greg, just a quick question. And then
19 I've got a follow-up. Between the box that is
20 the institution must inform students through the
21 notification process, and then the last one in
22 the center.

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1 Could you talk a little bit more about
2 what the process that you would see, or what you
3 would envision as to how the Department would
4 determine some of these things? I know you
5 referenced you have other tools, compliance
6 audits.

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

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

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

22 Right now, the way we have it is that,

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1 you know, there are -- there are certainly in
2 668.16 a number of measures of a school's
3 administrative capability.

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

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

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

21 Because the only reason why we're
22 looking at this one failing program? Or they

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1 have, are there multiple programs that don't meet
2 the benchmarks, and other problems at the school?

3 So, it gives us flexibility. And I think that's
4 intentional.

5 MR. RAMIREZ: Marc Jerome.

6 (Simultaneous speaking.)

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

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

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

22 You know, it's actually,

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

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

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

16 It's not a term commonly used as
17 bright line. If you fail the bright line you
18 automatically get penalized. I think the
19 discussion was that these indicate there may be
20 an issue. And we need to take a deeper look at
21 the particular program and/or the particular
22 institution.

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1 Works the same way in the
2 accreditation process. We'll do thresholds. And
3 we'll do three year rolling averages. Because
4 you see, that tries to take into account both
5 small ends, and also time lags, and things along
6 those lines.

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

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

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

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1 role.

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

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

13 MR. RAMIREZ: Okay. Thank you.
14 Jerome, Marc Jerome.

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

19 I believe, and someone can correct me
20 if I'm wrong, there's about 6,000 institutions,
21 depending on how you do OPIDs. Does anyone know
22 the number of total programs in the United

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1 States? I'd say it's a couple of hundred
2 thousand to a million.

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

5 MR. JEROME: A lot of programs.

6 PARTICIPANT: A lot.

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

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

20 Because I've lived through gainful
21 employment, with all its ups and downs. And
22 taking this to a programmatic level for all

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1 institutions across the entire country, given the
2 breadth, and depth, and complexity, seems to me
3 to be administratively untenable.

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

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

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

19 MR. JEROME: So I guess, and just to
20 talk it out. We've had some discussion. I'm
21 just trying to imagine how it's playing out
22 though.

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1 So, you know, if you have an
2 institutions with 100 programs, and two fail both
3 compared to an institution with a few programs.
4 Are you looking at the enrollment size of the
5 programs?

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

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

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

17 MS. BLUM: So, I just have a couple of
18 questions. So, Greg, to your point on the
19 administrative capability, I was going to ask
20 that. I assumed it was not on some new
21 programmatic level administration. Because I was
22 at the school level. And I, if I, I'm not that

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1 familiar with the economically disadvantaged
2 appeals process. But I believe that's at the
3 institutional level as well, isn't it, round
4 CDRs?

5 MR. MARTIN: Well --

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

8 MR. MARTIN: Yes.

9 MS. BLUM: Is that the --

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

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

18 (Simultaneous speaking.)

19 MS. BLUM: Steve can answer this
20 anyway. So, I just want to understand the
21 economically disadvantaged appeal, even though I
22 do think it's really hard to meet, regardless of

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1 whether it's at the institution level or the
2 program level.

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

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

13 MS. BLUM: Okay.

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

20 MS. BLUM: Okay. So, that was one
21 question. And then the other point that I just
22 wanted to make, because I know Daniel mentioned,

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1 a lot, a number of people sort of mentioned, sort
2 of the mandatory program, not mandatory, but the
3 sort of like jump, you know, ensuring that there
4 was a program review.

5 And I did just want to emphasize what
6 I said earlier, and also what Jeff said earlier.

7 That with the, what Marc just said, with the
8 volume of programs that we're talking about I
9 feel like there needs to be something written in
10 about what the norm is, so to speak.

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

18 Because I can't even imagine a world
19 where the Department is doing, you know, a
20 literally, you know, potentially dozens of
21 program reviews at the same time on a particular
22 --

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1 So, I just, I do feel like there
2 needs to be language written in somehow that
3 allows for that standard deviation. That was a
4 interesting idea that Jeff had.

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

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

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

18 MS. MORRISSEY: This is Kelly. I just
19 wanted to circle back to Neal's discussion about
20 the economically disadvantaged appeals. And just
21 looking at the grad rate requirement of those
22 appeals.

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1 In looking at the average graduation
2 rate of community college students, which is my
3 own sector. According to Clearinghouse data that
4 grad rate is 57 percent.

5 So, holding an appeal to a standard of
6 70 percent at an institution with a high
7 percentage of economically disadvantaged
8 students, you won't have any schools that are
9 able to demonstrate that benchmark.

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

16 MR. RAMIREZ: Okay, thank you. Ahmad.

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

21 And to that effect I would support a
22 requirement that the accreditors ought to be

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1 notified if these benchmarks are not met. And
2 I'm curious if anyone disagrees with that.

3 MR. RAMIREZ: Daniel.

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

9 MR. RAMIREZ: Johnson.

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

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

22 We have, the idea here is we are now

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1 having two metrics that will look at gainful
2 employment and repayment rates. If you fail both
3 of those you're in a bad place from both a
4 borrower's perspective, and from a tax payer's
5 perspective.

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

9 MR. RAMIREZ: Sandy.

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

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

19 So, perhaps for the sake of this we
20 would define economically disadvantaged, or
21 underserved maybe would be a better word. And
22 that we say that, we leave it at the 70 percent,

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1 or whatever the standard is. It might say two-
2 thirds.

3 So 67, if 67 percent of your students
4 are receiving more than half the level of Pell
5 eligibility you would be considered serving an
6 underserved or economically disadvantaged group.

7 And therefore, this. And leave off, for sake of
8 what's the next steps. Leave off the completion
9 and placement.

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

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

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

22 So maybe, to Mark's point, we add

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1 something that says, and is equal to some
2 percentage of the student population of that
3 school, or number of, or percentage of programs
4 offered.

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

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

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

20 So, numbers are always better if it's
21 compared to something. So, utilizing percentages
22 at that point might be valuable. Thank you.

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1 MR. RAMIREZ: Laura, then Tony.

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

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

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

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

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1 ideally to institutions too.

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

7 MR. RAMIREZ: Thank you. Tony.

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

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

18 And I think if we continue to use the
19 rates that I'm hearing that we're using, and
20 originally agreed that we could go down this
21 route, because I thought we were going to have
22 the second tier, that you could still have good

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1 performing programs, providing students great
2 gainful employment.

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

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

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

19 MR. RAMIREZ: Okay. Thank you.
20 Whitney.

21 MS. BARKLEY-DENNEY: Yes. I just
22 wanted to follow-up on what Sandy said. Because

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1 I think it's actually a pretty powerful point,
2 which is, you know, I first of all, just
3 stipulating that I'm concerned about the idea of
4 letting any one program, even if it only enrolls
5 ten borrowers, to fail, and continue to fail
6 without sanction.

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

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

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

22 And let me ask you all. How do you

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1 feel, as far as the conversation on sanctions,
2 knowing that we're probably going to have to make
3 some revisions to the language that was already
4 proposed, based on what we just heard here?

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

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

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

13 MR. RAMIREZ: Okay.

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

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

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1 MR. RAMIREZ: Okay.

2 MR. MARTIN: We're not going to be
3 able to get new language together tonight, I
4 don't think. So, I would rather actually hear a
5 more holistic discussion of it before we go back.

6 One thing we do have to do that was
7 very remiss about this morning was, we have our
8 data person, Sarah Hake (phonetic), who's been
9 waiting patiently in the back for me to probably
10 bring this up, when I haven't.

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

16 MR. MARTIN: All right, 90 minutes.

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

19 MR. RAMIREZ: All right, so just a
20 quick announcement. The -- at the end of the
21 day, as far as security goes, we are asking that
22 as soon as we conclude that folks gather stuff so

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1 that way the escorts could get you out of the
2 building as quick as possible. So no hanging
3 around. But then the other thing is, I
4 understand that some of you discovered the
5 cafeteria on the seventh floor. We are being
6 asked that that remain for the employees. I
7 think part of the issue is that this is a
8 building that's also shared with ICE and there's
9 security concerns. So, escorts would have to
10 take you to the seventh floor as well. But they
11 are asking that we just keep that as -- for the
12 employees. So if anyone has to get anything, we
13 have to go outside and -- and grab that.

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

20 (Pause.)

21 MR. RAMIREZ: Okay, Greg (phonetic),
22 we are ready.

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

16 MS. HAKE (phonetic): Good afternoon,
17 everyone. It is good to see all of you again.
18 So I wanted to start out with a couple of items.

19 After the previous Neg Reg, we did go back and
20 investigated the MOU and looked at it. And I got
21 a copy and read it for myself. As a result of
22 that, we have started investigating whether

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1 there's anything we could do before the existing
2 MOU expires. We are also in discussions about
3 future MOUs and our ability to match with the new
4 MOUs. So relative to data requests, we did
5 receive a few data requests. But we have very
6 few data scientists here at the Department. And
7 incredibly limited resources. And there's also
8 an intensive data validation process, and so
9 unfortunately we are not able to bring any data
10 to the table today.

11 So in lieu of that, I thought that
12 because we were contemplating adding repayment
13 rate, that it would be good to have a discussion
14 about how one might set thresholds on repayment
15 rate information and, generally, how in the realm
16 of mathematics and statistics the different
17 methods work for identifying outliers. And, sort
18 of, an honest discussion about what are some of
19 the pros and cons of each of them. So one of the
20 most common ways is using box plots. Before we
21 get into that intensively -- because that sort
22 of is the meat of what I am talking about there

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1 -- if you would turn over to the back and look at
2 the bottom of page two, there are other ways to
3 do this. And I have heard a lot of people at the
4 table talk about setting it at, you know, the
5 mean minus two standard deviations -- or at a
6 particular percentile within the data.

7 So the difficulty with that is that
8 you are, by definition, saying that your
9 population has outliers. Because if you use the
10 mean minus two standard deviations, you then have
11 four percent of your population with a lower
12 repayment rate than that threshold. And so you
13 are defining the bottom four percent of repayment
14 rate as outliers. And so that's -- to me, is a
15 concern because it could be that in other -- in
16 other mathematical or statistical methods, they
17 might not be identified as outliers. And what I
18 heard really clearly during the last meeting from
19 you guys was that you really wanted a way to
20 identify, in your own words, the bad actors. And
21 so I am not sure that that necessarily gets you
22 to where you want to go, but I think it's one of

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1 the valid ways that statisticians do use to
2 identify outliers in process control settings and
3 in other environments, okay?

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

16 Or you could test, does my data have
17 -- my data contains five outliers -- yes or no?
18 You can set an upper threshold and test for how
19 many outliers you think there are, but you're
20 still assuming that there's outliers. And so, if
21 what you're trying to do is actually pinpoint
22 where are the outliers given the distribution of

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1 the data, my recommendation is box plots. So
2 let's go back and talk about them. And before we
3 go too far in, there are some open questions
4 where -- when -- we welcome your input, but
5 where we would have to make some decisions around
6 how we do it, or how we group it. So let's just
7 talk through some of those. And I want you to
8 think about it as we talk about box plots.

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

13 (Simultaneous speaking.)

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

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

20 PARTICIPANT: Sure.

21 MS. HAKE: Okay -- all right, does
22 that help, sort of? So, if we were to group at

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1 CIP code and level, you would have differences
2 between CIPs and also between levels. So
3 theoretically, right, then we're just talking
4 about the different options that could be done -
5 - knowing we have to make choices. So in that
6 situation, theoretically there could be a
7 different threshold for bachelor's, computer
8 science, than there might be for a certificate IT
9 program than a master's degree computer science
10 program, okay? So that's one option. Another
11 options is throw the entire population of all
12 programs into the pot, and run one threshold,
13 right, that applies to everybody? Regardless of
14 your program type or what area it's in or what
15 level it is, okay? And I am not advocating for
16 one or the other. I want you to think about
17 which one you think is most appropriate. Okay?

18 Other ways that we could do it would
19 be trying to find demographically matched student
20 populations, or other ways of grouping the data
21 where we see statistical significance, or
22 statistically significant differences where when

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1 you do that kind of research, we usually ask
2 people, well, where do you think the differences
3 are? And then we test and see, you know, is
4 there a statistically significant difference if
5 we separate the population there? Or in that
6 way? Okay? So those are some of the decisions
7 we would have to make if we were to use box plots
8 and a repayment rate metric trying to set a
9 threshold in this way. So that's question --
10 open question number 1, okay?

11 Open question number 2, we've sort of
12 already covered, how should thresholds be
13 selected? Well, there's lots of different
14 methods. And I am going to talk about box plots.

15 But if other people feel strongly about a
16 different method for identifying outliers, we
17 welcome that discussion. And I would be
18 interested in what your thoughts are. The third
19 is how frequently should thresholds be
20 reassessed? So if we are using a mathematical or
21 a statistical method, and we compute them, would
22 you want us to compute them on that year's data

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1 so that you wouldn't necessarily know what the
2 thresholds are before you are held to them? Or
3 would you rather we set them on last year's data
4 and then you would know what the thresholds are
5 for the next year's data? Or would you rather
6 you we set them, say, once and say that if we
7 need to set them -- based off of drastic changes
8 in the economy or things like that, that we would
9 reassess in those sorts of situations?

