United States Department of Education

Gainful Employment Negotiated

Rulemaking Committee 2017-2018

Session 1

Monday

December 4, 2017

The Negotiated Rulemaking Committee met in Union Center Plaza Learning Center, First Street, N.E., Washington, D.C., at 9:00 a.m., Ramona Buck, Rozmyn Miller, and Javier Ramirez, Facilitators, presiding.

Present

Ramona Buck, Federal Mediation and Conciliation

 Service, Facilitator

Rozmyn Miller, Federal Mediation and Conciliation

 Service, Facilitator

Javier Ramirez, Federal Mediation and

 Conciliation Service, Facilitator

Jeff Arthur, Vice President of Regulatory

 Affairs and CIO, ECPI University

Whitney Barkley-Denney, Senior Policy Counsel,

 Center for Responsible Lending

Jessica Barry, President, School of Advertising

 Art

Jennifer Blum, Senior Vice President, External

 Relations and Public Policy, Laureate

 Education

Stephen Chema, Ritzert & Layton, PC

Jennifer Diamond, Policy Associate, Maryland

 Consumer Rights Center

Daniel Elkins, Legislative Director, Enlisted

 Association of the National Guard of the

 United States

Ryan Fisher, Intergovernmental Relations

 Division, State of Texas Office of the

 Attorney General

Pamela Fowler, Executive Director of Financial

 Aid, University of Michigan-Ann Arbor

Christopher Gannon, Vice President, United

 States Student Association

Andrew Hammontree, Director of Financial Aid and

 Scholarships, Francis Tuttle Technology

 Center

Neal Heller, President and CEO, Hollywood

 Institute of Beauty Careers

Marc Jerome, President, Monroe College

C. Todd Jones, President, Association of

 Independent Colleges and Universities in

 Ohio

Roberts Jones, President, Education and

 Workforce Policy

John Kamin, Assistant Director, The American

 Legion's National Veterans Employment and

 Education Division

Kirsten Keefe, Senior Attorney, Consumer Finance

 and Housing Unit, Empire Justice Center

Christopher Madaio, Assistant Attorney General,

 Office of the Attorney General of Maryland

Jordan Matsudaira, Senior Fellow, Urban

 Institute

Laura Metune, Vice Chancellor of External

 Relations, California Community Colleges

Anthony Mirando, Executive Director, National

 Accrediting Commission of Career Arts and Sciences

Matthew Moore, Director of Financial Aid and

 Scholarships, Sinclair Community College

Kelly Morrissey, Director of Financial Aid,

 Mount Wachusett Community College

Chad Muntz, Director of Institutional Research,

 Office of Administration and Finance, The

 University System of Maryland

Tim Powers, Director of Student Aid Policy,

 National Association of Independent

 Colleges and Universities

Sandy Sarge, SARGE Advisors

Ahmad Shawwal, Student, University of Virginia

David Silverman, CFO and Director of Business

 Affairs, The American Musical and Dramatic

 Academy

Christina Whitfield, Associate Vice President,

 State Higher Education Executive Officers

 Association

Staff Present

Amanda Andrade, Office of the General Counsel

Gregory Martin, Office of Postsecondary Education

Kathleen Smith, Acting Assistant Secretary for Postsecondary Education

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Proceedings

(9:00 a.m.)

# Opening

Mr. Ramirez: All right. Good morning everyone and welcome. A very prompt group.

I sent out an email warning about the security. I had no idea. This is my first time in the building. So I had no idea what that was going to be like.

So, I -- that might have prompted some folks to come here a little bit earlier. I guess worked out to all of our benefit.

But again, my name is Javier Ramirez. I'm with the Federal Mediation. I'm one of the facilitators that's going to be working with you for the next few months.

And I just wanted a couple -- cover a few basic logistics before I pass this over to Kathleen Smith.

We're going to be recording these sessions. So, we're asking that whenever you make a comment, state your name. So that way later on if somebody's listening to it, they don't have to guess who that is.

I think I have a pretty unique distinct voice. But still, I'm going to do my best to state my name every time that I make a comment.

And I will tell you, I know it's going to be difficult. We're going to have to keep reminding each other to do that.

And also, turn on your mic obviously before you do. But also, turn it off when you're done. Otherwise, we'll hear the paper shuffling. We will hear the cough.

We will hear the little whisper that you say next to the person sitting next to you. So, I guess you don't want the hot mic when you think it's off. All right.

As far as breaks go, we plan on taking two breaks. One in the morning and one in the afternoon. And then an hour lunch.

And also, whenever needed, we'll just do what I call a one function break. Okay? One function meaning you do one function and come back. It's going to be quick. Five, seven minutes.

You choose what that functions is. If you want to go to the bathroom, come back, you could do so. Check your messages, come back. We do permit some multitasking.

But, the idea is, five to seven minutes. And we'll do them as often as you need. So you let us know. Give us a signal of when you need that break. Okay? You know, whatever that signal is. And we'll do that for you.

You need to keep your badges on at all times. When you leave the building for any reason, you are going to have to come back through security again.

But you don't have to sign back in as long as you have your badge. But we are going to ask that you turn that in at the end of the day.

The Russians are outside the door. The Wifi code is up on the wall there. It's the ED Guest Wifi. And the password is capital Ed, small D, small Wifi, pound sign, number one. Okay. Just the number one.

Okay. That's the Wifi code. But it's up on the wall if you need that.

Okay. So we have a few more logistics that we're going to have to go through. But for right now what I want to do is pass it over to Kathleen Smith to welcome everyone and just get us kicked off. Okay.

# Welcome

Ms. Smith: Thank you Javier. Good morning everybody. Forgive my Minnie Mouse voice. A little bit of a cold.

As Javier said, my name is Kathleen Smith. And I am current Acting Assistant Secretary of the Office of Post Secondary Ed at the Department of Ed.

So I want to welcome everybody here. I think I have sat in every one of these chairs at one point in my career. So, appreciate what you are about to undertake.

So this is the first of three sessions focused on revising the Gainful Employment Regulations. And as you prepare to consider these important issues related to the Gainful Employment Regs, I would like to just take a few moments to underscore why your efforts here and our efforts together are critical.

Increasing access to and affordability of higher education is a top priority for this Secretary and this Administration. As is developing fair and effective and improved regulations to protect individuals from fraud, ensure accountability across institutions of higher education, and protect tax payers.

Sorry --

Participant: Sorry Kathleen.

Ms. Smith: That's okay. It's like what happened.

Participant: They're having a problem out there.

Ms. Smith: Secretary DeVos is committed to ensuring that institutions that receive federal funding are serving their students well.

The Secretary also appreciates that the traditional path to post-secondary education is not always the only path for meaningful educational opportunities. And that students should have access too strong, quality programs at a variety of types of institutions.

As part of the Department's regulatory review, we felt, and it became clear that as currently written the Gainful Employment Regulations are somewhat overly burdensome and confusing for institutions of higher ed.

We approach these negotiations with a commitment to ensuring every student, every student has access to an education that will put them on solid footing for success as they define it. As they define it.

Be it further education, a career, or entrepreneurship. And at the same time, holding institutions accountable to students and taxpayers.

Those of you around this table represent years of experience and dedication to post-secondary education. The work you will undertake through these negotiations is critical to the development of sound and concise regulations.

I do want to make a note. As most of you know, the House has recently introduced a small little piece of legislation.

(Laughter)

Ms. Smith: That is a legislative process. We are going to continue our work here in the regulatory process. Okay?

So, I am looking very forward to a productive, respectful, and informative process here to develop regulations that I am confident we can get agreement on.

So, I just want to say thank you for your service, your dedication, and the work you are about to undertake to improve these Gainful Employment Regulations. So thank you very much.

Mr. Ramirez: Great. Thank you Kathleen. All right, so what I want to do next is just go around the table and have you introduce yourself, your affiliation, and then also the name of your alternate.

# Introductions

Mr. Ramirez: And since I am the only Javier, I believe, at the table, so I could just say Javier going on. But if there's any duplicate names, maybe use a last name. I don't think there is.

So, I'm Javier Ramirez with Federal Mediation.

Ms. Miller: Good morning. I'm Rozmyn Miller with Federal Mediation.

Mr. Elkins: I'm Daniel Elkins with the Enlisted Association of the National Guard. My alternate is John Kamin with the American Legion.

Ms. Barry: Hello everyone. My name is Jessica Barry. I am the President and owner of the School of Advertising Art in Kettering, Ohio.

My alternate here is Neal Heller with the Hollywood Institute of Beauty Careers. Thank you.

Ms. Whitfield: Good morning, I'm Christina Whitfield with the State Higher Education Executive Officer's Association.

Ms. Blum: I'm Jennifer Blum with Laureate Education. And my alternate is Steve Chema with Ritzert & Layton.

Mr. Arthur: Jeff Arthur with ECPI University. And my alternate is Marc Jerome with Monroe College.

Ms. Sarge: Good morning. My name is Sandy Sarge. I'm with SARGE Advisors. And my alternate is David Silverman of the American Musical and Dramatic Academy. Thank you.

Mr. Jones: I'm Bob Jones with Education Workforce Policy. And my alternate is Jordan Matsudaira at Cornell University.

Mr. Madaio: Good morning. I'm Chris Madaio with the Office of the Attorney General of Maryland. And my alternate is Ryan Fisher, seated behind me at the Texas Attorney General's Office.

Ms. Metune: I'm Laura Metune with the California Community College Chancellor's Office. And my alternate is Matthew Moore with Sinclair Community College.

Ms. Andrade : Good morning. My name is Amanda Andrade from the Office of the General Counsel at Department of Ed.

Mr. Martin: Good morning. My name is Greg Martin with the Office of Post Secondary Education, Department of Education.

Mr. Morrissey: Good morning. I'm Kerry Morrissey, Mount Wachusett Community College. My alternate Andrew Hammontree, Francis Tuttle Technology Center.

We're representing Financial Aid Administrators.

Ms. Keefe: Good morning. I'm Kirsten Keefe with the Empire Justice Center. I'm actually the alternate. Johnson Tyler from Brooklyn Legal Services could be here today.

Mr. Jones: There we go. I'm Todd Jones. I am with the Association of Independent Colleges and Universities of Ohio.

And my alternate behind me is Tim Powers from the National Association of Independent Colleges and Universities.

Ms. Fowler: Good morning. I'm Pamela Fowler from the University of Michigan-Ann Arbor. And my alternate is Chad Muntz from the University System of Maryland.

We're representing four-year publics.

Mr. Mirando: Good morning. I'm Tony Mirando. I'm with the National Accrediting Commission of Career Arts and Sciences.

Mr. Gannon: Good morning everyone. I'm Chris Gannon with the United States Student Association. And my alternate is Ahmad. And he's a student at the University of Virginia.

Ms. Buck: Good morning. I'm Ramona Buck from the Federal Mediation and Conciliation Service. I'm very happy to be here today with you.

# Overview of the Negotiated Rulemaking Process

Ms. Buck: And I'm now going to talk a little bit about the process, the introduction to rulemaking. So, what is negotiated rulemaking?

And many of you know. For some of you, you've been in many before. For some of you, this is the first time.

And as you are aware, it is a process by which an agency invites representatives of the public and those who represent interest groups affected by the rule, to participate in the drafting and in the response to it.

And the Statutory basis is the Negotiated Rulemaking Act of 1990, and the Administrative Dispute Resolution Act of 1996. But really, after all that language, what is, is an opportunity to talk. An opportunity for dialog.

An opportunity for you to raise issues regarding the Regulations. Share your perspectives. And it provides the opportunity to propose, negotiate, and draft.

And as referenced, this is a public process. And as you know, members of the public will be provided the ability also to comment daily, but typically at the end of the day.

Our goal is to evaluate and understand the issues the working group has agreed to discuss. To engage in productive discussions and construction proposals.