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

20 But I think that -- that sort of is
21 where that question is. How often do you think,
22 knowing your own industry, we reasonably would

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1 want to reassess them? My experience with these
2 sorts of things is that when you set a threshold,
3 and you start paying attention to who is above
4 the threshold and who is below the threshold,
5 that behavior changes. And then you see -- you
6 know, and it takes time, right? Particularly
7 when you're only computing once a year. But that
8 behavior does change. And that -- you know,
9 theoretically, that could be one of the goals of
10 this group is to change that behavior and to try
11 and identify the bad actors and either make them
12 better or make them go away -- however you want
13 to think about that. And when you set a
14 threshold, agencies and institutions are likely
15 to start acting against that threshold. So
16 that's another thing to think about also when you
17 think about how often should we consider
18 reassessing thresholds?

19 The last one is how should we make the
20 methods and thresholds available to the public?
21 There's lots and lots and lots of ways to do
22 that. But think about what kinds of information

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1 would you want to know about the thresholds?
2 Right? How would you like us to tell you? How
3 would you like us, not just to tell you, but to
4 make that information available to other
5 constituents in the public or general people who
6 are, you know, surfing the web?

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

15 Are we working? Okay, so you guys are
16 all going to get a little glimpse into my
17 previous career as a high school math teacher.
18 Okay, so when you construct a box plot, imagine
19 the first thing a student would do would be to
20 draw -- like, this is the number line, and it's
21 going vertically, which isn't necessarily the way
22 we think about it normally. That's the way this

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1 one has been drawn. So there's a number line
2 going vertically and zero somewhere. Infinity is
3 up there. The negative infinity is down there,
4 okay? And then you just draw a whole bunch of
5 dots on their number line.

6 Then they compute where is the mean?
7 And the mean is here. They compute where's the
8 median, which is the middle number, which is
9 here. They compute, where is the line where I
10 have 25 percent of my dots below it? That's
11 here. Where's the line where 25 percent of my
12 dots are above it? Or, 75 percent of my dots are
13 below it? That's here. So the median is
14 splitting at 50 percent of the dots. And the
15 75th percentile is splitting where there's 25
16 percent of the dots above, and 75 percent below.

17 Okay?

18 So the box, then, has the middle 50
19 percent of the data. Okay? And we call that the
20 interquartile range, or IQR for short. And then
21 how do we draw -- these are called whiskers
22 because they look like little kitty cats.

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1 Okay, so this actually represents a
2 dot. So the threshold, theoretically -- and the
3 way it normally would be done when trying to
4 identify outliers -- is you would put the
5 threshold at -- if you're looking for a lower
6 threshold, right, it would be the 25th
7 percentile, or the 1st quartile, minus one-and-a-
8 half times the interquartile range, which falls
9 here, right? And it's a dotted line because you
10 don't usually see it in the box-and-whisker
11 graphs. The upper one is here. So what is that?

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

15 Well, why is this drawn here? That's
16 the dot that's as close to the lower fence as
17 exists in the data, but that doesn't go below the
18 lower fence. Okay? So this represents a real
19 piece of data in your data set, okay? So this
20 one only has upper dots. But Erin, if you would
21 move to the next page. We've already covered how
22 I don't have real data for you, okay? No

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1 throwing spit wads. So I created synthetic data,
2 and I made a bunch of assumptions. One, I
3 assumed the data are normally distributed, just
4 so we could talk about it. And I assumed that
5 the median -- no, sorry -- I assumed that the
6 mean repayment rate was 46-percent, which is
7 roughly where it falls for all institutions. And
8 then -- so that we didn't have a whole lot above
9 100 and a whole lot below 100 -- I think what
10 the paper says, as I assumed, either 12 -- or 15-
11 percent standard deviation.

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

22 (No audible response.)

1 MS. HAKE: You mean I made sense to
2 everybody? That's marvelous.

3 PARTICIPANT: I have a question,
4 actually.

5 MS. HAKE: Okay, yes.

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

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

20 All right. All right, good. Are we
21 all on the same page again? Anyone need me to go
22 back and reexplain something? Yes?

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1 MS. SARGE: So, this is Sandy. So
2 when you said that -- just that least piece
3 where you said here's the line -- so that's
4 where the minimum observation is? And then the
5 dots are falling below. And you're saying,
6 basically, the lower fence is not on this? Is
7 that right?

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

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

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

21 PARTICIPANT: So the idea of this is
22 that we'd basically be setting the threshold

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1 around the place where the outliers are? Is that
2 the rationale?

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

15 PARTICIPANT: Sorry, I am still
16 confused.

17 MS. HAKE: That's okay.

18 PARTICIPANT: So you set -- what I
19 guess I am asking, is, the reason why you
20 pictured the number of 1.5-times farther from the
21 central -- from the mean and median and the
22 interquartile range is because that shows us what

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1 outliers are? Is that right?

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

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

20 MS. HAKE: Exactly.

21 PARTICIPANT: And the one on the
22 bottom is the lower --

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1 (Pause.)

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

4 PARTICIPANT: Above the lower fence.

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

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

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

12 MS. HAKE: So, if this is the middle
13 50 percent of your data, well, it comes from
14 Tukey, who is the man who developed box plots.
15 But at that (telephonic interference) all of the
16 literature, Jordan, but from sort of the why
17 behind that. The idea is that this tells you
18 about how spread the middle 50 percent of the
19 data is. Okay? And then, if you multiply that
20 by 1.5, you are essentially saying that you're
21 going -- you're taking the spread of that and
22 you're going 1.5 times farther out from that

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1 middle 50 percent of the data than your central
2 spread.

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

16 MS. HAKE: Thank you. Yes, sure. So
17 it is the rule of thumb. I read Tukey ten years
18 ago, so I don't remember. But we certainly could
19 go back and see what Tukey used as his
20 justification. I do know it gets used across
21 industries. So I used it at the Census Bureau
22 when I was doing the economic census. I used it

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1 in Food Safety when I was doing some clustering
2 stuff with the CDC. So I am not saying it
3 necessarily is the perfect number, but given the
4 fact that we don't have the data in front of us,
5 I figured for the purposes of discussion we would
6 use the rule of thumb. Okay? But if you -- if
7 you have data that would support a different
8 number get used, we certainly would welcome that
9 and would be interested in seeing it. Okay?

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

21 MR. FINLEY: So what the court said is
22 -- is that the repayment rate was struck in the

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1 first GE (phonetic) regulations because we failed
2 in the final rule to provide an adequate
3 justification for setting it where we did. And
4 if you look at the regulation, I think the only
5 justification you might even find working
6 backwards would be what we had included in the
7 REA (phonetic) which kind of came up with a
8 suggestion that about 25 percent of the programs
9 might have failed that threshold.

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

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

19 PARTICIPANT: Sorry, I think I am not
20 more confused than I was at the beginning of that
21 conversation. So basically what you're saying
22 is, we could come up with that, we would just

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1 have to justify it to a greater extent than it
2 was justified in the last -- in the rule that
3 was struck down. Is that right?

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

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

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1 PARTICIPANT: Yes, that is the
2 challenge.

3 PARTICIPANT: Mark, did you have
4 something?

5 (No audible response.)

6 PARTICIPANT: Jennifer?

7 PARTICIPANT: This one is also for
8 Steven, I think. Can you remind me on debt-to-
9 earnings back in the -- and I know they never
10 really got to it, if I remember correctly, in the
11 court decision, but I can't remember that for
12 sure. But the thought occurred to me as I was
13 listening to this -- and obviously I have
14 already said this morning that before we get to
15 sanctions we -- there ought to be some
16 consideration of whether it's the norm to be, you
17 know, below a benchmark. Or, you know, if it's a
18 norm for a particular program. So I appreciate
19 the good work here and it's certainly helpful.
20 But of course the thought did occur to of, how
21 come we wouldn't do this for the debt to earnings
22 one too to understand what debt to earnings looks

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1 like on -- on a norm basis? Like, why is this
2 conversation just around loan -- I mean, I get
3 the lawsuit reason. But from a policy
4 standpoint, why wouldn't this be relevant for
5 looking at debt to earnings as well?

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

13 MS. HAKE: I would add that I did read
14 that research recently. And it relied upon loan-
15 based standards -- so, standards in the loan
16 industry. And -- that were created by actuaries
17 and I, you know, the court probably rightly said
18 why should we redo the work of all of the
19 actuaries in the United States? But yes, that -
20 - that's the reason behind it. We have looked
21 for similar things in repayment rate and we
22 haven't found them. But if someone else has and

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1 you'd like to provide us a citation, we would be
2 interested in seeing that as well. Okay? So we
3 are not opposed to setting one based off of peer-
4 reviewed literature either.

5 PARTICIPANT: Johnson?

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

11 MS. HAKE: Well, that was all fake,
12 made-up data. But yes, in my fake, made-up,
13 magical world, yes. Okay? And another piece to
14 sort of think about as you're thinking about some
15 of the other open questions is that when you have
16 a really large population and you run one box
17 plot against all of them, you are likely to
18 identify fewer outliers, or a lower proportion of
19 the population as outliers, than if you group it
20 into, say, 20 different groups and run 20
21 different box plots, each with their own
22 thresholds. You're likely to identify a higher

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1 proportion of the population in that situation.
2 Generally, the way box plots work is that the
3 smaller the population against which you are
4 drawing a box plot, the higher the likelihood is
5 that you will identify outliers and more
6 outliers. So that's just one thing to think
7 about.

8 PARTICIPANT: Okay. Tim and then
9 Sandy.

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

15 MS. HAKE: Sure, absolutely.

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

19 MS. HAKE: Is 80?

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

22 MS. HAKE: Yes, yes. Okay.

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1 MR. POWERS: Your median is 90 and
2 your 75th-percentile is 100. So 80, 90, 100. So
3 that would be -- it would be your Q1, so your
4 25th percentile, 80, minus 1.5 times your
5 interquartile range. Your interquartile range
6 being 20.

7 MS. HAKE: Yes.

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

10 MS. HAKE: No.

11 MR. POWERS: 1.5 times 20, which is
12 30, would be subtracted from 80.

13 MS. HAKE: Exactly.

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

16 MS. HAKE: You've got it.

17 MR. POWERS: Okay.

18 MS. HAKE: Good job.

19 MR. POWERS: Thank you.

20 (Laughter.)

21 (Applause.)

22 PARTICIPANT: Tim gets a star.

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1 MR. POWERS: I think I got it. Okay,
2 I appreciate that. Thank you.

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

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

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

9 PARTICIPANT: Chad.

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

21 MS. HAKE: You would need to ask
22 somebody in the Treasury Department that

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1 question. But I -- I hear your point. Yes, I
2 don't know the answer to it, though.

3 PARTICIPANT: Sandy?

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

13 But the way, then, you would put your box around
14 it would catch a bunch of them. Right? Because
15 you do have to put a box around the scatter of
16 dots. So if you were -- so if you had CIP code
17 -- six-digit CIP code and level, they may be
18 kind of all over the place. But then you would
19 put the 50 percent around it, right? Of where
20 they would end up -- and then still get
21 outliers? So it's really balancing that. It's
22 balancing how precise do we want to be in the

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1 definition of the group, versus what we lose by
2 becoming a little less specific and therefore
3 maybe missing some of those that are truly
4 outliers and deemed -- and would be deemed bad
5 players, potentially.

6 MS. HAKE: Yes, yes.

7 MS. SARGE: Okay.

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

9 MS. SARGE: Right, okay. Got it.

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

21 PARTICIPANT: Mark, are you back in
22 the queue here? Okay, Mark and then Tony.

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1 MR. McKENZIE: So, I am following up
2 on the other metric. And this may be for Steve
3 more than you. If -- I am a believe that the 8-
4 percent debt to earnings is going to be -- is
5 going to prove to be too broad and affect too
6 many institutions. Do we know, was the bound
7 research only identifying 8 and 12 as appropriate
8 metrics? Or was it a range in between? I just
9 don't remember.

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

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

18 (Pause.)

19 PARTICIPANT: Could you use your mic?

20 MS. HAKE: Yes, so I was saying I've
21 reread the bound (phonetic) research before the
22 first session. So this was obviously in

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1 December. But if I recall that paper concludes
2 with sort of a, what we would see now as kind of
3 an income-based repayment chart. And so the 8
4 percent is based off of a certain -- a certain
5 salary that you make. So it actually moves up
6 and down a scale, depending on the salary that
7 somebody makes, with eight percent kind of being
8 where -- right where the mean is.

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

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

21 PARTICIPANT: Okay, Tony, Jordan and
22 then Johnson.

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1 MR. MIRANDO: Okay, I have gotten a
2 little -- I have gotten more confused, now.
3 When you -- the last thing you mentioned -- I
4 think you saw my face, I was kind of like I had
5 question to ask. And I want to get -- I've
6 tried not to pay attention too much of what
7 everybody said between that time because I didn't
8 want to forget what I was going to ask you.

9 (Laughter.)

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

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

18 MR. MIRANDO: And I apologize -- and
19 this is -- for question number one. So this is
20 when you were first explaining to us that we can
21 do this in two different ways, or maybe three
22 different ways.

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1 MS. HAKE: Right, yes.

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

4

5 MS. HAKE: Right. So if you throw it
6 all together, you likely will identify some
7 outliers, just like we do on the board behind us.

8 But you've got a lot of data. And when you have
9 that much data, you're going to have a fair
10 amount of variation, which is going to make your
11 box larger, which is likely going to make your
12 whiskers larger, but will certainly make your
13 fences larger. Okay? If you start breaking it
14 down into smaller groups of data, you might pull
15 out a set of, say, 100 where there is just a lot
16 of variation. And -- or, where you have, like
17 -- what did I say, 100? Where it's really
18 central, but, like, maybe 10 of them are behaving
19 really differently than the others. And those 10
20 might all be identified as outliers. Whereas, if
21 they were smushed in with the rest of the, I
22 don't know, 100,000 -- I am making up numbers,

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1 right? They likely would all get mishmashed in
2 with potentially the middle 50 percent. But
3 that's -- that's one argument for identifying
4 populations that behave differently from each
5 other, and doing it in meaningful ways. So it
6 could go either way.