And to reach consensus for any that that is possible. And to determine the language for doing so.

There will be a number of meetings. We will be listening and developing an understanding of the issues to begin with.

Now, the role of the negotiators, I want to comment, we want to have it be open. As a number of you have commented in our calls to you, you'd like people to be able to listen to each other. And really hear each other, even if you don't agree.

You've probably heard of the positions versus interest. The position is what you want. And the interest is what you need.

So the underlying need or interest is what one of the things we as facilitators will be listening for. And also, ask questions.

Because in order to reach true consensus, you need to fully understand the other person's perspective. So it's really helpful to ask questions and see if you truly understand before going forward.

Now we do have a limited amount of time. So we are going to be asking people to be succinct.

And if we interrupt you at any point, it's just for the opportunity of making sure that everyone can speak. We want to focus on the challenge before us.

Now, I'll talk briefly about the role of the facilitators. And I'll mention a little bit about FMCS. Some of you may have heard of us. Some not.

We're a small Federal Government agency. Fewer than three hundred people total. Created in 1947 to promote labor management relations.

And a lot of what the mediators do, and we have field mediators around the country, is do labor management negotiations. We also do workplace mediation, facilitation of groups like this, process design, and training.

So, our goal here is to be a neutral third-party. If you feel at any point we're not being neutral, let us know.

And by the way, you can always make suggestions to the facilitators at the break if you have any. We're here to try to chair the meetings, to give everyone an opportunity to talk.

To guide discussions, and to keep focused on the issues. You're more the subject matter experts. We're more the process facilitators.

So we're certainly not here to tell you what to do about the subject matter. We're just trying to guide the discussion.

We may try to clarify if something seems confusing. We may ask questions to try to clarify it for everyone.

We may generate options. And again, going back to those specific interests and guiding the group in thinking about that.

And making sure everyone has an opportunity to speak. We are here to manage time, to prepare summaries, and answer questions.

And we each had talked with some of you by phone ahead of time. Some of the negotiators by phone ahead of time.

And I just want to mention, just two or three of the items that I heard stated in the calls that I made. One was respect. People really want to have respect even if others don't agree.

Another was being everyone having an opportunity to speak. And another one was, one person said, even if we don't reach agreement, it actually is helpful to have these discussions.

So, with that, I'm going to turn to Javier, who's going to talk about consensus and other items.

Mr. Ramirez: Okay. Any questions on any of that so far?

(No response)

Mr. Ramirez: All right. So when we reach agreement, we have to reach agreement through consensus. So, what is consensus?

I would say that consens -- there is a continuum when it comes to consensus, right? Where you had on one end of the spectrum you fully agree, you know, break out the pom poms, everyone's happy. Right?

On the other end is, you do not agree. And you will block. Okay?

And so anywhere in between there, that's consensus. Okay? And you say that you can support something even though you may not agree with it, because everyone's had an opportunity to be heard.

Everyone's had an opportunity to discuss the item. And they realize that this is the best solution for us at this time. Okay?

And that's how we're gauging, that's how we're defining consensus. Now, there's different ways that you could gage a level of consensus.

And one of the ways that we've seen folks do it, and for me at least, it's a little confusing, we've seen them use the fingers, right? Where five fingers is fully -- that you're in full agreement.

Four is it's acceptable. Three is you can live with it. Two is that you don't agree. But you won't block and you will support. That's like the lowest level of consensus. Right?

And then one finger left is no consensus. And that's where the problem came in. Which finger was remaining. Right?

(Laughter)

Mr. Ramirez: So, I'm not a fan of the fingers. Okay? So, what we do is we use the thumbs.

And what the thumbs do is although it may seem a bit trite or grade-schoolish, I guess, it really does give us a quick visual of where we stand on an item. Okay?

So, we're going to be doing, when I ask where are we at on something, right? I'll pose a question. I want to see the thumbs.

A thumb up is, you're good. You're good to go. Okay? Sideways is that lower level of support. Meaning that, look, I'm not in full agreement. But I'm going to support it. Right? I understand why we're doing this. So, that's going to be a sideways.

And a thumbs down means no agreement. Okay? But I also call it the pause button. Right? Because there's times that the conversation maybe going and I'll ask a question and you just need a few more minutes to digest it. Right?

So if your thumb is down, I'm going ask you, why is your thumb down? Right? And you need to either explain that, yeah, I just need a couple of minutes. Or, the question wasn't quite clear. Can you rephrase it for us? Right?

It could be a number of reasons. But if you are truly blocking, then you need to also explain your position why. And offer an alternative.

Okay? If we're to that point. Okay, so it's not just a matter of saying that you don't agree with it.

Now, one thing that I will caution you on is what I call the steamroller. Okay? And this is the way that works.

If I ask where you're at on something, and I don't see a thumb, you've just agreed to it. Okay?

And I'll give you plenty of warning. Right? I don't see any thumbs down. We're getting ready to go. All right?

And that's going to give you an opportunity to tell us where you're at. Okay? And the reason that I say that is that I don't want somebody else later saying well, I never thumbed it. I wasn't in agreement with it.

Okay? No. If you're not in agreement with it, you have to put your thumb down. If you need -- that's why you're here, right? You're here to represent your group. And you need to discuss it. Okay?

But I also get that there's times where I've seen folks that they're not very happy with it. But they also understand that that's the best that they could probably do. And so it's kind of like a protest support. Where they're not going to thumb it.

But, I'm making it clear. If your thumb is not down, that means that you support it. Okay? There's no decent there.

Okay, and the same thing, and we're going to talk about if you're not here. And we'll get into the protocols. Okay?

Everyone clear on how we're going to be gaging consensus?

(No response)

Mr. Ramirez: Okay. A few process elements. One of the things that we may do is do temperature checks. Okay?

With temperature checks is that we just want to get a feel for where folks are at. And if there's still a lot of decent, obviously we may keep the conversation going. Or ask where do we need to go from here?

If there is agreement, why continue with the discussion if we could end that, have the agreement, and move forward. And after a temperature check, we will have to do a formal vote.

And it may be a little bit later if we need to take a break or do whatever. But temperature checks are just a way to see where we're at on a situation.

I am empowering everybody with the ELMO. Okay? The ELMO is enough, let's move on. All right?

So, if we're beating a dead horse and as Ramona said, we're not the content experts, you all are. So there are times where you probably are beating a dead horse and we may not know it. Okay?

But I guarantee you, you will. And if that's the case, you could turn on the mic or indicate that you want to speak. And we'll give you the floor and say, maybe I think we're beating that dead horse. Let's move on. Right?

Which is the other thing, if you want to speak, just go ahead and put your table tent up like that. We'll get you into the queue and that we know that you want to speak. Okay? Instead of having to keep your hand up and do that. All right.

We may need to put some items into a parking lot. If that's the case, we will -- we'll do it here electronically. And then we'll make sure that we visit that at the end of the day to see what we want to do with any items that are in the parking lot.

When we take breaks, we ask that you be respectful. Try to come back on time. We probably will roll on if, you know, we'll give a little bit of cushion there.

But, if you're not here, we don't know what you're doing. You may be tied up with something. But, we'll continue on. Okay? So, we'll make it clear how long a break will be.

Talk about the names. Contribute to the conversation, but don't dominate. Right? We have quite a few negotiators in the room. And we have at least eight issues so far that we've identified with a number of questions below it.

And when you look at the number of negotiators in the room, just to get through all that, when you break it down between these protocols we have to get through, several logistical items, and just a conversation in general, believe it or not, the amount of time that we have left to fully discuss these items, is really not a lot of time.

So we don't want anybody dominating the conversation. If you have a long prepared statement, submit the statement for the record. But give us a summary.

Let us know what it is you're really trying to convey in that statement. So that way could expedite the conversation.

And I will tell you that one of the toughest jobs that we have as facilitators is moving the conversation forward. It does get uncomfortable when we have say, get to the point. Right? We need to move forward.

And that's going to happen. So, we're asking you to understand that it's in the process of allowing for everyone to be heard. And to move the discussions forward. Not necessary to cut anybody off.

So, we are asking in advance to please be respectful of that. And make your comments as concise as possible.

There's a few -- you know, aside from the few basic ground rules of courtesy, we ask that you keep sidebar conversations to a minimum. Because especially for me, when there's a lot of background noise, I -- for me it's distracting. I know that it could be distracting for others as well.

Don't talk over anyone. And there's one ground rule that I use often, there's just no spitting, kicking, punching, yelling, screaming, scratching, pulling hair, cussing.

(Laughter)

Mr. Ramirez: That -- you know, that's my way of telling the parties, be hard on the issues, not on the people. Okay?

I believe that you can convey your message without having to call out a specific institution, organization, individual. Right? Let's stick to the subject matter, not make this personal.

I will tell you that some of these negotiations, most negotiation can get emotional. But I call it not working at our best brains. Or working our lizard brain. Right?

Where we tend to get a little defensive at times. If stuff like that happens, we'll see what we can do to help bring it back and work in your best brain. Okay?

Ramona had mentioned the feedback. We are truly open to feedback. If there are things that you want to share with us, a keep doing, or a don't do, during the breaks come up, let us know. And we'll make sure that we take note of that.

There maybe reasons that we do certain things. But we're definitely open to suggestions. I'm skinny, but I have thick skin. Okay? So, please let us know if we're doing something that's not right.

As we transition to the protocols, I do want to mention that there was an issue that came up in our defense as far as live streaming. There will be no live streaming here. But we are recording.

We're recording these sessions. And that's why I went over the items with the mics. To make sure that you use them properly so that any folks that are listening to it later can definitely hear it.

And also, there's an overflow room. So, if folks are in there, they can't hear if you're not at a mic.

If an alternate needs to speak, come up to the table. Hit the mic and speak into the mic. Okay?

What I -- here's a good example of time boxing. What I want to do is I want to set a time box for a maximum of 30 minutes. Right?

Time boxes, just to give you an idea, they're -- a time box where we set a certain amount of time for a conversation.

And that time, it's a SWAG number. SWAG being a scientific wild ass guess. Right?

(Laughter)

Mr. Ramirez: We don't know how long a certain conversation will take. But we want to put something in there to look at and say, we don't have to use all that time.

But on the other end, the conversation is going and it makes sense to continue, we're having a productive discuss, everyone agrees that we need a little bit of extra time, we'll do that little bit of extra time. Right?

But we'll check in at whatever time we designate as that time box. Okay?

So what I want to do is set a time box of no more than 30 minutes. To see if there's any comments on the aspect of the recording, or streaming, or anything along those lines.

So, I'll go ahead and open up to the floor. So, we'll start with Whitney.

# Review and Adopt Protocols

Ms. Barkley-Denney: Yes. I just sort of wanted to inquire as to why live streaming isn't going to be allowed?

This is a public session and a public hearing with lots of people affected who aren't actually able to get here to D.C. in order to discuss their opinion. And discuss how they feel about these issues.

And so I think it would be very advantageous for those people, particularly students in the states that we all represent to be able to find a live stream and watch these proceedings as they go along.

And maybe even comment on the live stream if they want to.

Mr. Ramirez: Okay. Greg?

Mr. Martin: The Department's certainly appreciative of the desire on the part of a lot of people to see this live streamed. This issue did come up with the Department of Defense negotiations.

And the protocol we've chosen to adopt is the same as we have for Department of Defense. Again, the Department's not adverse to live streaming.

I think that if we do it in the future, we would want to announce that in the notice when we begin these proceedings. So that everybody who's going to be at the table would be aware of the fact that it will be life streamed.

I don't want to put people on the spot now to vote for that. Or to vote against it. As some people might not be prepared to say one way or the other. Or they might feel uncomfortable voicing their opposition to it.

And I think as Javier expressed a few moments ago, this will be recorded. So -- and made available to everybody.