7 MR. MIRANDO: So -- if I may?

8 PARTICIPANT: Yes, go ahead.

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

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

16 MR. MIRANDO: Okay.

17 MS. HAKE: Yes.

18 MR. MIRANDO: But if you -- what
19 you're saying is that if you go with a smaller
20 group, which is -- let's say a group that I
21 accredit, could be a group that's either here or
22 here on the bigger chart. And so then you're

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1 getting more specific to your group of people,
2 which could be beneficial or not beneficial. But
3 again, it's more specific to your people.

4 MS. HAKE: Right.

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

7 MS. HAKE: Exactly.

8 (Pause.)

9 MS. HAKE: Right, could go either way.

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

12 MS. HAKE: Absolutely.

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

16 MS. HAKE: Right.

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

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1 into the whole pie.

2 MS. HAKE: Yes, exactly.

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

5 MS. HAKE: Okay, good.

6 PARTICIPANT: Okay, Jordan, Johnson
7 and then Chad.

8 MR. MATSUDAIRA: So I -- I guess,
9 just one question that I have is whether we want
10 to get into some of the substance of how the
11 metrics should be defined in -- in -- you know
12 whether this kind of -- thank you. In whether
13 this kind of more relative metric as opposed to,
14 like, setting an absolute standard -- whether
15 that's preferable in the overall scheme of
16 things? Or whether we should just focus on the
17 -- understanding the details of the analysis that
18 had been presented? So just a question -- I
19 have a question about the latter, and then a lot
20 of things to say about the former part of that
21 question.

22

1 The -- the thing that I have to say
2 about the latter is just, you know, I suspect
3 this parameter of, like, 1.5 interquartile ranges
4 away from the 25th or 75th percentile is a method
5 is -- is a pretty arbitrary kind of multiple to
6 use. And it might be, you know, kind of accepted
7 as a standard in some cases, but I -- I just
8 wonder about the applicability here. Just to get
9 -- and I worry that here, it sets up a very
10 conservative standard for identifying outliers.
11 And I just wanted to make sure that I'm, like,
12 thinking about it the right way. So if the
13 underlying distribution is normal, then you can
14 kind of figure out what fraction of observations
15 should fall more than 1.5 interquartile ranges
16 below the 25th percentile. And I think it's
17 about 0.4 percent. So 4 out of 1,000 programs -
18 - the bottom 4 out of 1,000 programs would be the
19 ones that would be targeted. And I imagine that
20 if we look at the distribution of repayment
21 rates, you know, we would think that there's
22 still quite a bit of really low and absolute

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1 level repayment rates above that, kind of, 0.4th
2 percentile in the distribution that don't strike
3 us as good outcomes for students. So -- so I
4 worry that it's overly conservative. But just as
5 a check on my math, did -- did you say there are
6 1,000 programs here? And is it -- am I
7 eyeballing it right to say that there are about
8 -- are there two that are below the bottom
9 whisker?

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

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

17 MS. HAKE: Maybe.

18 MR. MATSUDAIRA: So my concern is just
19 that it -- it's, like, overly conservative. So
20 like in this example, only 2 out of 1,000 -- the
21 bottom 2 out of 1,000 judged as failing. So
22 just, my general comment about the former part of

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1 this, about whether this is a desirable way to go
2 -- determining outliers just purely in a
3 relative sense -- has to do with just, you know,
4 when we divorce this from kind of some norm
5 about, like, an absolute level of repayment being
6 a really bad outcome, then I worry that we can
7 have just a lot of programs being deemed
8 acceptable because they're not outliers in the
9 distribution even though they're really low
10 overall.

11 PARTICIPANT: Okay -

12 MS. HAKE: Yes, so just playing
13 devil's advocate -- because I hear your
14 argument, right? But this is what mathematicians
15 and scientists do, is one person presents one
16 side of the argument and then someone plays
17 devil's advocate, so we're -- it may not be my
18 actual perspective on the issue. But the other
19 side of that is, theoretically, if you throw
20 everyone together into one distribution, and you
21 create one threshold -- theoretically it is
22 possible that a particular CIP and level, all of

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1 those programs would fall below the threshold.

2 And is that something that you want to do?

3 PARTICIPANT: (Inaudible.)

4 MS. HAKE: So -- or, right. Or, for
5 a certain demographic, or however you decide to
6 group them. So that's the other side of that
7 argument. Okay?

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

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

19 If we have a program where nobody is
20 repaying their loans, you know, that feels like
21 that should be unacceptable. So I worry about
22 just giving up -- like, entirely punting on any

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1 sense of kind of absolute acceptability in the
2 rule.

3 PARTICIPANT: Let me get Chad and them
4 Mark.

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

14 MS. HAKE: So I think, actually,
15 that's one of my questions to you guys. If it
16 were me sitting on my sofa with my cup of cocoa
17 and my kitty can on my lap with my slippers on,
18 my answer would be, well, let's let the data
19 decide. Because I am a mathematician and I would
20 look for statistically significant differences,
21 and that would be my groups. But you guys have
22 the opportunity to make some of these decisions.

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1 And -- and so, we welcome your thoughts on how
2 you think we should approach that problem. If
3 you think we should approach it with my kitty cat
4 and cocoa method, then -- then that certainly is
5 something we'd want you to express. If you think
6 we should do it differently, or look at the
7 problem entirely differently -- I mean, I've
8 heard Jordan's thoughts on it. And -- and I
9 will take them back. But we really -- we are
10 open to your thoughts. This is meant to be sort
11 of a discussion. We want you to understand the
12 different possibilities. And the one that to me
13 seemed like it would be the most fruitful is the
14 one I've talked you through. But that doesn't
15 mean that that has to be decision that this group
16 makes if you come to consensus.

17 PARTICIPANT: Let me get Mark and then
18 Jennifer.

19 MR. MCKENZIE: Actually, it's for both
20 Department and for Jordan. I recall -- because
21 we have looked at this now twice. Once, GE-1,
22 when there was a 35-percent rate. Then the

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1 second time in (unintelligible) Defense when
2 there was a 50-percent rate. What I recall from
3 looking at the data both times was that there was
4 a clear and direct correlation between percentage
5 of Pell students served and repayment rates, with
6 the proportion being inverse. So, all I would
7 say is, is in my mind, to approve an appropriate
8 repayment rate -- and I think there's much less
9 research around this -- there's no way to avoid
10 the issue of student demographics. And so, I am
11 going to hold. But at some point, I think I am
12 going to throw out, again -- even though I
13 propose putting the repayment rates in, I brought
14 the recent data on student default -- where it's
15 about a little over half a million, and I
16 actually believe this group, if we consider this,
17 the research is much more robust. It may be much
18 easier to come up with an absolute number.

19 And, if we move to this, it meets one
20 other requirement I think of good policy, which
21 is the rule, institutions could have -- could
22 undertake actions that positively impact

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1 students. Whereas, with repayment rates -- and
2 I do want to address this -- I am -- I am of
3 the belief, especially with low-income students,
4 there is almost nothing an institution can do to
5 affect the outcome. So you had a little
6 conversation about when a data comes out, there's
7 something you can do. But in my mind, for low-
8 income students, I am choosing a non-amortizing
9 repayment plan is often the right thing for them.
10 And therefore, you'd have a regulation that's
11 almost at odds with what's sometimes right for
12 students. And I am happy to have discussion on
13 it, but at some point I am going to ask the group
14 to formally look at this. Because I actually
15 think, if this group looked at -- this is the
16 Department of Education recent release on three
17 or (unintelligible) default rates. And I
18 actually think we could come up with a policy
19 that lowered the number of people that default in
20 the United States by a significant amount.

21 PARTICIPANT: Jennifer?

22 PARTICIPANT: So I am harking back

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1 again to -- a lot of us have been at this for a
2 long time. So I am thinking about Gainful 1 and
3 I am thinking about the fact that the Department
4 had a year where they disclosed data before they,
5 you know, sort of -- and of course, then the
6 court came in. But -- but the idea of -- and
7 again, I am sort of looking at Steve for a
8 confirmation on this. But if I remember
9 correctly, there was a year of published data
10 that was not -- you -- nobody was really
11 subject. It wasn't -- it was not year one, if
12 you will, of the -- and -- and I again, this
13 goes back to something I said this morning, too,
14 and I keep sort of saying, which is I feel hard-
15 pressed to sit here and create a threshold, even
16 on a -- even with this good work on data that we
17 don't have. So if it's the kitty cat scenario,
18 perhaps, I just think that there's a strong
19 argument for getting the data -- releasing -- I
20 am not suggesting it be hidden or anything. But
21 in terms of the sanctioned piece, and in terms of
22 the -- understanding what a benchmark is, it

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1 feels like we ought to know what the data looks
2 like and then be able to make -- and when I say
3 we, it might not be -- be the Department,
4 probably -- but there could be language written
5 in about figuring out, you know, what those
6 benchmarks should be.

7 But it -- it feels really difficult
8 -- and if my mother were alive, she'd say I can't
9 believe my daughter is sitting at the table doing
10 anything mathematical because that doesn't work.

11 She was a math major, and I wasn't. So I just
12 feel like this is something where it's a -- we
13 are little hard pressed to make those types of
14 decisions about, you know, is it by CIP code that
15 we want to create benchmarks? Is it by
16 demographics that we want to create -- I think
17 it's hard without understanding the data and
18 having it in front of us. And so, I just do, I
19 hearken back a little bit to that year one of GE
20 where we all had the data and it was helpful to
21 have that. Of course, and then it stalled out,
22 but -- but it was helpful.

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1 MS. HAKE: And I -- I hear your
2 concern. This is the situation we're in. And we
3 don't have the data at the table. And so to the
4 extent that you could provide guidance or
5 thoughts, we would appreciate it. But I -- I
6 hear your concern.

7 PARTICIPANT: Let me get Laura and
8 then Todd.

9 MS. METUNE: Laura Metune. I want to
10 agree with Jennifer, that it's really hard to do
11 this without having data in front of us. And so
12 I guess all I can do is provide feedback
13 conceptually on the policy that you're seeking.
14 And so, in my mind, when I look at this document
15 about the process by which any sort of action
16 might someday ever be taken, I think -- if the
17 argument for why the current GE metrics are
18 insufficient is because they don't calculate
19 things like income that's not claimed for tax
20 purposes, then it seems like -- and you have to
21 fail that in order to even have this checked,
22 wouldn't -- shouldn't we not be looking at the

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1 people who also fail at the very lowest levels of
2 repayment? Shouldn't that somehow be made up for
3 by the fact that there's some level of income
4 that they're getting that's not being claimed on
5 their taxes? So I just sort of make that point
6 because I'm also not somebody who should ever be
7 allowed to look at math. But it just --
8 principally, it seems that it's a little bit
9 backwards and that we shouldn't be saying if
10 you're at the bottom of one, you also have to be
11 at the bottom of the other in order to ever,
12 someday, have a sanction.

13 MS. HAKE: So I think the idea behind
14 adding repayment rate is that debt to earnings
15 and repayment rate in the data that we have
16 available to us are not correlated. And so when
17 you have one measure and you fail one measure, if
18 you apply or make it possible to pass under a
19 different measure that is not correlated, you're
20 measuring a different behavior, for lack of a
21 better word. Okay? And so there may be
22 situations -- and I have been in one. I just

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1 told you guys earlier that I was a high school
2 math teacher. And there are a lot of teachers
3 out there that have high debt to earnings. But I
4 didn't meet a teacher I worked with who wasn't
5 able to repay his or her loans. So I think
6 that's sort of the thought process behind this.
7 And now, whether you agree or not -- or whether
8 you have a different reason for considering
9 repayment, rate -- and folks may have really
10 different reasons for why you want to include
11 different things, but that's one. As I was sort
12 of thinking about it, I could see that from my
13 own previous career as one way that my school
14 might have been able to protect themselves. And
15 I certainly got a good education. Just -- you
16 know.

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

19 MR. JONES: This is one of those
20 instances where we are in a less than ideal
21 position for rulemaking because the lack of data
22 makes the decision about whether to have an

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1 absolute standard one that is, in some ways,
2 foreclosed. I would love to have some sort of
3 useful, absolute standard -- even if there were
4 multiple absolute standards -- because that
5 would be based on data we know and it would be
6 based on some reasonably identifiable criteria
7 for what constitutes harm or a problem that we
8 can make a judgment. But, we are big boys and
9 girls and there really isn't that option here.
10 And we have to make a choice. And I am going to
11 say, guardedly, I think this is unfortunately one
12 of those situations where this is the -- I don't
13 want to say least bad because it makes it sound
14 like this is a problematic option.

15 But the last comment you made touches
16 on one of the appeals in my mind of this. And
17 that is, we have a problem with certain -- for
18 -- we have a problem for purposes of this
19 conversation with certain forms of employment in
20 this country that are traditionally low wage or
21 low entry wage. Teaching, because of how
22 contracts are negotiated, is not helpful for

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1 those who are in their first years of teaching,
2 but aside from the personal reward it is richly
3 rewarding at the back end with pensions and with
4 long tenure in teaching. Theology and being --
5 spreading the Word of God as you know it -- is
6 not a highly compensated position. But there is
7 other ways that debt is relieved or supported in
8 many cases. Social work is another one which is
9 a desperately needed occupation but is not high
10 compensation, but it has some of the similar
11 characteristics, once you have some experience,
12 of teaching in that -- in telling you have a
13 job.

14 The value of this structure makes the
15 calculation relative for types of education that
16 gets us beyond the limitations of an absolute
17 standard calculation that would inherently have
18 -- when we don't know how that will affect
19 particular kinds of work that we know to exist
20 and that are socially valuable. So, for my mind,
21 this is -- I -- I mean, I don't embrace it
22 because I know with certainty this is going to be

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1 a great working standard. I share some of
2 Jordan's concerns that there will be those who
3 are not within it. On the flip side, it's far
4 more likely to withstand judicial scrutiny from
5 an arbitrariness standard because we are adopting
6 something that is relative to data that is
7 currently unknown going forward. And we could
8 revisit this in a few years, or the Department
9 can, when data is known.

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

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

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

21 MS. HAKE: So my -- my suggestion
22 would be that if the lower fence is negative,

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1 that we would set it at zero.

2 MR. TYLER: So -- so --

3 MS. HAKE: Because it is a
4 mathematical calculation.

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

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

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1 conjunction. We have to keep minding that.

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

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

6 MS. HAKE: My pleasure.

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

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

19 PARTICIPANT: Okay.

20 PARTICIPANT: That may make more
21 sense.

22 PARTICIPANT: All right, then -- then

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1 let's do this. Let's take quick, ten-minute
2 break. And then let's come back in and then we
3 will pick back up with sanctions.

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

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

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

19 PARTICIPANT: Four.

20 MR. RAMIREZ: I'm sorry. Four. Four.
21 Top of page 3. So Sanctions, Issue Paper 4, top
22 of page 3.

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

9 (Laughter.)

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

14 (Laughter.)

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

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

22 MR. MARTIN: Yes, it was a very

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1 triggering event and that's why to this day I --
2 the math is -- I would have been like Sara, but
3 for that man.

4 (Laughter.)

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

8 (Laughter.)

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

11 So we're looking at 668.409. Starts
12 at the bottom of page 2 in Issue Paper 4. Going
13 over to the top, this is the -- just pointing out
14 the notice of determination. The only thing
15 that's different here is the addition of the
16 Secretary, "For each award year for which the
17 Secretary calculates D/E rates and a loan
18 repayment rate for an undergraduate program, the
19 Secretary issues a notice of determination
20 informing the institution of the D/E rates." And
21 it gives you the appropriate area for how that's
22 calculated and also the final loan repayment

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1 rate, which we'll go over after this paper, which
2 is in 406. And the final determination by the
3 Secretary as to whether the program meets
4 benchmarks or does not meet benchmarks.

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

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

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

16 (No audible response.)

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

22 So let's see a show of thumbs if

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1 everyone's okay with that language.

2 (Show of thumbs.)

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

5 MR. RAMIREZ: Okay. Not seeing any
6 thumbs down. Okay. So we'll go ahead and move
7 forward.

8 Greg, what's the next section?

9 MR. MARTIN: The next section would be
10 410, 668.410. This talks about the notifications
11 for programs that did not meet the benchmarks.
12 You'll note that we did change "low-performing"
13 to "benchmark" there. And for any area in which
14 an undergraduate educational program is
15 determined to not meet the benchmark under the
16 D/E rates and loan repayment measure, the
17 institution must provide a notification to
18 students and prospective students. You'll see
19 there the content of the notification. So unless
20 otherwise specified we can -- you can look at
21 that under (b).

22 What the notification must state and

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

16 And then I do want us to consider as
17 part of this as well in (2) right below that, an
18 institution if appropriate may include the
19 following notification: "Please note, however,
20 that the institution believes the earnings may be
21 affected by a significant number of students who
22 completed our program and did not report all

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1 their income, such as tip income, or who were
2 self-employed and had business expenses that
3 reduced the earnings being reported, or who
4 selected to work in part-time or -- to work part-
5 time or take time out of the workforce, including
6 care for dependents or other family members;" and
7 an institution may also include: "The institution
8 believes that the data here may not reflect the
9 earnings potential in your geographic location
10 because the institution enrolls students
11 nationally and wages can vary significantly from
12 one part of the country to the other."

13 MR. RAMIREZ: Okay. So, again, just
14 focusing on 668.410, starting at the top of page
15 4 to the middle, I guess, of page 5, looks like
16 we have a few comments there. So we'll start off
17 with Jennifer, Laura, then Whitney.

18 PARTICIPANT: So one, just I guess I
19 would qualify it as sort of technical, the
20 Department in its language flips a little bit
21 back into the word "standards" and not
22 "benchmarks," and so I feel like one thing that

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1 the Department ought to consider is is that when
2 -- instead of -- if you're going with the word
3 "benchmark," then be consistent with the word
4 "benchmark," because you used the word
5 "standards" in a couple of places. And so I
6 think just for ease of understanding I would be
7 consistent. It's either standards or it's bench
8 -- but you should pick one. And I think it
9 sounds like it's benchmark. So that was one just
10 sort of grammatical, if you will.

11 And the other one is actually sort of
12 along the same lines. But on top of page 5 I'm a
13 little bit concerned about "these graduates are
14 not making sufficient" -- some of them will be.
15 It's a percentile. So I was thinking along the
16 lines of could you say; and I'm just really
17 grasping here, but, "an insufficient number of
18 graduates are making payments to actively pay
19 down," or something that -- it's not all
20 graduates. Some of the graduates will -- I mean,
21 on the loan repayment rate in particular. It's
22 like somebody -- I mean, unless it's really,

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1 really bad. But, so it's just not completely
2 accurate to say "these graduates." So I feel
3 like there needs to be a little bit more clarity
4 around that sentence.

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

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

22 MR. RAMIREZ: Okay. So can I -- let's

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1 go ahead and make sure that we're capturing your
2 suggestions up there so we could take a look at
3 that.

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

15 MR. RAMIREZ: Okay. So --

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

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

21 PARTICIPANT: You have to -- it's now
22 a double-negative, so you have to say -- I think

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1 it would be "an insufficient number of graduates
2 are making payments." And you could say
3 "sufficient." I guess you could keep the
4 "sufficient." "Are making sufficient payments."
5 And then I guess I'm throwing it out there for
6 conversation, this "actively pay." I think
7 "actively" is kind of a trip word.

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

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

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

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

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1 important to me.

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

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

12 MR. RAMIREZ: More than --

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

21 MR. RAMIREZ: Yes, let me get Sandy
22 then, then Whitney.

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1 MS. SARGE: So where she has "an
2 insufficient number of" maybe we say "this
3 indicates that a number of graduates are not
4 making sufficient payment to actively pay down."

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

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

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

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

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

21 PARTICIPANT: That's good. Can I
22 respond to that?

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1 MR. RAMIREZ: Yes.

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

8 And so it's a little bit of a problem.

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

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

17 (Simultaneous speaking.)

18 PARTICIPANT: You make a good point.
19 And it's true, I think that's an omission here
20 that -- because we -- this language was
21 originally key to debt to earnings. And so with
22 the addition of the repayment metric the

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1 notification language is -- has I don't think
2 been sufficiently tweaked to deal with the fact
3 that it could be repayment as well. It's key to
4 debt to earnings. So we're going to have to take
5 a look at that.

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

12 (Simultaneous speaking.)

13 MR. MARTIN: I mean, in thinking about
14 the way that the chart works, so if you have a
15 program that fails; and, Steve, correct me if I'm
16 reasoning incorrectly here -- but if you have a
17 program that fails, that does not meet the
18 benchmark for debt to earnings and then met the
19 benchmark for repayment rate, you wouldn't get
20 here, right? So you're only going to get here if
21 you have a program that -- and you wouldn't get
22 here either if you had a program that didn't meet

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1 the benchmark for repayment rate, but did meet
2 the benchmark for D/E. So you're only going to
3 get here if you have a below-the-benchmark on
4 both.

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

13 Would that be accurate, Steve?

14 MR. FINLEY: Yes, I mean, Greg's
15 right. I mean, the other -- the anomaly here is
16 if that's the only required disclosure, there are
17 other programs that won't be required to make
18 that disclosure for which that statement would
19 also be true, right? It would be the programs
20 that didn't meet the standard, meet this
21 benchmark but they did in turn not meet the
22 repayment rate requirement either.

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1 MR. MARTIN: Well, I guess our
2 question would be to the group would it be
3 necessary then to say something beyond this, that
4 not only did they not meet this, but there are
5 repayment rate --

6 MS. SARGE: I have a suggestion.

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

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

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

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

19 MS. SARGE: I'm sorry, the end -- the
20 bottom of page 4. The earnings. So first we're
21 talking about basically the components of D/E
22 reported to the IRS. We could finish this little

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1 piece right here before the "Students should take
2 into account."

3 MR. RAMIREZ: On the top of page 5?

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

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

18 MS. SARGE: Yes.

19 PARTICIPANT: -- kind of both concepts
20 are there, but they kind of get amalgamated
21 together and not clarified. So I think we can
22 take a look at that and clean that up.

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1 MR. RAMIREZ: Okay. So then the
2 Department will take a shot at cleaning up that
3 piece.

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

12 (Show of thumbs.)

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

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

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

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1 going, then use that term --

2 MR. RAMIREZ: Use it for consistency.

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

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

7 MR. RAMIREZ: Yes, that --

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

10 MR. RAMIREZ: Yes, that's --

11 PARTICIPANT: -- that's what I wanted
12 --

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

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

22 MR. RAMIREZ: Bob, you have a thought

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1 on that?

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

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

17 MR. RAMIREZ: Any thoughts on that?
18 Johnson?

19 MR. TYLER: Yes, with all due respect
20 I think average and below average -- they're too
21 kind to the schools, frankly, that aren't serving
22 the students. A lot of my clients, if you said

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1 "benchmark" to them would not know what you're
2 talking about. And then to just say "below
3 average," a lot of their lives are already very
4 below average. I'm not sure that's a warning
5 sign.

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

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

16 MS. SARGE: I think you're right,
17 Johnson, when you say "below average, above
18 average," it does -- can get muddied. That's
19 everybody's interpretation. But if we say "the
20 average established by the Department," or
21 something along that -- we're more specific, I
22 think we could clear some of the muddiness in it

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1 with the intent of getting somewhere we could be
2 close to. I think the student could -- a student
3 could presume that the Department is trying to
4 find some -- a measure that you can say, okay,
5 did the school fall below it or above it and come
6 up with some thought process. So maybe just the
7 word "the average" would help that.

8 MR. RAMIREZ: Johnson?

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

18 MR. RAMIREZ: All right. So I want to
19 try to -- what I'm trying to do is seeing if we
20 could give some additional guidance to the
21 Department to -- when they're going to clean this
22 up a bit. What's the terminology that would be

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1 -- stand a greater chance of being accepted?

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

7 Whitney?

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

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

21 (Show of thumbs.)

22 PARTICIPANT: There's one down.

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1 MR. RAMIREZ: All right. One down.
2 Tony, is that down?

3 PARTICIPANT: Two down.

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

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

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

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1 you.

2 MR. RAMIREZ: Okay. Thank you. Tony?

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

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

17 And, again, I'm all about making sure
18 students understand this. To me this -- if a
19 student is saying, well, they don't meet a
20 standard from the Department of Education. Wow.
21 That really sounds serious. When indeed a
22 school could be a great school with a great

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1 program, but because of where the school is
2 located the student may not be repaying back
3 their debt and the debt to earning because of
4 their own personal situation may not fit. How is
5 that a standard? In my opinion it's just not a
6 standard.

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

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

20 MR. RAMIREZ: Okay. Daniel?

21 MR. ELKINS: To the people around the
22 table that had their thumbs down, would you care

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1 to offer a word or phraseology that you feel
2 comfortable with?

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

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

9 MR. RAMIREZ: Bob --

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

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

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

20 MR. RAMIREZ: Daniel?

21 MR. ELKINS: Can we vote on that right
22 now?

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1 PARTICIPANT: Below the metric? Norm?

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

4 (Show of thumbs.)

5 MR. RAMIREZ: What are you thinking,
6 Laura?

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

9 (Laughter.)

10 MS. METUNE: Finally. So I just think
11 that I came to be a part of these negotiations
12 because I believe that there are requirements
13 that institutions should have to meet to
14 participate in the Federal Financial Aid Program.

15 And I think that weakening those metrics,
16 standards, whatever we want to call them, to the
17 point where very few people ever get sanctioned
18 really undermines what I thought I was coming
19 here to do in the first place.

20 Putting that aside, if what we're
21 saying is that a disclosure is going to give any
22 sort of reasonable bit of information to a

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1 student to make a decision, these fall far short
2 of that. So we might disagree about whether or
3 not these actually evaluate something that a
4 student should know, but if we believe that they
5 do, then we -- it doesn't matter whether you call
6 it a standard or a metric. The school either
7 passed or failed. And it needs to be that simple
8 for a student to have it be meaningful at all to
9 them.

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

20 And then finally with regards to these
21 sort of -- and maybe our student -- the two and
22 three about students who maybe the data doesn't

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1 incorporate their income, it just seems like I --
2 when we were here last time we talked about an
3 institutional -- an institution's responsibility
4 to verify that these circumstances are actually
5 true before they put this kind of disclosure.
6 And I was wondering whether or not the Department
7 thinks this language accomplished that goal that
8 was expressed last time or if they just didn't
9 incorporate it at all.

10 PARTICIPANT: I think to respond to
11 that when the institution makes this -- this is
12 an assertion they're making about their program.