So, I don't think that there's any intent for these proceedings to be kept from the public. I think that for now that's the decision we've made.

And I think it's a sound one.

Mr. Ramirez: Daniel?

Mr. Elkins: I have a few comments to make on the proceedings. I want to start off by just showing these pictures.

These are two recent service members who have died in Afghanistan. And as representing the interest of veterans germane to education, I just want to make one small comment.

That what makes this nation so great is that we can form these groups. And we can have differences of opinion.

We can come around the table and passionately discuss issues. And we don't have to agree.

And as I do that, I want to keep in remembrance the people who have served to allow us to do that today.

Mr. Ramirez: Okay. Let me get Christopher then Jennifer.

Mr. Gannon: Thank you. And obviously first, I appreciate and respect the service of all the people that you represent. And yourself if you've served.

Back to the live stream point. And Mr. Martin, I appreciate what you said. Only pushing back on a few things.

I guess one, as far as the protocols that we're going to adopt, you know, I would ask that -- I mean, obviously I support that if someone wanted to live stream that's here, I think that should be -- that would be fine.

I'm obviously not asking that the Department create and put a live stream out. Obviously there are things that are here that perhaps weren't in the notice as far as audio recording.

My understanding is that this is being audio recorded. And that will be made available to negotiators at a later date.

I don't know if that was something that was in a notice. So, I'm just not sure how important it is that negotiators were notified ahead of time that this would be live streamed.

Obviously, negotiators knew that this would be a public session. And I'm not sure that it really makes a difference one way or the other whether that we were all notified.

Obviously we knew that the public would be very interested in what's going to be said today. And nonetheless, I mean, I just think that it should be an issue that should be put to the vote of the -- of the group.

If it's a protocol that we're willing to adopt that is to allow live streaming, if someone in the public wanted to live stream, then that's something we should be able to vote on as a part of the protocols.

Mr. Ramirez: Okay. Let me get Jennifer, Jessica, then Sandy.

Ms. Blum: Thanks. So, I do think actually that having prior notice is important. I think that people make decisions to be -- to dedicate their time at the table as good faith negotiators with the idea that they're going to be doing it, you know, in a way that's constructive and not playing to an audience that's in live stream.

I also think that this isn't, Whitney called it a public hearing. It's actually not a public hearing. It's a negotiation.

Which means that we're going to be very interactive and engaging with each other for three months together. And my hope is, is that in good faith we'll actually find some, you know, whether or not we reach entire consensus that we reach a common ground.

Again, I think that's extremely hard to do when there are -- when social media comes into play. It's come to my attention already in the last 30 minutes -- 30 seconds, that this is being live streamed right now.

So, it's on Facebook right now being live streamed. So, I would ask --

Mr. Ramirez: Yes. So, if I could ask whoever -- sorry to interrupt. Whoever is doing the live streaming, if you could cease that.

(Off mic comments)

Mr. Ramirez: Yeah. So, I'm going to have to ask you to turn that off.

(Off mic comment)

Mr. Ramirez: They will hear through the recording.

Participant: We don't have any information on when it's going to be released. And this is a public process happening right now.

Mr. Ramirez: All right. So, I'm going to go ahead and -- if you could turn that off now. Or otherwise we'll have to take a break and we could deal with that.

Participant: I feel very strongly about it.

Mr. Ramirez: Okay. Let's go ahead and take a one function break here. And let me -- I guess it's my function. Okay.

So, let's have five minutes.

(Whereupon, the above-entitled matter went off the record at 9:31 a.m. and resumed at 9:32 a.m.)

Mr. Ramirez: Okay. So what we're going to do, and we'll continue where we left off. And I apologize for jumping in there Jennifer.

But, what we're going to do is we're going to go ahead and continue the conversation. Just so you're aware, it is being recor -- it is being streamed at the moment. I just want everyone to be aware of that.

We'll continue on. And then at the end of the 30 minutes, we'll see where we're at. And we'll see what the group decides.

And the only thing that I would say is that these are your negotiations. Right? So, however the group decides this, that's what we'll do. Right?

So, let's continue one with the conversation. And we'll take a consensus check at the end. Okay? So, Jennifer, go ahead and continue.

Ms. Blum: Yeah. No, I want to continue. So, a couple of questions then. If it's going to be -- so, are you suggesting that in 30 minutes we'll have a vote on whether it should be live streamed or not?

Mr. Ramirez: Correct.

Ms. Blum: Okay. And in the event that we vote that it is not going to be live streamed, then will there be an effort to when there is a known live stream going on, will there be an effort to shut that down?

Mr. Ramirez: That is correct.

Ms. Blum: Okay. I just wanted to understand what we were doing for the next 30 minutes, you know, in relation to this.

So, if some of us already know how we're going to vote on that, I guess I'm already calling an ELMO.

Mr. Ramirez: Okay.

Ms. Blum: I just wanted to -- I mean, I think, right? Consensus is a vote of the whole?

Mr. Ramirez: That is correct. Consensus you need -- it's unanimous, right? So, again if there are thumbs down, I'll ask why just to make sure that it's not one of those things that -- where I just need to digest to just even know what's going on. Give me a couple of minutes, right?

But yeah, at some point the whole group has to agree in order for the motion to move forward.

Ms. Blum: Okay. So let me just conclude so other people can speak. In my point of view, as I just said a couple of minutes ago, in order to negotiate in good faith, it's important that this room be this room for the negotiators too really in good faith, focus on each of the issues and not on the audiences, not Tweet.

So I would actually also ask, and when we get to the protocol discussion that it be very clear that negotiators are not tweeting or retweeting comments of others during the negotiations. I think that's really the only way to get from point A to point B in a constructive manner.

I would also say that while I appreciate the Department having these negotiations be public, they are not bound by FACA rules. In fact they are explicitly not under FACA.

I want them to be in the public. I want the audio recording. I've thought long and hard about that. My organization has thought long and hard about that. I'm comfortable with audio recording.

I understand the need and the value of transcripts for all of us, by the way, to have a transcript is actually quite valuable. Very much appreciate the transcription.

Very much appreciate that there are people who I actually care about, who I'm representing, behind me. So, I appreciate having it open to the public for those purposes. I do not support live streaming.

Mr. Ramirez: So, I have Jessica, Sandy, and then Christopher, I'm going to be calling you Christopher and you Gannon. Okay, so?

Okay. All right. So we have Jessica, Sandy and Christopher.

Ms. Barry: Hi. So this is Jessica Barry. I just wanted to state my position as well.

I do ask though, I do have one question. I don't support live streaming. I think we would have needed to be made aware of that ahead of time if that were going to take place.

But I am concerned that if we do not allow it during the negotiations that we will continually be interrupted by -- by suspected live streamers.

So, I don't know as facilitators how do you expect to control that?

Mr. Ramirez: Yeah. And we just ask the folks that are in the room that whatever the result is, I mean, I have an idea how it might be. But, respect the wishes of the negotiating committee. Right?

This is the process. These are the folks that are represented to deal with this issue. And we'll just have to help each other and keep an eye out.

Okay. So let me get Sandy, Christopher, and then John.

Ms. Sarge: Yes. Hi, this is Sandy Sarge. My -- one of the things I heard somebody say is that they were concerned that they don't know when the audio and/or the transcript would be made available.

So my question is, or I want to make sure I understand this. First of all, this is my first time doing this, and doing anything in a government setting.

So, I'm a little nervous about live streaming just because I watch the news every day and things can be sliced and diced out of everything. So, I'm a little nervous about that.

And I would -- and if that had been something, I would have wanted to know. Mainly because I probably would have brought legal representation.

I'm the only person, I believe, I can see that's an independent consultant. And I am my own livelihood.

So, that makes me very nervous. And I'm not sure my bonding covers all that.

With that being said, I have a question about this whole process. My understanding is, we go through negotiated rule making.

Whatever we come up with, hopefully in consensus, is then documented and put out for public comment. And then the public has an opportunity to read all of the negotiated content, and provide commentary.

And the Department and/or whoever else would then read that, take that into consideration, take it back, edit it as need be based on what the public is saying. And then come up with final regulations.

My question would be, will this audio and/or transcripts be available with people to have enough time to be able to digest that information so that when the information does come out for public comment, they have had the full opportunity to hear everything and then use the rest of the process to comment publically as opposed to playing this out in the press every night?

That would be my question.

Mr. Ramirez: Okay.

Ms. Sarge: Thank you.

Mr. Ramirez: We'll let Greg answer that. And then we'll continue down the list.

Mr. Martin: I don't know -- I don't know off the top of my head exactly when that will become available.

But when -- at the break I'll find out from some of my colleagues when we can expect that to be put out.

Mr. Ramirez: Okay. So then let me get -- and it's -- okay. Let me get Christopher, John, Gannon, and then Whitney.

Mr. Madaio: So my first question is about the votes. I guess I'm a little unclear on whether we're voting on to change the protocols? To add something to the protocols? To permit live streaming? To prohibit live streaming?

It's not something, right, we're not asking the Department to do anything? We are simply considering whether to permit a member of the public to live stream.

So, can you clarify that?

Mr. Ramirez: Yeah. When we get to the question, the question will be if the negotiators here are comfortable with the process being live streamed.

Mr. Madaio: And what you're saying is that there needs to be 100 percent consensus as to that?

Mr. Ramirez: That's correct.

Mr. Madaio: Okay. Okay. I guess -- my -- and my comment to that is, I mean, there's nothing in the protocols as far as live streaming one way or the other.

So, I guess I would put the question -- and I think it more should be phrased as should we prohibit live streaming?

I mean, that's in essence what we would be doing. Is prohibiting live streaming. And that's what the vote should be on, not whether to permit it.

Because there's nothing prohibiting it here. There's no signs that were prohibiting it.

I mean, I really think the key is that members of the public, whether they be students, people who with knowledge in the field who could give comments as the sessions move on, or as the sessions move on in this week, it's valuable for those folks to be able to see it as it's going on.

And an audio transcript that will be -- and a transcript produced at an unknown date, I think doesn't really do the same things.

So, I would encourage everybody to really consider that there's not really much of a danger in -- I appreciate the concern as far as videos could be edited.

But, so could an audio recording. So could a transcript. Someone can -- a member of the public could tweet something that one of us may feel is not accurate.

But, I mean, that's kind of life in 2017. I think that's what truly happens here will be the official transcript. And what we all know happened.

So, that's why I would encourage, I guess, number one that the vote be to prohibit live streaming. And then number two that we all, you know, I would encourage everyone not to prohibit that.

Thank you.

Mr. Ramirez: Okay. John, Gannon, and Whitney. And then Pamela.

Mr. Kamin: Yes. I'd just like to say that I think we agree with some of the concerns over liability and live streaming.

As far as I know, in terms of the individuals in this room represented and affiliated with military and service members, it's just me and Daniel. We don't have anybody behind us to guide us in certain ways.

And we take that responsibility very seriously. And I think under ordinary circumstances the benefits of closed door and not live streaming would perhaps outweigh the benefits of streaming considering the diversity of stakeholders.

However, for my mind, I can't reconcile the reality that we are in right now. And take into account activity that's been going on on the Hill.

Where the fact of the matter is, if we do nothing, there are -- there is legislation out there that's been proposed that will eliminate the differences between higher ed. Between different types of institutions.

And then we can forget about gainful employment. We can forget about our own defense. We can forget about coming together in any type of way.

So, if this truly is the sunset of gainful employment and other provisions, I feel like we not only deserve to put the best foot forward publically, but also need to strive against every instinct of live streaming in terms of grand standing and propping up and making political statements.

Because guess what? If that happens, we're throwing it right back to a reality that we know exactly where it's going to go.

So, as far as the military's aspect of this, we will just say that as far as live streaming goes, we would commit to a narrative that is toned down. That is respectful of everybody's opinion.

And striving towards genuine consensus for that being our objective. And not trying to score any political points or make any statements that are outside of that come together to find out what specifically works best.