13 And they -- if it's -- we're not going to set up
14 a -- I don't even know how we would do that, set
15 up something in advance where we would vet every
16 time an institution does this automatically
17 whether or not they had made this assertion in
18 earnest.

19 However, as with any other assertion
20 an institution makes, it is subject to review by
21 the Department. If in the context of a program
22 review or some other evaluation -- well, it would

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1 certainly be, I should say, acceptable for a
2 reviewer to ask an institution to justify having
3 made that statement. So I think we have that --
4 we certainly have that authority. We would
5 expect that an institution would make this
6 assertion in good faith and not just be slapping
7 it onto every program.

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

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

17 MR. RAMIREZ: Yes, go ahead, Whitney.

18 MS. BARKLEY-DENNEY: Thank you. So
19 this is Whitney. I guess I'm with Laura on this.
20 I mean, as somebody who drafts legislation I got
21 hives when I read the words "if appropriate,"
22 because it also doesn't give the institution very

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1 much guidance as to when it's appropriate for
2 them to use this or not. And if we're not going
3 to be doing program reviews, then I would imagine
4 -- or not -- we might do program reviews, but if
5 we're not going to be doing appeals around this
6 issue, then I would imagine that "if appropriate"
7 needs to be fleshed out more so that institutions
8 know whether or not it is appropriate for them to
9 use this.

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

22 So I just -- I really think this needs

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1 to be fleshed out more if we're even going to
2 consider it.

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

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

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

16 MR. ARTHUR: Whatever the rule is.

17 MR. RAMIREZ: I see. Okay.

18 MR. ARTHUR: When we decide what that
19 is.

20 MR. RAMIREZ: Yes. Jennifer?

21 PARTICIPANT: Well, I'll keep with the
22 theme. I think one of the reasons that where I

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1 put my thumb sideways on standards, I actually
2 did like Tony's of below the Department's metric,
3 but let me just qualify that I think part of the
4 struggle here is is that if we walk away from
5 here either us deciding what a threshold -- what
6 the metrics are, what the metric amount is, or
7 the Department later on decides what the metric
8 amount is on their own for each of them, then I
9 think "below the Department's metric" makes
10 sense, because we don't know where it fits in
11 relative to anything else.

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

21 But without understanding what it is
22 relative to anything else, if the Department's

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

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

14 MR. RAMIREZ: Okay. Tony?

15 MR. MIRANDO: Thank you. So, yes, I
16 absolutely agree with you, Laura. I listened to
17 what you said and I agree that's what we're here
18 for, but when I hear the word "standard," I
19 associate that with something that's going to
20 work for everyone. It's a standard. It's a
21 standard for which everybody can live by, and in
22 this case this metric is not a standard for which

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1 everyone can live by. So it's "the Department's"
2 -- and maybe another word you might want to look
3 at is maybe "established criteria." So it's "the
4 Department's established criteria."

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

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

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

21 MR. SHAWWAL: Ahmad. I would push
22 back a little bit on saying it's above or below

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1 metric or a threshold, because depending on how
2 you do the calculation who knows if it's good to
3 be below the threshold or if it's good -- or if
4 it's bad to be below the threshold. I'm not sure
5 what the disclosure language is currently. It
6 might be helpful to say, hey, this passes or
7 fails this metric as defined by the Department of
8 Education. And you could include language that
9 says these are metrics which the Department
10 believes to be a -- I don't want to say
11 "effective," but effective measure of program
12 outcomes.

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

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1 MR. RAMIREZ: Okay. Thank you.
2 Johnson, Bob, and Daniel.

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

16 MR. RAMIREZ: Bob?

17 MR. JONES: Yes, I think probably
18 we're all basically in agreement around whether
19 it's "metric" or some language like this, but I
20 want to go back and repeat that I think the
21 system we're here today talking about is not the
22 regulatory solve. It is the disclosure to

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1 everyone of performance and where people are,
2 where the schools are, so that students can make
3 decisions.

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

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

21 MR. RAMIREZ: Daniel?

22 MR. ELKINS: I was curious if the

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1 people who put their thumbs down for "metric"
2 could offer maybe a potential alternative?

3 PARTICIPANT: For the record we like
4 "benchmark."

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

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

15 MR. RAMIREZ: Yes, Sandy?

16 MS. SARGE: This is Sandy. The last
17 time we were here we had a lot of discussion
18 about this concept of what does the words "pass
19 and fail" mean? And they're very definitive in
20 that. This is -- to me this is an indication
21 that there may be issues within other issues that
22 the Department would then have a mechanism to

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1 which they could explore and continue down their
2 ability to -- it gives the Department an
3 opportunity to dig deeper, which that's really
4 what we should be using this for because of all
5 the other reasons we've talked about.

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

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

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1 composite score -- they're looking at the audits.

2 You're going to go in and find out whether or
3 not they're maintaining records appropriately.
4 You're going to go in and investigate in a
5 program review tell me how you gather your
6 employment information. You're going to find out
7 a lot more.

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

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

19 MR. SHAWWAL: I mean, I was going to
20 say -- so I'm a big fan of brevity, and I'm not
21 sure what the disclosures look like, but I think
22 it's totally reasonable to say something like,

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1 hey, it passes or fails by this test that we've
2 developed, but -- and take it with a grain of
3 salt because not all -- like no calculation is
4 perfect. This is what we just believe to be an
5 indicator of such and such problems. Like, I --
6 is there any pushback to something like that?
7 Like what is the current disclosure language?

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

14 It states "the program has not passed
15 the standards established by the U.S. Department
16 of Education. The Department based these
17 standards on the amounts students borrow for
18 enrollment in this program. If in the future the
19 program does not pass the standards, students who
20 are then enrolled may not be able to use federal
21 student grants or loans to pay for this program
22 and may have to find other ways such as private

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1 loans to pay for the program." And that was key
2 to the loss of -- to the current loss of program
3 eligibility. But that's the way the warning is
4 currently worded. So the notifications replaced
5 warnings. Disclosures are a separate thing.

6 PARTICIPANT: So maybe we did a full
7 360 here, right?

8 (Laughter.)

9 PARTICIPANT: Pass, not pass the
10 standards, right?

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

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

17 (Show of thumbs.)

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

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

22 PARTICIPANT: I will add what I think

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

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

20 So before we move on to the next
21 portion. is there anything that, Ahmad or Tony --
22 you're the last two left. Is there anything else

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1 that you really wanted to add before we move on?

2 PARTICIPANT: I'm just trying to think
3 of ideas that could lead to consensus. I don't
4 know, maybe green, yellow, red zone. I'm not
5 sure how effective that would be.

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

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

10 MR. RAMIREZ: Oh.

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

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

16 PARTICIPANT: Spaces.

17 MR. RAMIREZ: Okay.

18 (Laughter.)

19 MR. RAMIREZ: Tony?

20 MR. MIRANDO: So I have another
21 question, but it's prior to that section, so I
22 just want to make sure before we move on.

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1 MR. RAMIREZ: Okay. Thank you.

2 MR. MIRANDO: So, yes?

3 PARTICIPANT: Yes.

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

17 MR. MARTIN: That's correct.

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

21 MR. MARTIN: Right.

22 MR. MIRANDO: Okay. I just want to

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1 make sure I understand.

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

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

8 PARTICIPANT: Yes.

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

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

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

19 PARTICIPANT: Well, it says "program."

20 PARTICIPANT: It does say "program"
21 though.

22 PARTICIPANT: But what is a program?

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1 I mean, we're talking about students here who are
2 reading that.

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

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

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

21 PARTICIPANT: I think it needs to say
22 that students are not doing well.

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1 PARTICIPANT: Oh, something about this
2 -- well, I mean, we continue --

3 PARTICIPANT: Yes, rather than the
4 program.

5 PARTICIPANT: The performance of this
6 program --

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

11 PARTICIPANT: -- students borrow based
12 on --

13 (Simultaneous speaking.)

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

19 PARTICIPANT: That works.

20 PARTICIPANT: There you go. Boom.
21 Done.

22 PARTICIPANT: So you just put

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1 "students" in front of the debt to earning.

2 PARTICIPANT: I like "students"
3 better.

4 PARTICIPANT: Does that work?

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

7 MR. TYLER: Yes.

8 PARTICIPANT: That gets to the
9 students.

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

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

17 PARTICIPANT: I think if we say
18 "students," everybody knows it's them. I mean, I
19 think that would refer to anybody. They're
20 getting this -- hopefully they're seeing this
21 when they begin the program, so hopefully they're
22 being positive they're going to make it through.

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1 Its' better than having no -- nothing in there
2 with students, because I understood what you were
3 saying.

4 MR. RAMIREZ: Johnson, does that work?

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

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

17 PARTICIPANT: Can you say that again?

18 PARTICIPANT: Yes, I mean, and I'm
19 making -- well, I'm not making it up, but I'm
20 doing this on the fly, so it might not be the
21 same twice. "Regarding the debt-to-income ratios
22 of prior graduates and loan repayment performance

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1 of the program's borrowers," or something like
2 that. So then it's clear who the cohorts are for
3 each of the metrics.

4 PARTICIPANT: That's fine.

5 PARTICIPANT: Okay.

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

8 PARTICIPANT: Just qualify each
9 section.

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

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

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

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

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

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1 (Show of thumbs.)

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

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

8 MR. MARTIN: So the -- thank you,
9 Javier. This is Greg for the record. So we'd be
10 looking on page 6 at (c), Alternative Languages.

11 So we did make some revisions there. You can
12 see that the language states, "Programs that are
13 not taught in English or that use non-English
14 promotional materials must provide notifications
15 in the language of the program instruction or the
16 promotional materials."

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

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

21 MR. RAMIREZ: Oh, Mark, go ahead.

22 MR. MCKENZIE: Thank you. Mark

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

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

21 In this sequence there's automatically
22 a notification. So a notification is now going

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1 before there's been a review or a consideration
2 of, okay, do these two flags actually indicate
3 something that needs to be -- there needs to be
4 some intervention? And one of the challenges
5 here is that -- and I think Jessica said it
6 earlier, is that there's a difference of opinion
7 in how we're -- how the groups are kind of coming
8 at this.

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

20 So to automatically go to something
21 that's going to start penalizing institutions
22 and/or students attending those institutions --

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1 because it's not just the students that are
2 attending bad institutions. If you close down a
3 good performing institution, those students get
4 penalized as well. Those faculty members get
5 penalized. So there are a lot of issues at stake
6 here and I think making sure that we're thinking
7 about that on the front end rather than on the
8 back end. Thanks.

9 MR. RAMIREZ: Okay. Thank you.

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

13 MR. MARTIN: I just want to make a
14 point of clarification; this is Greg, regarding
15 notifications. The notifications are not new per
16 this session. Remember that the chart we handed
17 out that went through the various steps that we
18 always -- even going back to round one, our first
19 proposal was when we proposed this as a
20 disclosure-only regulation, that we still had
21 disclosures and we still had notifications
22 involved.

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1 Now what this one does is introduce
2 the concept of or the possibility of sanctions.
3 That's what new. But notifications was there.
4 The notifications don't key to any -- in and of
5 themselves don't key to any type of action. It's
6 just if the benchmarks are not met, then the
7 notification is necessary. But the notification
8 doesn't go to anything other than making the
9 notification.

10 MR. RAMIREZ: Okay. Thank you.

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

13 (Show of thumbs.)

14 PARTICIPANT: I don't see any down.

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

17 All right. And one of the reasons --
18 I want to get that one done, but one of the
19 reasons I wasn't necessarily going back on the
20 issue of the notifications, the flow chart,
21 because I understand that we still have to make
22 some tweaks to that language and there's probably

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1 going to be some additional discussion at that
2 point, right?

3 So, Greg, what's the next section?

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

15 So this is delivery to students of
16 notifications. "An institution must provide the
17 notification required under this section to each
18 -- in writing to each student enrolled in the
19 program, but no later than 30 days after the date
20 of the Secretary's notice of determination."
21 And "Hand delivering the notification" -- by hand
22 delivering "as a separate document or sending the

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1 warning -- the notification rather to the primary
2 email address used by the institution."

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

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

13 And then we have, "Delivery to
14 prospective students," as well. "Provide
15 notification required in this section to each
16 prospective student or third party acting on
17 behalf of that student by hand-delivering as a
18 separate document." Again, we're again "sending
19 notification to the primary email address."
20 "Providing a student a copy of the disclosure
21 that includes the notification, because remember
22 that the notification will be, as is currently

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1 the case with the warning, included on the
2 disclosure template itself.

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

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

16 And then finally we can look at the
17 disclosure template. "Within 30 days of
18 receiving notification from the Secretary that it
19 must provide the warning, the institution must
20 update the educational program's -- undergraduate
21 educational program's disclosure template to
22 provide -- to include rather the notification."

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1 MR. RAMIREZ: Okay. So, Steve, you
2 have a comment or a question on that?

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

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

20 MR. CHEMA: No, I appreciate --

21 PARTICIPANT: -- some of the
22 requirements we had here.

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1 MR. CHEMA: I very much appreciate
2 that simply because the read receipt capability
3 on email is so spotty. Thanks.

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

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

10 PARTICIPANT: Could you read the
11 sentence, please?

12 PARTICIPANT: Yes, so "hand
13 delivering" --

14 PARTICIPANT: (Inaudible).

15 PARTICIPANT: No, here. Under (i).
16 "Hand delivering the notification as a separate
17 document to the prospective student or third
18 party individually; or as part of a group
19 presentation." And should there be and "and" or
20 an "or" that (ii) and then you also have send the
21 notification? I'm just not sure whether that's
22 -- does that make sense?

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1 PARTICIPANT: So if I could jump in
2 here, because under the delivery to students
3 there's an "or" after it in the delivery. After
4 prospective student there is no "or." So as you
5 -- are you talking about after the prospective
6 students?

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

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

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

14 PARTICIPANT: Yes.

15 PARTICIPANT: -- "or as part a group
16 presentation."

17 PARTICIPANT: Yes.

18 PARTICIPANT: Because there should be
19 something after that, correct?

20 PARTICIPANT: Yes, so there is an "or"
21 under the first one under students, but there's
22 no "or" under "prospective students."

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1 PARTICIPANT: Ah, prospective
2 students.

3 PARTICIPANT: There is -- under
4 prospective students there is the -- the way
5 that's worded, yes, "by hand delivering the
6 separate document," and then there's a semicolon,
7 "sending the notification to the primary email
8 address for communication, or providing the
9 prospective student with a copy of the disclosure
10 template."

11 PARTICIPANT: Right, and so under
12 prospective student under (i) I think what Mark
13 is saying there should be an "or" at the end of
14 the first (i) under "prospective students."

15 PARTICIPANT: Do they both or do they
16 do --

17 PARTICIPANT: One or the other.

18 PARTICIPANT: You can do one or you
19 can do this?

20 PARTICIPANT: Right.

21 PARTICIPANT: It's any of the three
22 there, right, so --

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1 PARTICIPANT: So then it should be
2 "or."

3 PARTICIPANT: Right.

4 PARTICIPANT: Just the "or" is
5 missing.

6 PARTICIPANT: Oh, I see. Okay. On
7 page 7 where it says "Hand delivering?"

8 PARTICIPANT: Page 7.

9 PARTICIPANT: "Hand delivering the
10 notification as a separate document to the
11 prospective student or third party individually;
12 or as part of a group presentation" --

13 PARTICIPANT: Or.

14 PARTICIPANT: -- or sending the
15 warning to the primary address."

16 PARTICIPANT: Yes, that's -- well,
17 it's just the way you read it. It's basically --
18 so it says, yes, "Sending the notification." And
19 then you can do it -- so you can hand deliver.
20 So you're giving them a list. I can hand deliver
21 it, I can send the notification to the primary
22 email address, or I can provide it via the

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1 disclosure template, right?

2 PARTICIPANT: They're saying that in
3 the previous page where you had the same wording
4 you did have an "or," so they'd like you to put
5 the or in this one as well.

6 PARTICIPANT: At the bottom of page 6.

7 PARTICIPANT: It goes in the clause
8 before the last one. If it's an "and," all three
9 apply; if it's an "or," any of the three apply.

10 MR. RAMIREZ: Mark, does that help?

11 PARTICIPANT: You don't need
12 (inaudible) from a legal standpoint?

13 PARTICIPANT: No. No.

14 MR. RAMIREZ: Okay. Then any other
15 discussion on delivery of notification for
16 students, prospective students or the template?

17 Sandy?

18 MS. SARGE: This is Sandy. I just
19 have a question and to Kelly and Andrew from --
20 since this falls on financial aid, would this --
21 is 30 days adequate?

22 MS. MORRISSEY: I'm not sure that it

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1 would fall in financial aid if we're talking
2 about prospective students because we in some
3 cases would not be in contact with them at that
4 point in the enrollment cycle, but I think to me
5 30 days is adequate.

6 MS. SARGE: Okay.

7 MR. HAMMONTREE: I would agree. And
8 this is only for those students in a program
9 that's not meeting a benchmark. It's not for all
10 programs. That's what we had some concerns about
11 before is it wasn't realistic --

12 MS. SARGE: Okay.

13 MR. HAMMONTREE: -- to do -- to
14 include all programs. But if this is only
15 notifying students in a program that's in danger,
16 I think it's okay.

17 MS. SARGE: Okay.

18 MR. RAMIREZ: Thank you, Andrew. All
19 right.

20 PARTICIPANT: One more thing. I just
21 want to point out that I was informed that I
22 erroneously suggested that -- at the top of page

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1 7, that we were keeping substantive content. And
2 that should -- and as is -- what's there is
3 correct. We removed "substantive" just to make
4 it easier. It's the only content of the email.

5 PARTICIPANT: That makes it much
6 clearer.

7 MR. RAMIREZ: All right. Let me see a
8 show of thumbs if everyone's okay with delivery
9 of notification to students, prospective students
10 and the template.

11 (Show of thumbs.)

12 MR. RAMIREZ: Okay. I am not seeing
13 any thumbs down, so that means we're moving
14 forward.

15 Okay. Thelma?

16 MS. ROSS: Did we define a
17 "prospective student?"

18 MR. RAMIREZ: Greg?

19 MR. MARTIN: Okay. "Prospective
20 student" is on Issue Paper 1, page 7. I thank
21 Jennifer for that quick reference.

22 On page 7 you'll see, if you go back

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1 to Issue Paper 1, the definition of a
2 "prospective student" is there. "An individual
3 who has contacted an eligible institution for the
4 purpose of requesting information about enrolling
5 in an undergraduate educational program or has
6 been contacted directly by the institution or a
7 third party on behalf of the institution about
8 enrolling in a program."

9 MS. SARGE: So is the intent to be
10 going forward on that? I'm sorry. I just jumped
11 right in there, Javier. I apologize. This is
12 Sandy.

13 So it would be prospective. So if
14 something comes out, says they're not passing
15 these rates, we have to do notification within 30
16 days, and it would be notification to any student
17 that in the future either asks for information or
18 not and any student that's currently in the
19 system, right, student already enrolled, we'd
20 have to give that notification. So then I think
21 the only question would be about the students
22 that have not yet enrolled but began the process

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1 before this notification.

2 So I think the bottom line is just
3 make sure you're letting people know. Is that
4 your concern, Pamela?

5 MS. FOWLER: We had talked before
6 about a student -- it was much broader than that.

7 It could be the kid that was at cheerleading
8 camp or at basketball camp or football camp when
9 they were in the seventh grade and never had any
10 intentions of attending the institution. That
11 was my concern.

12 MR. RAMIREZ: All right. So, but with
13 that clarification of --

14 MS. FOWLER: Not enrolled? MR.
15 RAMIREZ: Yes, okay. All right. Jeff?

16 MR. ARTHUR: Yes, so in that regard, I
17 mean, "first contact" is pretty broad. And I
18 would suggest that we make this at the time of
19 either application or expressed interest in a
20 particular program or a first visit to a campus.

21 There has to be some qualifier besides just,
22 hey, here, here's a name and address of somebody

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1 that might be interested.

2 (Simultaneous speaking.)

3 MR. RAMIREZ: All right. So --

4 MR. ARTHUR: You may not even know
5 what program they're in. And then they're in
6 your system. And now at some point they identify
7 a program. Good luck trying to figure out what
8 -- when that happened. When did they actually
9 decide on a program that you need to disclose?
10 Very complicated.

11 MR. RAMIREZ: So we have to look at
12 that under Issue Paper 1 under the definition of
13 "prospective student." Is that where we would
14 make that modification?

15 PARTICIPANT: Yes.

16 MR. RAMIREZ: Okay. So we'll hold off
17 on that for now. I think we're still okay with
18 the language that you all just approved. We
19 would have to make sure that we are clear on what
20 is prospective student under Issue Paper 1 then.
21 Correct?

22 (No audible response.)

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1 MR. RAMIREZ: Okay. All right. So we
2 have about 50 minutes left. Do we want to go
3 back into the D/E rates?

4 PARTICIPANT: 5.0 or 1.5?

5 MR. RAMIREZ: 5.0. And we -- and
6 actually we need a little bit of time -- make
7 sure there's any comments in closing, but --

8 PARTICIPANT: Yes.

9 MR. RAMIREZ: We jumped into sanctions
10 after talking about D/E rates for a little bit.
11 So all right. Let's go ahead and continue on
12 with D/E rates then.

13 MR. MARTIN: So we're going back to
14 D/E rates. It's Issue Paper No. 2. Just give
15 everybody a minute to go there.

16 (Pause.)

17 MR. MARTIN: I think we already read
18 the summary of that, and just to draw your
19 attention again to the notes at the bottom of
20 page 1 regarding the feedback we're interested in
21 with respect to these ideas you see listed at the
22 bottom.

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1 This basically talks about adding the
2 loan repayment rate framework. And you can see
3 starting at the top of page 2, the undergraduate
4 educational program framework. We have debt-to-
5 earnings rates, or D/E rates, and loan repayment
6 rates that's been added. And noting here that
7 for each award year and for each eligible program
8 the Secretary is going to calculate two D/E
9 rates: the discretionary income rate and the
10 annual earnings rate, using the procedures in
11 668.404 and 405, and the loan repayment rate,
12 which is using the procedures in 668.406.

13 And you see the benchmarks for D/E
14 rates measure. And those haven't changed; so we
15 had those last time around, so I'm not going to
16 review those again because we know what those
17 are.

18 And again, the reference at the top of
19 page 3 that: "An undergraduate educational
20 program is considered to meet the benchmarks
21 under the D/E rates measure if the institution
22 demonstrates to the Secretary it meets the

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1 standards for economically disadvantaged appeals
2 in 668.213, or meets the standards appeals in
3 668.216 for programs with thirty-or-fewer
4 borrowers."

5 All right. Okay. So can entertain
6 comments on that.

7 MR. RAMIREZ: Yes, Pamela?

8 MS. FOWLER: Actually I would like to
9 go back to page 1 where you talk about as a
10 comparison tool among institutions of similar
11 size and scope and that serve a demographically
12 matched student population. Are you looking at
13 -- are you talking about all three of those or
14 are you talking about any order?

15 MR. MARTIN: Yes, here we're
16 soliciting -- we're just soliciting your feedback
17 on ideas about what you think about any or all of
18 these. So we're not necessarily committed to one
19 or the other. We put it out there as whether --
20 or as to whether or not the D/E rate should be
21 used as a comparison tool among -- to
22 institutions with similar size/scope or those

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1 that serve at a certain demographic and what you
2 think about whether or not we should pursue that,
3 or which of these you think would be most
4 effective toward that end.

5 MR. RAMIREZ: Okay. Kelly?

6 MS. MORRISSEY: This is Kelly. I
7 would also like to provide feedback, but on the
8 second point about evaluating incomes only on the
9 top 50 percent of students in a program. I
10 oppose this both philosophically and
11 logistically.

12 First of all, I'm just wondering why
13 we would exclude students who are maintaining
14 standards of satisfactory academic progress,
15 therefore they're allowed to receive financial
16 aid, receive federal loans, why we would not be
17 tracking their outcomes if they in fact completed
18 the program.

19 And then logistically I'm not sure how
20 these rates would be calculated without
21 additional data points being reported to the
22 Department in an effort to exclude those students

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1 from the calculation.

2 MR. RAMIREZ: Okay. Whitney and then
3 Jeff?

4 MR. MARTIN: You are -- I'll respond
5 to that. You are correct that we would -- it
6 would require us to get further data from
7 institutions. I mean, there are different ways
8 we could do it. We could possibly do it with --
9 through completer lists. Schools -- only
10 including those students who were above a C, or
11 an A or a B. That's a possibility.

12 I think just the theory here is that
13 -- behind this is that -- especially for open
14 enrollment institutions or schools that act in
15 that way that they take -- they basically take
16 all applicants and that there are a certain
17 number inherent with that. There's a greater
18 risk to those schools than perhaps you have with
19 a more selective institution that self-selects
20 out those kinds of students who would have more
21 difficulty being employed or meeting higher
22 academic standards.

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1 MR. RAMIREZ: Okay. Whitney, Jeff,
2 Steve, Johnson, Christina.

3 MS. BARKLEY-DENNEY: Yes, so my first
4 comment, Greg, to your last point is that we're
5 already getting to that by using, at least in the
6 D/E rates, graduates only. I mean, those people
7 have made it through the program. The school has
8 deemed them competent enough to receive the
9 certification or degree or diploma, whatever
10 they're getting from the school. So therefore,
11 we should believe that those people can be hired
12 in their field.

13 I agree with everything else Kelly
14 said. I thank her for raising that because I
15 don't even know what we're considering here. Are
16 employers asking for your grade in your mechanics
17 class? Like I just don't understand that -- if
18 that's even something that happens when people go
19 out into the world, or they're just looking at
20 the diploma.

21 PARTICIPANT: They ask for grades.

22 MS. BARKLEY-DENNEY: They do ask for

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1 your grades? Okay. Well, I've never encountered
2 that, so that's not something I'm familiar with.

3 But I still think that if a school has said that
4 someone is doing well enough to graduate from
5 their program, then that should really be the end
6 of the discussion.

7 MR. RAMIREZ: Jeff?

8 MR. ARTHUR: I think I've got an
9 approach to this that may be way simpler and
10 actually address several concerns.

11 We've heard a lot of concerns about
12 pay discrimination. We've heard concerns about
13 people that have a percentage, good percentage of
14 people that are self-employed that doesn't get
15 counted to Social Security wages, about people
16 that are good -- or a good number of students
17 receive income through tip-based income.

18 And I think also if you consider the
19 academic performance, the lowest-performing --
20 academically performing students is -- I think if
21 we take the salaries and just simply base the
22 median on the 75 percent of students with the

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1 highest salaries, we would basically eliminate
2 and adjust for pay discrimination, self-
3 employment, all those factors and just chop those
4 out, all those that maybe out and put a median on
5 the 75 percent of the highest wages. And I think
6 it would address all of that.