Mr. Ramirez: Okay. Thank you. Let me just -- Jennifer, and Chris, are you done? Did you have another --

(Off mic comment)

Mr. Ramirez: Oh, you have another comment. Okay. I'll put you on the list.

(Off mic comment)

Mr. Ramirez: Okay. So I have Gannon, Whitney, Pamela, Laura, and then Jennifer.

Mr. Gannon: Yeah. I just wanted to speak in favor of the live streaming. I think students have a right to hear what's going on this room and not two or three weeks from now, digging through a federal website to find out what was said.

I think they have the right to that today. And I know many students that wanted to be here today but couldn't afford a plane ticket.

And honestly probably couldn't find a seat in the back. It appears there are about 40 seats there.

And they need a seat at this table. And need to hear what is taking place in this room. And they need to hear that today.

So, I fully support the live streaming.

Mr. Ramirez: Okay. Whitney, Pamela, Laura, Jennifer.

Ms. Barkley-Denney: Yeah. I just have a quick question. So, I was trying to watch the Department of Defense negotiation. And of course the end result of that was that live streaming was not allowed.

And I think there was a promise made that the audio would be available by last Friday. Which hasn't happened from my understanding.

So I just wanted to see, you know, if we're going to be voting against, you know, live streaming, if there is a guarantee that there's going to be a Department of Defense -- or there's a guarantee there's going to be the audio available in a timely manner.

So that people who do what to watch it or listen to it can comment before the next rulemaking.

Mr. Martin: I'm told -- I'm not going to make any -- I'm obviously not going to guarantee that by a specific day we're going to have that out.

But, the -- I'm told the contractor needs two weeks to prepare that. And then we need about a week and a half to actually post it.

So, that's a time frame of three and a half weeks we would be looking at from this point to get it out.

Mr. Ramirez: Okay. It looked like Pamela, did you --

Ms. Fowler: Yes.

Mr. Ramirez: Okay.

Ms. Fowler: No, I -- I'm from a four-year public institution. Everything we do is public.

I don't have a position on this one way or the other. I would hope that whatever is said would be said whether it was open or whether it was closed, respectfully.

And I'm going to yield to my alternate chair.

Mr. Ramirez: Okay. Sure.

Mr. Muntz: I'm also from a public university. And much of our business, all of our business is in public.

We believe in accountability and transparency. And we would be in favor of live streaming.

Mr. Ramirez: Okay. Let me get Laura and then Jennifer.

Ms. Metune: First I have a question. When we take a vote, is each of our votes counted and rolled in the -- for future reference?

Or is this just an up or down, we've reached consensus or not in the recording that you will be doing?

Mr. Ramirez: Consensus or not.

Ms. Metune: Okay. Then I think it's really important that I go on record also as a representative of a public institution. To say that everything we do is in public.

I've also been a government employee for the State of California for 15 years. Everything we do there is in public.

I see now reason that we wouldn't allow live streaming in this process. Thank you.

Mr. Ramirez: Laura the Jen -- then -- I'm sorry, Jennifer.

Ms. Blum: So let me just say. I again appreciate the nature of the public and obviously we feel very accountable to the public as well.

So, I do understand all of those pieces of the puzzle. But I also, having watched Department of Defense, some behavior it wasn't so attractive. And so I'm trying to avoid that unattractive behavior.

But I do want to ask a couple of question. And I correct that regardless of whether it's audio recorded or live streamed, that caucuses are done in private?

Mr. Ramirez: That is correct. Caucuses are private.

Ms. Blum: Am I also correct that any member can call for a caucus whenever they want to call something into private?

Mr. Ramirez: That's correct.

Ms. Blum: Okay. I just want to point out that when anything gets sensitive, if we're live streaming, there's going to be more of a likelihood to call something into caucus.

Not necessarily by me. I just want to point out to folks who haven't done this before, or even who have, that the opportunity to put the whole thing into private is actually a pretty strong authority that any member of this committee has.

Is that correct?

Mr. Ramirez: That's correct.

Ms. Blum: Okay. So I just wanted to -- and I do want to second something that Whitney said though about the transcript.

I too have been wondering about the timing of the transcript. And I do believe that if we are going to do an audio recording that it is in the interest of the Department and everybody else at the table, including ourselves, to have the value of having that transcript within a reasonable period of time after.

So, I do want to agree with Whitney. And I do think that actually if we move onto audio recording that it should be explicit.

You know, not obviously I know that there are holidays and things like that. But within reason. So last Friday was the day after Thanksgiving, but Monday might have been appropriate to review the content.

So I would ask that when we get to a vote, if we have a vote on audio recording that it be clear that there is a time frame by which the Department should issue the transcript.

Mr. Ramirez: Okay. Kirsten?

Ms. Keefe: I have a question about the caucus presses. Could you explain that? This is my first time at the table.

Mr. Ramirez: Yes. So in the protocols, either side can call a caucus. And usually the reason for the caucuses are to have a conversation that's off the record with either groups within their constituency.

Or maybe even with other folks. They just want to have a private conversation.

And anyone can call a caucus at any time. It does -- it does gum up the works. It does make it difficult to have a productive dialog.

And as far as facilitation goes, I'm one of the facilitators that -- there's different styles of facilitation. But, I prefer to try to have as much face time with the parties as opposed to separating and doing a shuttle.

It becomes more complicated that way. So, anyone can call that caucus. Yeah.

Any other comments? Oh, I'm sorry. It's right in front of me. Okay. Neal then Kelly.

Mr. Heller: Good morning. I think that everybody came here today that's sitting around this table, and those of us that are in this room, in good faith.

In good faith to each other that we're going to be here to negotiate something that hopefully makes sense to all of us. And protects the people that need to be protected, and the people that we represent.

I quite frankly have some great concern with that good faith when somebody is in this room live streaming without anybody's knowledge or anybody's permission. And that leaves me a little bit hollow.

And I understand the concerns and why we would want to have this live streamed. But I also understand the concern of this becoming a public spectacle.

And I really believe that's what is happening right now. And that's what has been created, is a public spectacle, which really leaves me wondering about good faith when somebody comes in here and lives streams without anybody knowing about it.

Thank you.

Mr. Ramirez: Kelly?

Ms. Morrissey: Kelly Morrissey. I would -- Kelly Morrissey. I would echo the sentiment of my colleague that this should be a public and transparent process.

And I also believe that regardless of the medium that I'm using to obtain the collaboration of my colleagues, whether it be Twitter, any other social media, I do plan, since I represent financial aid administrators, to garner their input whether it be via email, text message.

So, I don't really feel that I should be prohibited from tweeting or retweeting just in an effort to get the opinions of my colleagues.

Mr. Ramirez: Whitney?

Ms. Barkley-Denney: Yeah. I just wanted to echo what John said earlier. Thank you for that.

I hear the concern about this becoming a public spectacle. And I know I for one came here in good faith.

And if you've been at a negotiating table with me before, you know that I usually conduct myself, aside from some real housewives jokes, very professionally.

And so I -- I just want to echo that. And affirm that if we go to live stream that I will continue to conduct myself in the way that I have so far as far as negotiating in good faith, listening to all who are around the table, and taking all of that into consideration.

Mr. Ramirez: Okay. Jennifer.

Ms. Blum: I appreciate that. And having watched Whitney over the years, I can second that -- that, so.

So, I have a proposition. A proposition? Proposal? Whatever. If we were, and it's an if, because to be honest with you, I'm not sure exactly where I'm going to land.

But if we were to go to live streaming, I think we -- could we do a contingency on good behavior?

So in other words could we establish a protocol but then -- but then allow for the opportunity to revisit in the event that somebody in the room is doing something that's you know, is not --

Participant: That changes the dynamic.

Ms. Blum: Yeah. That changes the dynamic. And that we collectively see a changed dynamic among our -- the negotiations.

Mr. Ramirez: Okay. Daniel?

Mr. Elkins: Jennifer, thank you for your suggestion. We would support that 100 percent.

Mr. Ramirez: All right. So, it looks -- actually, look at this timing. That was right about the 30 minutes there.

And it looks like you all are at about a place where we could do a check on this. So, let me start off with the question of, do you all approve of live streaming?

## Live streaming discussion vote

Mr. Ramirez: Let me see a show of thumbs for that. So we have probably about four or five thumbs down.

So, let me just ask a question. Jennifer, could you restate what you were talking about as far as stating a modification.

Ms. Blum: Yeah. And I don't know how you write it to be honest with you. So, I'm just, I'm trying to be helpful and constructive.

I'm not trying to -- and as my colleague's just pointed out a good point. That it's not so much -- and let me clarify this too. It's not so much that I don't mind being videoed.

You know, I don't know -- you know, I'm going to think about what I wear every day or something. Little bit of housewives thing.

But, it's not about the video. It's about the commentary that comes along with the live streaming.

And so -- and the social media aspects of live streaming that are the pieces that cause us, you know, I think legitimate concerns.

And so, what I would say is that if there were a way that we could live stream and see again, like I said, if there are derogatory comments made, not by us. I'm not suggesting that the negotiators themselves would do that.

But, in the event that the environment of social media impacts the ability for all of us to feel comfortable, I think that that would be a very relevant, you know, no -- I don't mean to be harsh, but breaking point in terms of our ability to negotiate in good faith.

And so, I recognize that by, you know, opposing the live stream I'm jumping to a conclusion earlier -- you know, early. That I'm fearful that it will cause, you know, that chilling effect.

And so, in my acknowledgment of recognizing that I might be jumping early, I -- you know, I'm willing to give a benefit of the doubt.

I'm just not sure how you write that. I'm not saying it, you know, for now. You know, I don't know how you write that into the protocols and then be able to take it back if we all agree to take it back.

So, I can't help you too much on how it would be written.

Mr. Ramirez: Um-hum.

Ms. Blum: But, I am suggesting that we could give it sort of a trial run or something.

Mr. Ramirez: The one concern I see with that is just we don't -- we, the facilitators, don't have the bandwidth to monitor that. Or to enforce that.

But that's -- Sandy then Greg.

Ms. Sarge: So one of the things that I -- that comes to mind when I think about this, it's oftentimes -- I was going to use the analogy of parents get behind closed doors and hash out things and then come and give a family discussion.

But I don't want in any way to disrespect anybody's level of peer relationship they have in this negotiation -- so I.

But many times people start off with a perspective. And then it may say something early in a negotiation or in a group, and then their mind changes.

And they are convinced or see the light, or in any way are influenced to maybe say wow, I hadn't thought about it that way. And I'd like to reconsider my position.

And when we're in a live streaming situation, we -- somebody can jump in and out and only see one part of that.

Somebody can be there from the very beginning and hear the one opinion, but not later on three days later. Maybe they have to go to class. Or maybe they have to go to work, or whatever. They don't see the other side of it.

So the question is, along with the live streaming, will we also have audio and transcripts? Because I'm hoping that I will get to see a lot of other different perspectives.

And I'm not convinced that I won't be -- won't find very solid and convincing arguments on all sides. And so I'm concerned that I'll be stuck with the one that the live streamer was there when I made one comment will -- that will be what I go down in infamy for.

So, will we have both in essence?

Mr. Ramirez: Okay. Greg?

Mr. Martin: I want to make -- voice one concern about the proposal to have it on a contingent basis like Jennifer pointed out.

I think it's an interesting idea. The only problem I would have with it is, who would make the decision that something had happened that was inappropriate that would require that we stop the live streaming?

And would that be anybody around the table? Obviously those who are not disposed to allow live streaming would probably be the people that would have a problem with it initially.

And others might not see that there is a problem. So, there would have to be somebody to make a call.

I'm not sure how that would work. Whether I would require consensus to stop it. So, I'm concerned about how that -- how that protocol would function.

Mr. Ramirez: Chris?