7 MR. RAMIREZ: Johnson?

8 PARTICIPANT: I'm going to have to
9 think about what Mark said. It's an intriguing
10 idea.

11 PARTICIPANT: Jeff.

12 PARTICIPANT: I'm sorry. Jeff.
13 Sorry.

14 So I'm concerned about the end factor
15 here. You're already -- you have completers
16 being smaller than the group of people that enter
17 the program. Some of these schools, there are
18 very few completers. And if you take that end
19 group and you divide it in half to get the top
20 part of the class, I think you're just
21 eliminating more data that's out there.

22 PARTICIPANT: That -- but, Todd, that

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1 does then actually adjust for some of the
2 concerns with a really low 10 n, so it would have
3 to -- then you'd be at about a 13 n, because if
4 the number of 75 percent represented less than
5 10, then I would also propose that that doesn't
6 meet the n threshold. So you'd be adjusting the
7 n threshold up about three.

8 PARTICIPANT: We'll talk off mic.

9 But I also I had one more point, but I
10 can't remember what it was, so --

11 MR. RAMIREZ: We'll come back to you.
12 Steve?

13 MR. CHEMA: Steve Chema for the
14 record.

15 Just one small reaction point to
16 Kelly. I think while I definitely appreciate the
17 logic behind the comparison to SAP because they
18 both establish a metric or a baseline around a C
19 average, I think there is a little bit of an
20 apples and oranges application to how -- why we
21 use SAP the way we do and looking at outcomes for
22 graduates. Because if you think about how SAP

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1 works, it measures touch points during a
2 student's enrollment.

3 And there's a certain profile of
4 student that a lot of you would be aware of that
5 struggles early on in a program maybe first
6 couple of terms, has difficulty because the GPA
7 cumulatively is low or credits that they complete
8 might be low, but they kept their stride and they
9 get out of jeopardy and they graduate well above
10 a C average. And I think SAP exists to -- it
11 monitors how students are doing, but also to
12 alter their behavior, give opportunity for
13 institutions to intervene.

14 But if you're looking at graduates,
15 it's done. There's no opportunity for
16 improvement there. And I just wanted to raise
17 that.

18 MR. RAMIREZ: Okay. Christina and
19 then Sandy.

20 MS. WHITFIELD: I'll be really brief
21 because a lot of my points have already been
22 made, but I wanted to be on the record about -- I

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1 also -- I agree that it's inappropriate to
2 exclude half of graduates and say that somehow
3 even though the institution has credentialed
4 them, they're not sort of putting their full
5 faith and credit behind the credential that the
6 institution itself has awarded.

7 I also think that on the first note I
8 understand what age -- what an age band would
9 look like and what Pell recipients -- who Pell
10 recipients are, but I think socioeconomic status
11 is pretty vague and how we would define that. We
12 would need a -- that's another can or worms
13 entirely to bring up.

14 MR. RAMIREZ: Okay. Sandy?

15 MS. SARGE: This is Sandy. I like
16 Jeff's idea as we talk about so many of the
17 issues of the, yes, but what about this, what
18 about this. And I personally dealt with probably
19 half of those issues as a graduating --
20 undergraduate student. I was part time, I had
21 kids early, I did this, I did that. So -- and I
22 worked for tips. And we'll leave it at that.

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1 (Laughter.)

2 MS. SARGE: I would say that by
3 dropping -- I know. No. No. I was born in
4 Mexico. I got ICE right next door. I mean, what
5 else are we going to talk about, right?

6 But if we drop the -- if we drop the
7 bottom 25 percent of those earners in the
8 population from the Social Security and you then
9 get a mean on the remaining 75, you eliminate
10 mathematically some of the noise that's been down
11 there. So that -- I -- actually I love that
12 idea. So I'm going to go on the record for that,
13 for the denominator.

14 MR. RAMIREZ: All right. Johnson, did
15 you want to -- do you remember --

16 MS. TYLER: (Inaudible).

17 MR. RAMIREZ: Okay.

18 (Laughter.)

19 MR. RAMIREZ: Tony?

20 MR. MIRANDO: Yes, can you repeat what
21 you said? Just because --

22 MR. ARTHUR: Yes, I said that when

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1 you've got -- we know and we've stated concerns
2 about pay discrimination, we've got a number of
3 people that have interruptions to their work
4 early in their career because of having children,
5 you've got people who are self-employed, you've
6 got people that work for tips and you've got a
7 certain percentage -- and so there's a lot of
8 issues with a percentage of students as they
9 start their career. And we're measuring wages
10 somewhere in the three to five years after they
11 complete when all this is going on.

12 So my proposal was that if we
13 eliminate the 25 percent of graduates with the
14 lowest salary, that we would remove some of that
15 noise, or a good amount of that noise, and then
16 median the remaining wage data. And the
17 Department could do that extremely simply by
18 telling the SSA instead of here's the list of
19 Social Security numbers; tell us a median, they
20 say here's the list of Social Security numbers;
21 tell us the median of the 75 percent of the
22 highest wage earners in that cohort. Boom.

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1 Done. It's done. You got it.

2 PARTICIPANT: (Inaudible) median or
3 mean?

4 PARTICIPANT: Yes, median or mean,
5 whatever (inaudible).

6 MR. ARTHUR: Median or mean. Yes,
7 whatever it is.

8 MR. MIRANDO: So basically that would
9 get -- it would take into consideration the
10 demographics where the school is located as also
11 -- the whole --

12 PARTICIPANT: (Inaudible).

13 MR. MIRANDO: Yes, I like that idea,
14 too.

15 PARTICIPANT: Yes, geographic. I
16 mean, there's so many things that we've expressed
17 concerns about that that would help adjudicate a
18 little bit.

19 MR. MIRANDO: Can I follow up on that?

20 MR. RAMIREZ: Tony, yes.

21 MR. MIRANDO: Yes, so how would that
22 work for -- I mean, I could see that working for

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1 schools that have multiple campuses, but how
2 would that work for a single campus in a city
3 school? How would that work for them?

4 MR. ARTHUR: I don't think statically
5 it would really matter whether it was a school of
6 300 students in one location or 10-20,000
7 students with 15.

8 PARTICIPANT: But it would be an
9 indicator if it didn't move it, if -- then you
10 would go in and there would be other reasons
11 going on. Because if your incomes in that area
12 of all those -- in the cohort were similar, so it
13 didn't move the needle much, that's an issue
14 within that geographic area potentially about --
15 like one school came to me and said we're a
16 welding school in the Upper Peninsula of
17 Michigan. Our welders don't want to leave town,
18 they don't want to leave where they grew up, but
19 there's only two welding jobs in the whole area.

20 So that -- and it would be a different
21 indicator, but what it does is it takes away some
22 of the noise on if they're reporting fully to the

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1 IRS or if the amount of money that's in the
2 denominator is a full year of earning when the
3 numerator is a full year of debt repayment,
4 right? So it kind of averages out.

5 It's not going to solve for
6 everything, but what it does is it takes away
7 some of the noise. You may still have problems
8 in socioeconomically depressed areas where
9 student are trying to get jobs, and that might be
10 something that the school then says, listen, we
11 have to start working on figuring out how kids
12 could move out of the area, get to somewhere
13 where they could get a good job.

14 PARTICIPANT: I think it's --

15 PARTICIPANT: Yes, and when I looked
16 at the top 50 percent of academic performers
17 proposal, I mean, that just seemed really
18 complicated, unworkable and data that I think a
19 lot of people would object to going to the
20 Department of Education. But yet it did bring --
21 it kind of prompted that thought that, well,
22 there is some element here that -- okay, let's

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1 take this to a -- let's look at this a little
2 differently.

3 MR. RAMIREZ: Steve then Jordan?

4 MR. CHEMA: Yes, I just want to ask if
5 part of that suggestion is then that completely
6 streamlines the notification to remove all these
7 other hypothetical reasons that a program might
8 not be meeting the benchmarks or the standards or
9 the metrics, or whatever the word --

10 PARTICIPANT: I'd be up for that.

11 MR. CHEMA: -- is, right? But --
12 because it sounds like that's a potentially
13 significant adjustment.

14 PARTICIPANT: Yes, yes. Let's -- I
15 would be fine with removing the -- all the
16 excuses an institution might want to put on why
17 the median wages -- or why the debt-to-earnings
18 calculation may not be as effective for your
19 institution. I mean, yes, I think it would
20 streamline a lot of things.

21 MR. RAMIREZ: Jordan?

22 MR. MATSUDAIRA: This is Jordan. So I

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1 want to I guess just suggest that I think this
2 idea of trying to figure out a way of kind of
3 risk-adjusting, for lack of a better word, or of
4 adjusting the metrics for variation in the
5 demographic characteristics of students across
6 programs is probably a bad idea in this context,
7 and I think it's -- but it comes back a little
8 bit to what the purpose is if we view the metric
9 as really being a good proxy of the quality of
10 the program.

11 So for example, like an earnings
12 value-added divided -- like this is how much the
13 program causally improves your earnings as a
14 fraction of that. Then I could see a rationale
15 for risk adjustment. But if we're still thinking
16 about this as protecting students from incurring
17 unsustainable amounts of debt, which is the
18 original rationale behind the rule, then -- and
19 this is just a question about what the goal of
20 the regulation is now in this kind of new world,
21 but if we're trying to protect students from
22 incurring like an unsustainable amount of debt,

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1 low-income students don't get to pay back less of
2 the debt that they borrow.

3 So if we do this kind of risk-
4 adjustment as a function of the fraction of Pell,
5 for example, of students in a program, that has
6 the impact of making the standard softer for
7 programs that serve more economically-
8 disadvantaged students. And that has the
9 implication that in schools that -- or programs
10 that serve higher fractions of Pell students
11 perversely we're going to allow them to
12 accumulate more debt as a fraction of their
13 income than we would otherwise. So I think it is
14 really counter to the original intent of the rule
15 of protecting students from taking on
16 unsustainable amounts of debt.

17 You know, Jeff's idea about throwing
18 out the bottom 25 percent, I also -- I think it's
19 conceivable that this addresses some of the kind
20 of problems in the way that you describe. We're
21 basically going from looking at median earnings
22 to looking at the 63rd percentile of earnings.

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1 Okay? And it's conceivable that the person, the
2 63rd percentile across different programs looks
3 more demographically homogenous than the median
4 student does, but that's not necessarily true.

5 Okay?

6 We're just kind of moving up the
7 distribution. Most of these kinds of issues
8 about particular programs serving more
9 disadvantaged students, it just depends on what
10 the fraction is. If the fraction is above kind
11 of -- if that kind of heterogeneity across
12 programs goes from top to bottom in terms of the
13 students; in other words, compared to students at
14 Cornell, students at some other college, are kind
15 of universally shifted down in the distribution,
16 then just picking out a different point in the
17 distribution and comparing them across different
18 institutions isn't going to solve that problem.

19 So I don't -- I basically see that as
20 just kind of picking the higher number for
21 earnings rather than really addressing some of
22 these problems in a fundamental way.

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1 MR. RAMIREZ: Sandy, Neal, Tony and
2 Jeff.

3 MS. SARGE: We're trying to get --
4 this is Sandy. We're trying to get to a place
5 where -- I think how I'm seeing this is we want
6 to find a balance between not punishing schools
7 who take the risk right from the beginning of
8 engaging in students that are otherwise not
9 accepted at other schools for a variety of
10 reasons, anything from the state budget to their
11 high school academic performance. So they're --
12 a lot of these students are already behind the
13 eight ball.

14 And you have schools that have chosen
15 to say, well, 30 percent of high school students
16 get into the top tier colleges or the state
17 colleges. There's another 70 percent of students
18 out there that may want some sort of education
19 and now you're going to punish them, in essence.

20 So it's such a fine line when we're
21 dealing with this -- we're trying to make sure
22 that we don't throw the baby out with the bath

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1 water.

2 I think Jeff's suggestion is trying to
3 solve for many components that have made the D/E
4 ratio unappealing and basically disregarded in a
5 lot of ways because it's like, oh, God, you're
6 missing so much. It's just not even relevant.

7 If you try to address that part of it,
8 we get back on a table towards consensus. If we
9 try to take into consideration all these other
10 things -- and we have to ask ourselves -- I mean,
11 put it on the table, people. If we're going to
12 allow students that come from disadvantaged
13 backgrounds who may or may not have had any
14 family experience with borrowing money, from
15 understanding the excitement of a great
16 economically-advantaging job, then we shouldn't
17 be allowing them to borrow at all because they're
18 -- you know, that's the real question then.

19 So if we're not going to take
20 borrowing to disadvantaged students off the
21 table; which I don't think anybody's doing, like
22 give everybody grants for that, then we have to

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1 start moving forward in how to get to the right
2 -- something that we can move forward on this.

3 MR. RAMIREZ: Neal?

4 MR. HELLER: Yes, Neal here. Isn't
5 this better when we sit down, Jordan, because you
6 and I were the only two standing.

7 (Laughter.)

8 MR. HELLER: It's much better.

9 I think that the comments that Sandy
10 made are right on point. As we've gone around
11 and around and around with the debt-to-earnings
12 ratio, I think Jeff has come up with a very
13 simple solution with data that can actually be
14 collected rather easily and that can be
15 interpreted in a pretty fair way. And I had not
16 heard that until he expressed it a few minutes
17 ago.

18 But one of the things that we always
19 looked at -- I mean, again, we're the -- we are
20 the sector, the cosmetology schools, under-
21 reported income, unreported income. How do we
22 adjust for that? I think that actually takes

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1 care of it.