Mr. Madaio: And that's a great point on why we're here discussing this, of the live streaming itself.

I mean, we all come here with the understanding that this was going to be public. And we all knew we were going to be seen by members of the public in the room.

Some people might be in the room for a short amount of time. Some might be in the room for a long amount of time.

As far as whether there be an audio or a transcript, I think that was less clear in the original posting. It was made known to some of us shortly before coming in.

And I guess I would just encourage all of us to remember that we're here for the public. To write a rule that will affect not just our constituencies, but thousands and thousands of people, students, and people who work in the fields, people inside and outside our constituencies.

And there's a lot of people out there who are very interested in this rule. And I think we're all professionals.

And I'm confident that we can all overcome the differences between being on a video at the instant moment, and being on an audio transcript that will be released in a few weeks.

You know, and I do think a month, approximately a month, three and a half weeks to wait for an audio transcript is a long time.

And I think for people who are interested in this rule right now who may want to make plans to make public comments, I mean, the difference between waiting for a month and having a live stream to those folks, I think makes a big difference.

So, again, I would encourage us to vote. But also to vote on whether we should be prohibiting this.

I really think that's -- that's a key difference. I mean, we -- there was nothing in the protocols about it being permitted. And we're trying to change that.

So that's really what I do think the vote should be on prohibiting and not allowing.

Mr. Ramirez: Um-hum. John?

Mr. Kamin: Yeah. I just wanted to reiterate that this is kind of a fire hose moment for us in terms of sensitizing distilling information that we're going to be receiving.

There's no way that -- we don't have enough paper for me and Daniel to take notes of everybody.

And I think one of the things we'd love to do is go back and re-listen to some of the comments. Learn about citations that people are offering and given.

I'd also say that even though this might seem like it with live streaming, and it kind of catching us by surprise, this isn't a town hall. We're not going to have people jumping up and down and yelling at us and kind of coercing us into things that we might not want to say.

I think that we can all function as a team when it comes to being negotiators here, and kind of look out for each other in that sense. Because ultimately, we are empowered. We have been empowered by constituents and by our interest groups that to do so.

And I think that to that end, if anybody needs the military group to take the ammo for anybody, we're more than happy to. You know, because we're going to make sure that we keep it there.

Mr. Ramirez: Okay. Go ahead Daniel.

Mr. Elkins: I would just like to add that if we end up live streaming, it would be great if we could get it from another angle. Not just the back of my head.

(Laughter)

Mr. Ramirez: And which is your good side? Yeah. Sandy?

Ms. Sarge: I just never got an answer to the question whether or not we'd have both the live stream -- is it an either/or?

Or is it when it's live streaming we will also get the audio and transcript?

Mr. Ramirez: Greg?

Mr. Martin: We will do the audio and transcript regardless.

Ms. Sarge: Thank you.

Mr. Ramirez: Okay. So, I'm going to -- what happened there was that the question was, we checked for consensus. We didn't have it. We allowed for some additional discussion based on the thumbs that were down.

So, what I'd like to do is ask the same question again based on the discussion that we heard. To see if there was any -- to Sandy's point, did anyone change their mind?

Right? And I would hope that you all would take that into consideration and be open to changing your mind.

So, let me again check to see if you all are comfortable with the idea of -- or with permitting live streaming.

So, there are three thumbs. So, there was some mind changing going on there. But still not consensus.

Let me ask -- let me pose the question as far as the contingent authorization of live streaming with the idea of monitoring.

I understand that even if the group does approve that, we would have to discuss if it's even feasible. Right?

But let's see as far as contingent authorization of live streaming. Let me see if you're okay with that?

Ms. Blum: Can I ask a question first?

Mr. Ramirez: Yeah.

Ms. Blum: If somebody doesn't vote, do we get to ask why they didn't vote?

Mr. Ramirez: That is the -- what I talked about was that they're steam rolled.

Ms. Blum: I know.

Mr. Ramirez: But if there is not a thumb down, you're going okay. You're going with the rest of the group.

Ms. Blum: Okay.

Mr. Ramirez: And I don't want to hear later that you were against it.

Ms. Blum: No. I just wanted to get clarification on that one more time. Sorry. I was just --

Mr. Ramirez: Yeah. Okay.

Participant: And I wanted to ask you, Jennifer, when you proposed contingency, were you thinking of asking for a vote every so often if you weren't sure?

Or what did you mean -- what was your thought about that?

Ms. Blum: To be honest with you, I was throwing it back at you for that.

(Laughter)

Ms. Blum: Yeah. And that's what -- I don't know. That's -- I mean, I'm just trying to re -- I mean, to be completely honest with you, I really just want to get to the conversation about gainful employment.

So, I just really trying to -- and I also really just want it to be completely clear that my objection is not to -- is really not to this -- the people at this table.

And I just from a goodwill and respect standpoint, I want it, you know, I want to be really clear that my issue is not with the people sitting at this table with regard to how we're going to conduct ourselves.

And so I -- it's in the -- in the -- literally in the genuine interest of moving on that I'm trying to grasp that.

And it's also, I would say, as a compromise position. It's not really compromise. Because I agree with Whitney, that on the audio I think if we get to that point, we should be explicit.

And so I would put that proposal on the table as well now, too. I'm literally just doing this to keep the ball rolling on conversation, you know, and get moving past.

Mr. Ramirez: Yeah. And that's why I said that let's see if we could even get approval on the contention idea.

And then if there is, then we need to see, can it be implemented. Right? Because it is -- it can be fairly complex. At least how I'm looking at it.

But, let -- Sandy, did you have something else? Jeff?

Mr. Arthur: Yeah. I think what you -- the contingency, if we consider how that might work, if we find that some of the negotiators or others are uncomfortable with the comments that are posted, or the reaction that that would be the point where we would say, hey, we need to bring this to the attention of the committee.

There has been some commentary and activity going on behind the scenes of social media that's made this uncomfortable. And there's something that we can do about it in this room that let's reconsider it at that point.

Mr. Ramirez: Let me do a temperature check on that then. Right?

Let me do a temperature check to see if the group is willing to authorize something like that, then we might have to have some discussion on how would it be monitored before we take a formal vote. Right?

So because I'm hearing that there might be some concern on how -- and I could understand that. I could appreciate that.

If that were approved, how would that be monitored? Right?

So, let's do a temperature check. And just to be clear on the temperature check, it is not the official vote. Right?

But if we can't get consensus even on a temperature check, that kind of speaks a lot.

Sandy, did you want to say something before we do that?

Ms. Sarge: Yeah. I actually thought of a better analogy. And since I'm here representing CFOs and business office finance people.

Many times when you're in an audit, publically held companies, any kind of company that are in the public, they give stuff, you have a discussion with your auditors before final footnotes are put into your audited financial statements.

You get to negotiate or -- behind closed doors to the language being used. And language is extremely important.

There's lots of different tones of voices and word choices that people can use. And even the SEC, FASBI, AICPA, all of those that govern the accounting world do not expect that those discussions are also put in the footnotes of 10Ks and 10Qs when you go about making, you know, public the footnotes of a financial statement.

So, there's ways to get to the -- get to it. I'm -- maybe I'm cynical. Maybe I have 20 year olds in my household. It could be a number of things as a parent.

But, what I don't like about live streaming is the -- what do they call them, trolls? Out there. Isn't that what they are?

The trolls of the world out there that are sitting around in the dark web. I'm using all those buzzwords because I'm really too old to really understand what any of those mean.

(Laughter)

Ms. Sarge: But, I have seen the impact of that nasty, nasty commentary. And it's very ineffective.

And quite frankly, for many of my peers and my friends, it has literally told -- said to them, I don't want to be a part of making change in this world.

I took a big risk by coming here. But not to be -- I want to -- I don't want that negativity to be seen.

I'm willing to think it through. And I'm willing to look at alternatives. And I'm certainly, certainly very, very happy to hear that either way we'll get it.

Because I can -- I agree with the gentlemen who are representing our military, that we're -- I'm one person. I'm not necessarily going to be able to cover every note and footnote and citation.

So, I'm going to want to go back. But at the end of the day I'm very, very concerned. If I thought we could say, all right, all of you listening to live streaming, please be respectful of the fact that we're just doing this for the first time, and they would all listen to us.

I hope they heard that by the way. Then, maybe I could be more comfortable with this.

But, timing, you know, we've been dealing with gainful employment now since 2010. And we're barely getting it out here on the table. So, three weeks doesn't seem excessive.

I'm going home to celebrate the holidays. So, I won't look at it until January anyway.

But, those are some of my thoughts. Thank you.

Mr. Ramirez: Okay. So, let me go ahead and pose a -- I'm sorry. Go ahead.

Mr. Heller: Sorry. I agree 100 percent with Sandy and her sentiments. Neal Heller. I'm sorry.

I don't have much doubt about the people sitting around this room in terms of how we' are going to behave on a live stream. But, I do have doubts about those --

(Off mic comment)

Mr. Heller: Sorry. I do have doubts about those who are trying to live stream right now. And those are the very people, quite frankly, who Sandy is speaking of.

Negative commentary. Ridiculing people that disagree with them. And it's going to turn into the circus that we're all concerned about.

The other question I would have is, if in fact we were going to live stream, then that would be perhaps incumbent upon the Department in their responsibility to set up the proper cameras and to do this in a professional manner?

So we don't worry about the splicing, and the dicing. And deciding to live stream things that are favorable. And not live stream things that are unfavorable.

I find it very, very uncomfortable. That's just my comment. Thank you.

Mr. Ramirez: Okay, Gannon?

Mr. Gannon: Yes, I think live streaming functions in a simpler way that actually attending this public meeting would -- people can come in and leave this -- this public meeting at their desire. And that's the same thing with the live stream. But the only thing that the live stream does is let you go back and see the entire conversation that took place versus coming in and out of a public meeting doesn't do that. So I actually think it paints a better, broad, overall picture of what took place that day.

Mr. Ramirez: Jennifer?

Participant: I think that a video -- and I mentioned this before, I think -- and this is hindsight and I actually would encourage the Department in the future to be -- really be thinking about this. Rather than live-streaming, there are certainly ways to do -- for the Department to do video recordings. That's not happening and obviously I think that's a big request to be asking of the Department, so I don't -- without prior notice and all of that, I don't support that today.

But to your point, I think there's a big difference between video and yes, people are going to go off. But the actual live stream piece with social media the way it is, it's an uncontrolled environment and I think what these negotiators need -- or, what we need around the table is control.

Mr. Ramirez: All right, so with that, let me do a temperature check on the idea of contingent live-streaming with the ability to monitor and pull it back if -- if it runs out of control. See a show of thumbs if you're okay with contingent live-streaming.

(Pause.)

Mr. Ramirez: Okay, we have a couple thumbs that are -- that are down. So still now consensus on -- on that alternative option. Go ahead.

Ms. Barry: Yes, I just wanted to explain why my thumb was down. I just think it's probably unrealistic to think that we are going to monitor this. Jessica Barry. I think it's just unrealistic that we could monitor social media in an effective way without planning for that in advance.

Mr. Ramirez: Okay. Tony?

Mr. Mirando: Yes, Tony Mirando. So I was originally down and then I kind of went to warm. And then again Jessica just spoke. I -- I actually would love to understand how that would work. I mean, I too am very concerned, as Jennifer and Sandy said, and some of my initial concerns were exactly how they started off. And even though, Jennifer, you kind of -- kind of gave a little bit -- which is what negotiating is about. And that's kind of good. I am still very concerned again is -- is the dicing and the splicing and what's real. You know, you start off one way at the beginning of the day. In the middle of the day you've kind of negotiated it to a different place and all of the sudden all everybody hears is what you said at the beginning of the meeting. And -- and so, how would that work?

Mr. Ramirez: Yes, so part of me -- I'm a little hesitant in going down that path just because there was more than just your thumb that was down. There were other thumbs down. Does anyone else that had your thumbs down want to speak to why their thumb was down? Greg, do you want to speak?

Mr. Martin: No, I just have to say -- I will certainly let Kelly speak before this point. But at this point we'd like to call a break so if -- I think we're close enough to our actual break anyway --

Mr. Ramirez: Yes.

Mr. Martin: That we could do that after Kelly's had an opportunity to speak?

Mr. Ramirez: Okay. Let me get Kelly then Todd then we'll do a break.

Mr. Martin: Thanks.

Ms. Morrissey: I would just like to quite simply say any efforts to sanitize social media I think would be fruitless. I just think that we should just have the live stream and that I -- I really don't understand how we would monitor or control anything that happens via social media.

Mr. Ramirez: Todd, and then we'll take a break.

Mr. Jones: This is Todd. I haven't weighed in on the larger question. I am not going to at this point yet. But it's like being pregnant. You're either pregnant or you're not. And this is either on social media, or it's not. And, you know, pretending -- the other part is the -- the -- the conflict that would then occur when somebody is calling out someone else for inappropriate conduct in here, or when they're saying that, you know, people through this live stream are doing this. I -- it -- that -- we've already wasted a -- a fabulous amount of time so far on this topic and I am sure we will probably have more to go. But that would only lead to even more discussions of the nature of social media later on. And that's not what we're here to do.

Mr. Ramirez: Yes, so we're going to take a break. And part of -- the reason that I put this piece right over here, I knew that it was going to be a topic of discussion and it is leading to the protocols. We're going to have to deal with protocols as well. So when we come back from break we will take a final vote on the live-streaming issue and then get into the protocols. And -- let's take a 15-minute break, okay? Thank you.

(Whereupon, the above-entitled matter went off the record at 10:15 a.m. and resumed at 10:30 a.m.)

Mr. Ramirez: All right, wow, I tell you -- you guys are the absolute most prompt group I have ever worked with. I was the late one here. Okay, so let's go ahead and start back up. And let's do this -- again, I put the -- I knew there was going to be some discussion around this item here. And so I put it hopefully, you know, right into the protocols. So what I am going to suggest is that we set this aside right now. Let's continue with the protocols. We'll deal with this, you know, at the end of the protocols. But let's go ahead and see how far we get through the protocols and then we will continue on with the idea of the -- the live-streaming. So just to be clear, though, it is being live-streamed. So I just wanted to make sure that you -- that you understand that. Okay?

So as far as the protocols go, these are the same protocols that (unintelligible) Defense used and I am not going to time-box this. We're -- let's just go in order. We'll take each paragraph as we go and we will just take a consensus check on each paragraph and then formalize the entire protocols at the -- at the end. Okay? So with that, I am going to pass it over to Greg just to walk us through the -- the protocols. Once we're done reviewing each paragraph we'll -- we'll take a consensus check. Okay?

Mr. Martin: Okay, thanks Jav. We will move through the protocols and -- the first one being the -- obviously, the mission statement there. No need to review that. We will move on to participation with the -- the committee consists of the members you see here. We do have some unfilled positions. We have two unfilled positions both primary and alternate for Minority-Serving Institutions and I think we also have a position vacant for accreditation agency, and we do have people here that will be petitioning to join. So bear that in mind as we move through the protocols.

Discussion about the member -- you can read there, the member will participate for the purpose of determining consensus. The alternate member will participate for the purpose of determining consensus in the absence of the member. Either the member or the alternate may speak during negotiations.

Participant: Okay, that's pretty straight-forward. Any questions on that one? Let me see a show of thumbs if you are okay with 2B. Okay, no thumbs down, so we are moving forward. Next?

Mr. Martin: With approval by a consensus of the committee, individuals, including specialists who are invited by a member, may participate in committee or sub-committee meetings as needed and appropriate, but are not members of the committee.

Participant: Any questions on that one. Chris?

Participant: So again, to clarify, in order for some -- someone could be I guess invited by a negotiator, but then would need consensus -- 100-percent approval -- for that person to speak? Is that -- my understanding and correct?

Participant: Yes, that's correct.

Participant: Okay, I guess -- you know, I guess -- I hope and I am sure we will all want to hear from varying different sides. So I know I will commit to hearing from an expert who may not share my beliefs, but I obviously would want to hear that person and I hope we will all commit to that and will not be not having consensus on -- on an expert even though we may not agree with his or her beliefs.

Participant: Okay. Yes, Tony?

Mr. Mirando: So how would that work? If you want to bring up an expert is it as needed? Or do you do it at the beginning? Like, when you start today, that you might have somebody?

Participant: I would say let us know as far in advance as you can. But obviously, depending on how the conversation goes, you may not know until you hear something. But I would say that the -- the -- the most notice that you can give us, the better. Or the more notice you give us, the better. Okay? So let me see a show of thumbs if we are okay with 2C. Okay, there are no thumbs down. So, next?

Mr. Mirando: The committee may add members. Requests for membership must be approved by a consensus of the committee under such conditions as the committee establishes at the time. New members may begin to participate immediately upon admission to membership.

Participant: And we will be doing that right after the protocols to -- the vacancies as well as -- see if there's any nominations for any additional seats. But we will be doing that after protocols.

Ms. Sarge: Just to make sure I understand this --

Participant: It's Sandy.

Ms. Sarge: Oh, I'm sorry, Sandy. I'm sorry.When it says may add members, is that for positions that are not filled? Or does that mean beyond the membership or the -- the represented segments? So -- so we are each communities of interest. So -- so in other words, I could decide that I am in dog watching and I want to come on in and be a committee member? Or is it you have to be one of these and it's replacing one of the two? Tell me a little bit more about that, please.

Participant: Yes, okay.

Participant: The -- the committee may add members, so if -- in addition to these slots we have here the committee can vote to -- to add additional members. But again, it would have to be done by consensus -- by consensus of the committee.

Participant: And is there -- is there also any approval from the Secretary on any additional members? I say additional members, not necessarily -

Participant: Other than what was here? Yes, if -- if we want to add anybody who's -- who is beyond the slots that we originally had slated, I would want to confer first before we do that. I reserve that -- that right.

Participant: Okay, so when we get to that point we would do a temperature check to see who -- the names would be taken to the secretary then. Okay?

Participant: Would they follow the same protocol that we all did? Like -- other than the -- we got nominated, or nominated ourselves, we submitted that to the Department of Ed. You guys went through your process of decision making and then chose the committee members. Would -- would somebody being added go through a similar thing but with the added burden of having to have consensus from all of us as well?

Participant: Yes, there would have to be consensus and any individual voted on would have to be vetted by the Department.

Participant: Okay.

Participant: Okay, so with that understanding, let me see a show of thumbs for D. Okay, D is approved. There are no thumbs down.

Mr. Martin: Okay, continuing with E. Subcommittees may be formed by the committee to address specified issues and to make recommendations to the committee. Subcommittees are not authorized to make decisions for the committee. Subcommittee meetings will be open to any member of the committee and may be held between the meetings of the committee. All committee members will be notified of all subcommittee meetings.

Participant: Chris?

Mr. Madaio: Chris Madaio. Will subcommittee meetings be open to the public?

Participant: No, subcommittee meetings are not open to the public.

Mr. Madaio: Could I enquire as to why?

Participant: It's part of the established protocol.

Participant: You have to remember too that subcommittees are not making any decisions. Usually subcommittees are formed to -- to deal with some voluminous or nuanced issues. And it's just to bring a more concise topic to the full committee for discussion, review and adoption. So anything of the nature from the subcommittee, the public would have a chance to hear it through their reports.

Participant: Right, that's an important point. It would be brought back here and voted on. Subcommittees can't make any decisions.

Participant: Correct. Okay, let me go -- Tony, then. Okay, Tony.

Mr. Mirando: Yes, Tony Mirando. So, is it my understanding for subcommittee, for instance, if we're all negotiating an item in one of the papers and it appears that we've hit a roadblock, instead of continuing it on for hours, maybe days, we could all agree to get a group of us together outside of here, kind of come up with some thoughts and suggestions to -- for the next meeting?

Participant: That could be. It would be for any reason that you all determined that subcommittee could be productive. But even in that scenario that you gave, that subcommittee would not be tasked with making any decision. It would be maybe to brainstorm some additional creative ideas -- just using your scenario. Where I have seen it again used more is where there's just some lack of better term, maybe some grunt work. Where there's, like, a lot of just detailed work that needs to be done -- or research. And there's folks that would get together and say let's -- let's get this information that we could bring back to the full committee.

But either way, you all will determine when is a subcommittee appropriate and who would be on that subcommittee and what their task is. And you all would do it at that time.

Mr. Mirando: Again, Tony Miranda. So can -- can a -- can an individual negotiator suggest a subcommittee?

Participant: Absolutely.

Mr. Mirando: Or a gaining subcommittee? And then, is it that we would invite certain people to be on the subcommittee? Or is that -- the group decides who the subcommittee is, and so on and so forth?

Participant: Anyone could propose a subcommittee, but it would be this committee here that would determine what that subcommittee -- what their task is, and who would be on that subcommittee. Right? So let me go to Chris and then Jennifer.

Mr. Madaio: Thank you, Chris Madaio. Would a subcommittee be created by consensus?

Participant: Yes.

Mr. Madaio: Okay. And then my comment -- I just think a subcommittee should be public. If our work is open to the public, so should the subcommittee regardless of if it's voluminous, technical -- I think regardless of the subject area of the topic, this is an important public matter and that, regardless of how we choose to -- to do the business, it should be open to the public.

Participant: Okay. Jennifer?

Participant: (Unintelligible) pass.

Participant: Okay. So with that discussion, let me see a show of thumbs if you all are okay with E. Okay, a few thumbs sideways, none down. So that's consensus. F?

Mr. Martin: Upon the initiation by any member and after consultation with the facilitators, the Secretary may remove a member she determines is not acting in good faith in accordance with Paragraph 6B of these protocols. In such a case, the Secretary will provide an explanation in writing to the member and the committee.

Participant: And 6B is all members and the organizations they represent shall act in good faith in all aspects of these negotiations. That's what 6B is. Okay, any questions or comments on F?

(No audible response.)

Participant: Okay, let's see a show of thumbs on F. Okay, no thumbs down. G?

Mr. Martin: Okay. The Secretary may remove any member who ceases to be employed by or associated with the community of interest the individual was chosen to represent.

Participant: Questions or comments? Sandy?

Ms. Sarge: So, D says we can add any members we want and they don't have to be part of our -- the -- the communities of interest. Yet the Secretary can remove any members in the community -- it seems like they conflict.

Participant: I don't necessarily think they -- I mean, I think what we're saying here is that when we determine to do this negotiation, we established certain communities who would be represented here whom we wanted to be represented here and put out nominations for that. So if that were -- if those persons' employment were to change and they were not -- no longer representative of those communities of interest, we -- we do want those communities of interest represented here, and that's -- that's the reason for 4G.

Participant: Okay, Whitney?

Ms. Barkley-Denney: I also think, Sandy, that the consensus is a really important backstop on adding people when it comes to different communities. So, you know, we're not necessarily as a table -- or at least, I can pledge to not vote for a dog catcher. Right? I mean, we are -- yes. So I think that that's an important backstop on the front end to keep in mind that, you know, willy-nilly, there's not going to be people just coming up from totally unrelated communities trying to get onboard and then getting voted in by the committee.

Participant: What's your perspective on them therefore being able to be removed?

Ms. Barkley-Denney: I am fine with it. I think if it were a longer negotiating period, I would be more uncomfortable with it. So if it were a year and we were expecting people to stay in the same job for a year. But we are really only talking about, you know, now through March. And I think it's reasonable that most of us will probably stay in our -- our position, then.

Participant: Yes.