2 One of the things that always
3 confounded me when the earnings and the loan data
4 came out was zeroes count in earnings even though
5 we have no idea why they have no income. We know
6 that they pay rent, we know that they have a car,
7 we know that they have other expenses and yet
8 they have zero earnings. And that counts. And
9 yet when we have a student; and I have a few,
10 that actually don't take out a loan, don't get a
11 Pell grant. They didn't count in the ratio. And
12 to me that was patently unfair. Give us credit
13 for having students that actually pay out of
14 pocket if you're going to discredit us with
15 students that, quote, "have zero income."

16 So actually I think that this is a
17 pretty simple way and an effective way to take
18 all of the stuff that we've talked about and take
19 the language that Steve alluded to in terms of
20 not even needing it anymore, the disclaimers, if
21 you will, which I think are kind of worthless,
22 out of the equation and have a very simple way to

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1 address all of those issues with one simple way
2 to do it.

3 So, Jeff, thank you. That was great.

4 MR. RAMIREZ: Thanks, Neal. I have
5 Tony and Jeff in the queue, but let me ask the
6 group here, you all want to take a temperature
7 check on that and see where we're at on it?

8 So let --

9 MR. ARTHUR: (Inaudible)?

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

11 MR. ARTHUR: Yes, and just to point
12 out, Jordan, too, yes, it's effectively the 62nd
13 percentile, but also we're talking about a very
14 low 8 percent debt to earnings threshold. So
15 we're talking about a pretty low threshold.

16 And then when you look at the data, if
17 you've got a less-diverse, more-lead school, I
18 mean, that variance between the 50th and 62nd
19 certainly I'm sure we'll see is extremely tight.

20 For schools that are serving a diverse
21 population and are subject to some of these
22 things, it will be a little more meaningful.

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1 It's not hugely meaningful on the salary, but
2 it's enough to help mitigate some of those
3 differences and something I think we could
4 embrace.

5 MR. RAMIREZ: All right. Let's do a
6 temperature check and let's see where we're at on
7 that. So it would be clean this up considerably
8 and doing 75 -- the top 75 percent of earners.
9 Let's --

10 PARTICIPANT: Basically saying take
11 the cohort, the entire -- the cohort, send it to
12 -- those Social Security number to SSN and ask
13 SSN to gather the data and send back the median
14 and mean of the top 75 earners in that cohort.

15 PARTICIPANT: Rather than the 50
16 percent like the Department proposed.

17 PARTICIPANT: Right.

18 PARTICIPANT: This is a little tougher
19 than that.

20 MR. RAMIREZ: Laura, you have a
21 clarification on that?

22 MS. METUNE: I feel like I was

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1 listening to two different conversations. I
2 thought what we were taking a temperature check
3 on was the idea that we would look at a student
4 population beyond those students for whom federal
5 financial aid was provided. No?

6 PARTICIPANT: (Inaudible) into
7 consideration.

8 MS. METUNE: You're saying that it
9 takes -- I'm sorry.

10 MR. RAMIREZ: Neal, could you get to a
11 mic?

12 MR. HELLER: I'm sorry. I think it
13 just cleans up all of those other potential
14 factors in one sweep, if you will, with Jeff's
15 alternative. And I think it is a better
16 alternative than what's on the screen right now,
17 which was to only include those that were the
18 higher echelon of grades in a program.

19 MS. METUNE: I'm still confused. So
20 Jeff's proposal is to take the top 75 percent of
21 federal aid participants?

22 PARTICIPANT: No.

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1 MS. METUNE: But you're -- okay.
2 Those seem like two different things.

3 MR. RAMIREZ: Jeff, could you restate
4 it?

5 (Simultaneous speaking.)

6 MR. ARTHUR: I basically stated that
7 we're taking the median of the 75 percent of the
8 highest earners that are sent to the Department
9 for a median wage return.

10 MR. RAMIREZ: All right. So let's do
11 a temperature check on that. Let's see where
12 folks are at.

13 Tony, you have a question?

14 MR. MIRANDO: Yes, so again I just
15 want to make sure. So that's in lieu of you're
16 saying the disclosures about the tips and the --
17 or that's staying in there?

18 PARTICIPANT: I said disclaimers.
19 Don't call them disclosures. They're disclaimers
20 in the notification.

21 MR. MIRANDO: Okay. Disclaimers.
22 You're saying that that's -- are you saying that

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1 you would consider that? Are you saying that can
2 still stay in? What are you --

3 PARTICIPANT: We would give those up.

4 PARTICIPANT: Yes.

5 MR. MIRANDO: Just want to know before
6 I give my thumbs.

7 MR. RAMIREZ: Yes, so -- but, Jeff,
8 restate what it would include and not include.

9 MR. MIRANDO: I'm hearing -- I just
10 wanted to clarify it.

11 MR. RAMIREZ: I just want to make sure
12 everyone else does though. Can you do it again?

13 MR. ARTHUR: What it would include, it
14 includes everything it does now.

15 PARTICIPANT: No. No, no, no.

16 MR. ARTHUR: You explain it. I don't
17 know what he's asking.

18 PARTICIPANT: He's asking if the
19 proposal on the table is to -- not just on the
20 taking the 75 percent earners of the Title IV
21 borrowers. But he's also asking whether in -- as
22 part of this consensus or this temperature check

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1 we would also -- you would also include the
2 removal of the disclaimers on tips and geography,
3 because to your point earlier in making the
4 argument for this it would resolve those issues
5 so you no longer need the disclaimers. That's
6 the --

7 MR. RAMIREZ: It would clean
8 everything up.

9 PARTICIPANT: It would clean
10 everything up. Steven Finley made that point
11 earlier.

12 PARTICIPANT: So I think our proposal
13 is to --

14 PARTICIPANT: Well, he asked the
15 question.

16 PARTICIPANT: Yes.

17 PARTICIPANT: I won't say made the
18 point. Sorry.

19 PARTICIPANT: So the proposal is to
20 exclude those as something that we're going to
21 give up in lieu of that consideration and -- yes.

22 MR. RAMIREZ: Is that correct?

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1 (No audible response.)

2 MR. RAMIREZ: Yes? Okay.

3 So with that clarification and
4 understanding, let's -- and this is a temperature
5 check, right, so at least the Department could
6 get a feel for where you're at on it. So let's
7 see a show of thumbs on that.

8 (Show of thumbs.)

9 PARTICIPANT: There are three at least
10 --

11 MR. RAMIREZ: No. Yes, I got four.
12 Yes, four thumbs down.

13 Okay. All right.

14 PARTICIPANT: I also want to say I --
15 I'm sorry. I just don't feel comfortable making
16 a decision of a thumbs up or thumbs down right
17 now without thinking through this. And it's late
18 in the day, my brain is kind of fried, so --

19 MR. RAMIREZ: All right. So it's not
20 necessarily a no, but -- and understand, that
21 wasn't a formal (inaudible). That was just a
22 temperature check.

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1 Greg, you wanted to add something on
2 that?

3 MR. MARTIN: Yes, just one question
4 for those that proposed it. So we would be
5 taking 75 percent, the top 75 percent of earners,
6 right, in that cohort? And is there any
7 disconnect between still using the debt for 100
8 percent of the cohort but not the -- you don't
9 see any?

10 PARTICIPANT: No, because it's average
11 on average.

12 MR. MARTIN: Okay.

13 PARTICIPANT: (Inaudible).

14 MR. MARTIN: But the intent was --
15 your intent -- just to clarify, your intent was
16 to maintain the debt the same way, right, just to
17 take the top 75 percent?

18 PARTICIPANT: Yes, I think -- yes, I
19 should say that this top -- the lowest 75 percent
20 of debt, but I mean, how do you disconnect that?
21 I think it's -- your median debt is your median
22 debt of your cohort. I don't see any other way

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1 to look at that, I guess.

2 PARTICIPANT: So debt of 100
3 percent --

4 PARTICIPANT: Yes.

5 PARTICIPANT: -- of the borrowers?

6 PARTICIPANT: Yes, the debt's the
7 debt.

8 MR. RAMIREZ: All right. So I have
9 Johnson, Thelma, Neal and Laura.

10 MR. TYLER: Just very quickly, I think
11 the repayment rate was a way to deal with some of
12 these irregularities in terms of the debt-to-
13 earnings ratio and to -- for example, David was
14 -- David Silverman was saying how his group was
15 -- his school was poorly affected. And in fact
16 his repayment rate is almost at the median level
17 of the school. And that would have gotten him
18 out of that.

19 So I would like to see some more data
20 about this idea which is -- was thrown out today.

21 I really have to echo that debt is debt and
22 there is yet another metric out there that is

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1 designed to -- or the purpose here was to
2 insulate those people, those schools that may
3 have been incorrectly put in this group.

4 MR. RAMIREZ: All right. Thelma?

5 MS. ROSS: Thelma. I am not in
6 agreement with the 50 percent, using 50 percent
7 of the students completing a program. I think
8 that if we're going to look at them, we look at
9 everybody. But I also -- in this context.

10 But I am curious to hear more, Jeff,
11 and to get a better understanding of what you
12 proposed, because I think it has some merit. I
13 appreciate the rationale behind what you're
14 attempting to do, but I do want to hear some
15 more. That's why my hand -- my thumb was
16 sideways.

17 MR. RAMIREZ: Okay. Neal?

18 MR. HELLER: Yes, Neal. Yes, I just
19 want to again remind everybody -- because our
20 issue from a cosmetology school standpoint -- and
21 again one of the reasons we're all gathered here
22 for this wonderful exercise is because of the

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1 lawsuit that the American Association of
2 Cosmetology Schools brought against the
3 Department. These are real issues. The under-
4 reported income, the unreported income, the
5 demographics, the type of students that we serve
6 and etcetera, etcetera, etcetera, that you've
7 heard me talk about for the last three sessions
8 are real issues.

9 How we address them, everybody has
10 kind of a thought. I mean, we obviously don't
11 like the eight percent threshold. We'd like to
12 see some sort of factor, some number factored
13 into income which would increase the income to
14 make up for what is clearly under or unreported
15 income.

16 And now for Jeff to come up with
17 something like this which sort of wipes that all
18 clean in one fell swoop and we don't have to deal
19 with all of those issues individually or try to
20 deal with it by articulating it in the written
21 word and using real data and using real numbers,
22 I think it's an opportunity. I think it's a real

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1 opportunity for us to actually come to consensus
2 on something and at least address what is a real
3 issue.

4 And it's not going to be addressed by
5 a disclaimer. What does that do? We all pretty
6 much know that students aren't going to read the
7 disclaimers any more than they're going to read
8 the disclosures or the warnings or etcetera.

9 So here's a chance to actually have a
10 -- data that means something and have numbers
11 that actually mean something. And I just think
12 it's an opportunity for us to come to consensus
13 on something that actually makes sense and
14 addresses a lot of the issues that many of our
15 schools, and certainly the schools I'm here
16 representing have. And they're real issues.
17 Thank you.

18 MR. RAMIREZ: All right. So we have
19 Kelly here closing out and then I'll make a quick
20 comment.

21 Kelly?

22 MS. MORRISSEY: I just wanted to

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1 expand on why my thumb was down. I certainly can
2 get behind the simplicity of what Jeff is
3 proposing; I really enjoy that part of that, but
4 I'm just wondering why 25 percent? I mean, I
5 just want to know in the data where does it make
6 sense to eliminate a certain floor of students
7 and under which point would it even make sense to
8 exclude them? Because when we're looking at an
9 incomplete cohort, at what point are we really
10 addressing the root problem by not including
11 those students?

12 I mean, I know from looking at some of
13 the data from the students I work with we have
14 many, many students who just opt out of the
15 workforce entirely. And this would be a way to
16 address that issue, but I'm just not sure that
17 the 25 percent point is the way to do that
18 without seeing the data to inform that decision.

19 MR. RAMIREZ: Okay. And I think
20 that's a good segue for what I was going to say.

21 I think that this is a good place to
22 end, right, because I think that the reason that

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1 there were quite a few thumbs down is more just
2 that there's a lot to think about with that. It
3 was an idea that was just thrown out there for
4 the first time.

5 So we could pick this up again
6 tomorrow, give you a chance to really think about
7 it and see where we go from there.

8 So to close out, are there any
9 additional comments from any of the negotiators
10 before we open it up to the public?

11 (No audible response.)

12 MR. RAMIREZ: Okay. Any public
13 comment?

14 (No audible response.)

15 MR. RAMIREZ: Okay. No public
16 comment.

17 And then what I would leave off with
18 is that this week we want to try to leave with as
19 many agreements as possible, if not a full kind
20 of agreement. And I agree with what Mark was
21 saying, is that we don't want to rehash arguments
22 that have already been made, right? Either we

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1 could make it work or we can't at this point.
2 It's kind of hard to tell when we're going to end
3 up going down a rabbit hole.

4 But we are going to have to take some
5 clear votes and in as much detail as we can on
6 this language. And you did get some of that
7 stuff today. So bear with us. Hopefully we get
8 through the entire agenda by the end of Thursday.

9 Reminder about security. You might
10 want to come in a little bit earlier tomorrow.
11 It seems like it does take a little bit longer
12 than anticipated. Seventh floor closed off. And
13 we're going to ask folks to allow the Department
14 staff to move you through to the bottom floor as
15 quick as possible. So Amy's back there waiting
16 to take the first round, so if you're ready --

17 PARTICIPANT: (Inaudible).

18 MR. RAMIREZ: I'm sorry?

19 PARTICIPANT: (Inaudible).

20 MR. RAMIREZ: Oh, yes, and please take
21 your trash.

22 (Whereupon, the above-entitled matter

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1 went off the record at 5:09 p.m.)

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