Participant: Okay, so let me see a show of thumbs on G. Okay. I don't see any thumbs down, so we are good.

Participant: And by the way, if we ever don't notice that there's a thumbs-down somewhere, feel free to speak up.

Participant: Thank you. Okay, decision making.

Mr. Martin: Okay. The committee will operate by consensus and that means there must be no dissent by any member in order for the committee to be considered to have reached agreement. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations about the approach or solution that is proposed for consensus. Absence will be equivalent to not dissenting. All consensus agreements reached during the negotiations will be assumed to be tentative agreements until members of the committee reach final agreement on regulatory language. Once final consensus is achieved, committee members may not thereafter withdraw their consensus.

Participant: Sandy?

Ms. Sarge: So I had a question about this right from the beginning. So we received eight issues -- papers -- with multiple questions on each of those. It -- I believe the -- my understanding is that we would have to have 100-percent consensus on all of the issues completely in order for anything to be agreed upon. So my question is, is that realistic ever in a negotiation and -- and can we -- and/or can we decide as a group to do them by issue? Where we have consensus on one issue but maybe not on another issue and so on and so forth? So that we can break it up into chunks that -- so you're not feeling like it's all or nothing.

Mr. Ramirez: Yes, I will tell you -- I will let Greg comment on this as well, but I will tell you that we -- we have gotten agreements on -- on all issues in other regulatory negotiations, so it can be done. And as far as process goes, what we were planning on doing was going and trying to get as many pieces of these items agreed to, but then it would have to be an overall consensus vote. But I will leave it to Greg as far as the answer on the all or nothing aspect.

Mr. Martin: You're correct, Javier, that -- that consensus does need to be reached on everything. I would point out that by consensus we don't mean 100-percent agreement on -- that everybody absolutely -- this is the way everybody would have it if they had their -- if they have their way with it. So it is -- it is a process of some give and take.

Traditionally we've reached consensus on about half of our packages. Is it realistic to expect consensus? Well -- and I won't address that. I think it's always realistic to -- to hope for that outcome at the -- at the beginning and hope that we can come to some -- some agreement. But again, the whole consensus process does involve a give and take that we will hopefully be able to -- to have happen here.

Mr. Ramirez: And again, that -- that idea of the continuum, right? So you're not -- it's not necessarily that it's your absolute ideal agreement, but it's somewhere along there where you could live with, again, that lowest level of support is that -- that you could live with and support. And that's the important piece -- that support. So as long as you could say I get it, I understand it, along that continuum I am everywhere but -- the don't agree and will block. Okay. So hopefully we can find some spot along that continuum that makes people happy.

Ms. Sarge: Sandy again. I think that the reason why I ask that is because -- and again, I am just trying to make sure I understand the rules -- that should consensus not be had -- accountants tend to be worst-case scenario people. So just -- you know, what's the worst-case scenario? The worst-case scenario is we don't reach consensus. So then 100-percent of things we may have agreed on in -- in issue would go back to the Department to decide in its entirety. Right?

So -- so if we agree on one thing -- one of those issue papers -- let's say we agree on seven of eight, and -- but that eighth one is a doozy. So there's no consensus had, then everything goes back to the Department for finalization?

Mr. Ramirez: I will let Greg answer that one.

(Simultaneous speaking.)

Mr. Martin: That is correct. Yes -- entire -- consensus does have to be reached. If consensus is not reached on everything, then it is the Department's prerogative to -- to regulate. I would point out, though, that we would not -- if that were the case, we would not be dismissive of the -- of -- of what was said and what was agreed upon and where people did meet -- reach consensus.

Mr. Ramirez: Okay. Jennifer, then Dan.

Participant: I just want to say that in my experience in observing -- and actually, we -- my organization has been at the table a few times -- and actually we were at one when there was consensus on repay. But I would just say that in our experience of observation -- and I am saying this in part just to keep everybody in the good-faith negotiating mode -- that in our experience, when there has been consensus on an issue, the Department takes that to heart and it -- it is a productive and helpful piece of the puzzle in the regulatory process of -- regardless of whether consensus on a whole is met. And so I would just, you know, say that I am going to be working hard to find areas of common ground on each issue and I know others at the table will be too. And so I find that it's -- although it's a weird process, we find it to be productive in providing that input to the Department, which the Department has historically taken pieces of.

Mr. Ramirez: Okay. Dan?

Mr. Elkins: I just want to ask the Department's clarification just to clarify for all of us around the table, it is our responsibility to come in good faith for the purpose of reaching consensus, is that correct?

Participant: Yes, you've characterized it accurately. I think everybody here should -- should come to the table in good faith. We do -- I mean, we are cognizant of the fact, and it would be foolish to deny this, that there are -- there are differences of opinion. Some very great gulfs of opinion here. But I think we -- the reason for this is that we all come -- we all are negotiating in good faith, and it doesn't mean that we're bound to -- to agree, but you're right. And I think all the discussions we're going to have about this and -- and move towards that common goal.

Mr. Elkins: And for the record, I think we owe it to each other to police ourselves. And if we feel that anyone around the table is not acting in the interest of that, then it's our obligation to bring that to the attention to the group.

Mr. Ramirez: I will take all the help I could get. Thank you.

(Laughter.)

Participant: I think what Javier said earlier, is if we make it about issues and not people, that that's a good place to start. You know, you can disagree vehemently with others about -- about the issues and not make it personal. If that weren't -- if that weren't the case, I could never have Thanksgiving or holiday dinners with my family.

(Laughter.)

Mr. Ramirez: All right, so with that, let me see a show of thumbs on number three, decision making. Okay, no thumbs down, so we are good to go. So 4A?

Mr. Martin: The goal of the committee is to develop a proposed regulations that reflect the final consensus of the committee. If consensus is reached on the proposed regulations, the Department will provide a preamble consistent with the proposed regulations to the members of the committee for review and comment prior to publication of the proposed regulations. The Department is not required to adopt or respond to the committee members' comments on the preamble.

Mr. Ramirez: Any question on that?

(No audible response.)

Mr. Ramirez: Let me see a show of thumbs if we are okay with that. Okay, so 4A is good. 4B?

Mr. Martin: If the committee reaches a final consensus on all issues, the Department will use this consensus-based language in its proposed regulations, and committee members and the organizations they represent will refrain from commenting negatively on the consensus-based regulatory language, except as provided in paragraph 4C.

Mr. Ramirez: Go ahead and review 4C before we ask for a thumb on B.

Mr. Martin: The Department will not alter the consensus-based language of its proposed regulations unless the Department reopens the negotiated rulemaking process or provides a written explanation to the committee members regarding why it has decided to depart from that language. That written explanation will contain a detailed statement of the reasons for altering the consensus-based language and will be provided to the committee members sufficiently in advance of the publication of the proposed regulations so as to allow them a real opportunity to express their concerns to the Department. If the Department alters consensus-based language, it will also identify the changes made subsequent to consensus in the preamble of the proposed regulations, and committee members may comment positively or negatively on those changes and on other parts of the proposed regulations.

Mr. Ramirez: Thank you. So in summary, B is saying that, look, if we reach consensus -- and again, that's that lowest level of support, right, that you're going to go along with whatever the question is and you're going to support it -- that's that lowest level. So we're saying if we reach consensus, we don't want you out there later, then, talking bad about it. Talk bad about it here. Unless they change that consensus language, right? If they change it, then you could do what you need to do, right? Either support or -- or -- speak for or against. So that's -- that's what B is saying. Any other questions on B? Jennifer?

Participant: So I know this question comes up a lot, and I just want to clarify real fast -- or ask for clarification that when it says the -- I guess it's in B, and the organizations they represent that you, in this case, don't mean the communities of interest that I represent, because I can't necessarily control that. But just my own organization. Correct?

Participant: That is correct.

Participant: Okay.

Mr. Ramirez: Okay. Looks like that got Kirsten's (phonetic) question as well. Whitney?

Ms. Barkley-Denney: I was just wondering how often in the past it's happened that consensus has been reached and the Department has overridden that consensus? And their reasons for doing so.

Participant: Off the top of my head I just don't know, so I will -- but it -- but since the question is out there, I will confer with our more senior people. Because I'm just a young person. No, I'm just kidding. I'm -- people have been doing this process for a long time and see if we can determine exactly how many times that has occurred, if ever. I will get that for you.

Mr. Ramirez: Todd?

Mr. Jones: I can't give to the issue of whether a whole consensus has been overridden, but I was here eight years ago for this exact negotiation and we had a consensus which there were only a couple that came out of that first round of negotiation on it on the issue of the definition of a credit hour -- rejecting the proposal of the Department. And -- and I was the lone standout who pushed for that and eventually convinced my colleagues. And the Department rolled me. And it was thrown out. So I understand as much what Jennifer is saying that, you know, it is a good process. It is worthwhile to go through this process. Let's not be under any illusions that, you know, where -- unless there's a full consensus, that the power lies.

Mr. Ramirez: Okay. Then, with that, let's see a show of thumbs for 4B. Okay. No thumbs down. We're good to go. C?

Mr. Martin: Okay. The facilitators will maintain a clear and reliable record of tentative and final agreements reached during the negotiation process as well as the discussion of preamble language. The draft meeting summaries will be provided to members who may share them with others within their community of interest. After review and approval by the committee, this record would be made available to the public.

Mr. Ramirez: Okay, let me -- let me pause you for just a second. Because we approved 4B, but we did not approve 4C. So do we want to read it again? He read it in preparation of -- of B. So is everyone okay to vote on 4C? Let me see a show of thumbs for 4C. Okay, again, no thumbs down, so we are good to go on C. And 4 -- I am sorry, 5A.

Mr. Martin: Want me to reread 5A?

Mr. Ramirez: Do -- is everyone okay? Any questions on 5A? Yes, Sandy.

Ms. Sarge: Sandy again. That's going to become my name, Sandy again.

(Laughter.)

Ms. Sarge: After review and approval by this committee, it does not say by consensus -- is -- am I to assume that we have to reach consensus on these reliable -- you know, on this language? Or is it just by majority vote?

Mr. Ramirez: All decisions are going to be done by consensus.

Ms. Sarge: Okay, thank you.

Mr. Ramirez: Yes. Okay, so with that understanding clarification, let me see a show of thumbs for 5A. Okay, we are good to go. No thumbs down. 5B?

Mr. Martin: The Department will make every effort to distribute materials to committee members in a timely fashion. To the extent practicable, the Department will provide members with documents for discussion at committee meetings at least seven days in advance of the meetings.

Mr. Ramirez: Any questions on 5B?

(No audible response.)

Mr. Ramirez: Show of thumbs on 5B? Okay, no thumbs down. 5C?

Mr. Martin: A caucus for the purpose of consultation may be requested by the facilitators at any time by any member. I should say, may be requested of the facilitators at any time by any member.

Mr. Ramirez: Discussions on 5C?

(No audible response.)

Mr. Ramirez: Show of thumbs. Okay, we're good to go. No thumbs down. 5D?

Mr. Martin: The facilitator will be responsible -- responsible for developing an agenda for all meetings of the committee. This agenda will be developed in consultation with the members of the committee.

Mr. Ramirez: And we will be getting (unintelligible) in a little bit. So show of thumbs on 5D? Okay, no thumbs down, so 5E.

Mr. Martin: All committee meetings, but not subcommittee meetings or caucuses, are open to the public.

Mr. Ramirez: Discussion? Chris?

Participant: I guess I will just make the point again, I just think the subcommittee meetings should be open to the public. I mean, I'd love to hear if anybody else has an opinion on this. You know, I guess I could be convinced, or I suppose I could live with it, but -

Participant: I will ask the -- the Department to comment on this as well. But I do know that there are notification requirements whenever there's meetings to the public. And I've seen these committees, they're usually pretty agile, it's just a matter of trying to get that group together to work on whatever it is they need to work on and come back. When you throw in the dynamic of public notice, it -- it -- and then, if you're dealing on a tight time frame, it makes it difficult to do that. But I will let -- Jeff?

Mr. Arthur: I would even make the point that it would delay the process. We're looking at getting through this material efficiently, and having to set those protocols aside and deal with the public recording or public availability would be -- you know, inhibit that.

Mr. Ramirez: Okay. Mark?

Mr. Jerome: Marc Jerome from Monroe College. So to shed some light, I was the primary last time and essentially the subcommittees did work on technical matters. They did work not in Washington sometimes, by phone to help resolve and bring the different groups together. And because Gainful Employment is such a long, technical rule there are certain reasons for -- I guess it's impractical to have it open to the public.

Mr. Ramirez: Okay, all right. Seeing no additional comment -

Participant: I'm sorry.

Mr. Ramirez: I'm sorry. Go ahead.

Participant: One clarification, if it were to be made public, how would we do that? I mean, who would be responsible, if we're having phone meetings and stuff like that?

Mr. Ramirez: I tell you what, let me -- let me pause that question. Let's -- let's do a consensus check and let's see if it's necessary to go down that road. So let me see a show of thumbs for 5E. Okay, some sideways but no thumbs down, so we are good to go. Okay. So 6A.

Mr. Martin: Any member may withdraw from the negotiations at any time without prejudice by notifying the facilitator in writing.

Mr. Ramirez: Any questions? Okay, let's see a show of thumbs for 6A? Okay, no thumbs down, so we are good on that. 6B?

Mr. Martin: All members and the organizations they represent shall act in good faith in all aspects of these negotiations.

Mr. Ramirez: Show of thumbs? Yes, I'd like to see somebody arguing not to act in good faith.

(Laughter.)

Mr. Ramirez: Okay, so we're -- we're good to go on that one. 6C?

Mr. Martin: Contact with the media, the investment community and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations. Members will refrain from characterizing the views, motives and interests of other members during contact with the media, the investment community or other organizations outside the community of interest represented by the member and to the general public through social media.

Mr. Ramirez: Any questions or comments on 6C?

(No audible response.)

Mr. Ramirez: Let me see a show of thumbs for 6C. Okay, not thumbs down, so we are good to go. 7A?

Mr. Martin: The facilitators will serve at the discretion of the committee and will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing a record of agreements and helping the parties resolve their differences and achieve consensus on the issues to be addressed by the committee.

Mr. Ramirez: Any discussion on 7A?

(No audible response.)

Mr. Ramirez: Show of thumbs? Okay, 7A is good to go. B?

Mr. Martin: The facilitators will be available to facilitate all meetings of the full committee and, the extent possible, subcommittee meetings and caucuses.

Mr. Ramirez: Okay, any questions?

(No audible response.)

Mr. Ramirez: Show of thumbs on 7B? Okay, good to go. All right, so we have a little bit of time here still and I want to -- I want to hold off on the idea of the live-streaming and -- at least for right now, and continue on with the petitions for membership because there -- there are a few vacant positions that I'd like to see if we can get those filled if possible.

And so what I'd like to do is see what nominations we have. If there are multiple nominations for a vacant position, I am going to ask for temperature checks on those nominations just so that way the -- the Department can be targeted in who they're taking back information to the -- to the Secretary so that way it's not a bunch of folks that probably wouldn't even be approved by -- by the committee. If we have an idea that there stands a chance of that person being approved by the committee, well then -- then we'll take those in -- if there's multiple nominations on vacancies. Once we fill in the vacancies, then we will see if there's any additional nominations.

Okay, so for the first vacancy we have the Minorities Serving Institutions and we have the negotiator and the alternate position in there. So let me hear, are there any nominations for the negotiator spot for Minority Servicing Institutions? Yes, could you get to a mic, please?

Ms. Zanders: Good morning, my name is Joan Zanders. I am Director of Financial Aid at Northern Virginia Community College and I would ask to be seated as the representative serving the Minority-Serving Institutions. I have been a director of financial aid for thirty-plus years. I've been at NOVA for over nine years, but I have represented both four-year private, four-year public and two-year community colleges. NOVA is an (unintelligible) school. We also have a student population that is over 50-percent minority. So I feel like I would be representing this particular area very, very well.

I also have strong knowledge of gainful employment because we have a number of certificate and career study certificate programs at NOVA and most of the requirement and responsibility for reporting comes through our office. I am being sponsored and supported by the Association of Community College Trustees and the American Association of Community Colleges.

Participant: I just want to point out -- oh, sorry. I just want to point out that because Ms. Zanders had indicated an interest on -- on petitioning to be voted on, that we do have a resume for her. So I will pass that around to the committee members.

Mr. Ramirez: Okay. So while -- while that's being passed around, are there any other nominations for that position? Let me get Pam and then I will come back over here. Go ahead.

Ms. Fowler: Yes, I would like to nominate Thelma Ross (phonetic). For over 30 years Ms. Ross has worked for students at HBCU such as Paine College, Clark Atlanta, North Carolina A&T, Lincoln University in Pennsylvania, Coppin State. She is currently the Director of Financial Aid at Prince George's Community College. She is an active member of NAFSA (phonetic), serving on committees and as a peer-reviewer for their Standards of Excellence Program. She has been a trainer of state and regional association as well. And I am very pleased to nominate her as negotiator on behalf of Minority-Serving Institutions.

(Laughter.)

Participant: Thelma, did you want to come up and speak for yourself before we move to the next nominee?

(No audible response.)

Participant: You don't have to.

Participant: It's optional.

Participant: It's optional.

Participant: I will be passing around a resume for Ms. Ross as well.

Participant: Okay.

Participant: Thank you, but no.

(Laughter.)

Mr. Ramirez: All right, short and sweet. I believe I saw John -- John come up to a mic? I'm sorry, a different John.

Mr. Pierre: Good morning, my name is John Pierre. I am the Chancellor of the Southern University Law Center, one of the six historically black college and university law schools in the -- in America. I have extensive experiences in higher education, both at the undergraduate and graduate school level. I'm very familiar with gainful employment in the sense that it affects professional schools. And I am here on behalf of minority-serving institutions, and particularly for NAFEO and Thurgood Marshall College Fund, who -- who asked me to be here to be considered as a negotiator in this particular situation.

Mr. Ramirez: Okay. Would you happen to have a resume or anything that you would like to pass out? Or --

Mr. Pierre: I don't have one now, but I --

Mr. Ramirez: Okay, okay. That's fine. Another -- one more gentleman. You can use this mic over here.

Mr. Martin: Just want to point out -- Greg again. If anybody has a resume, they can -- they want to make it available to us, we will get it copied as soon as possible.

Mr. Simms: Good morning, everyone. My name is Derek Simms and I am with NAFEO, the National Association for Equal Opportunity in Higher Education, and we just wanted to second our nomination for Mr. John Pierre. He's a wonderful attorney, a skilled negotiator and as part of NAFEO he's been part of our Government Relations Team and he's been a wonderful addition to that. In addition, NAFEO also is a member of the Alliance for Equity in Higher Education with HACO (phonetic), APIACO (phonetic) and AHEK (phonetic) and we would love to have Mr. Pierre share his thoughts on this wonderful convening. Thank you.

Mr. Ramirez: Thank you, Derek. Dan? Let me get Dan then Whitney. Daniel, sorry.

Mr. Elkins: I would just like to ask the Department if there were any applicants for these vacant positions, and if there were some insights as to why they had not been chosen?

Participant: When we put out the nominations we had -- I will see if I get this correct, and somebody might have to correct me back here -- I think that we had some from -- there was one person that was I think for both -- and that person was chosen for another slot. So ultimately, no. There was nobody -- we didn't turn anybody down for that position who was -- who was nominated through the -- through the process when we put out the notice. So it was truly a vacant position. Not vacant because we chose not to select anybody who was -- who was nominated.

Participant: Thank you. Whitney?

Ms. Barkley-Denney: I just want to say how important I think it is that we get some folks from minority-serving institutions around this table. As I look around the table, you guys, it's kind of white. We need -- because minority students are represented a lot in career programs and we need people who work with those students every day and who understand this process in a different way than we can either coming from, you know, consumer groups or the AG's office or any of the institutions if they are not specifically HBCs and minority-serving.

I am happy to -- to look through these resumes and -- and hopefully we can get one from Dr. Pierre or talk to Dr. Pierre and see where they are. But I do think Dr. Pierre also brings a unique perspective as a graduate school, and particularly a law school. That would fill a role that I don't think we have around the table. Somebody can correct me if I am wrong, but -- oh, graduate. Okay, I'm sorry. You're right (unintelligible). But a different type of graduate education with law school. And so I just wanted to voice my support for filling this role and how truly important I think that it is to have the views of minority-serving institutions represented here.

Mr. Ramirez: Okay, is it -- is it fair to say that -- well, let me ask, are there any nominations for the alternate position in Minority-Serving Institutions?

(No audible response.)

Mr. Ramirez: Okay, so we have three nominations for two slots. Correct? Let me get Jeff then Chris.

Mr. Arthur: I mean, wouldn't it be safe to -- Jeff -- wouldn't it be safe to assume that any one of them would be willing to serve as an alternate too so that we can fill the -- a primary and alternate for Minority-Serving?

Mr. Ramirez: That -- that's kind of where I was going with that question. But there -- but there still are three people for two slots. So we're going to have to figure that piece out. Chris? Same thing? Okay, great. All right, so -- Whitney?

Ms. Barkley-Denney: Can I suggest a -- I don't remember what we're supposed to call them -- specific break to look at resumes and talk to people and see what we want to do?

Mr. Ramirez: Yes, how much time do you think would be appropriate for that? And the reason I am asking is that -- would we want to do an early lunch? Or is it too -- or is it still too early for that? Or is it -- could we do it fast enough that we would just do a break and come back, do this, and then lunch?

Participant: Can we get the -- I mean, I know you already asked for it, but can we get the -- the third resume as well in advance of that? So can we just -- and can we also have -- I assume that you were going to go with this, but can we also discuss whether there are any other -- you know, so that we are breaking with L (phonetic)?

Mr. Ramirez: Okay.

Participant: You know, breaking in after we have all nominations for any seat?

Mr. Ramirez: Okay, so Dr. Pierre is working on the resume piece. So let's go on then to the accrediting agencies, and then we'll -- we'll get everyone -- at least the vacancies. Any nominations for the alternate position on Accrediting Agencies? Yes, Tony.

Mr. Mirando: So I have the gentleman, Mark McKenzie (phonetic). Mark, do you want to kind of give your little spiel? Or would you like me to do it?

(Unintelligible.)

(Laughter.)

Mr. Mirando: Okay, so -- thank you. So I have a bio of him. I will go ahead and pass it around. And Mark, if you don't mind I will just read it to everybody so they have an idea. Okay, perfect.

So Mark McKenzie (phonetic) is currently the Executive Director of the Accreditation Commission for Acupuncture and Oriental Medicine. After serving as Dean at the College of Acupuncture and Oriental Medicine, Northwestern Health Sciences University in Bloomington, Minnesota for over ten years. He is a board-certified, Minnesota-licensed acupuncturist and experienced management executive, administrator and clinician. For over thirty years he has worked to promote the health of individuals, institutions and our environment while refining abilities to assess situations effectively, utilize resources, communicate and empower people to meet their goals.

Dr. McKenzie earned his PhD in traditional Chinese medicine from -- I'm not even -- thank you, Tianjin University of Traditional Chinese Medicine in Tianjin, China in 2015; his Master of Oriental Medicine from the Minnesota College of Acupuncture and Oriental Medicine in 2002 and his bachelor of arts from Augustana College in 1982. He also completed the Summer Institute for Education Management at Harvard College -- I mean, Harvard Graduate School of Education. He has presented both nationally, internationally on accreditation and assessment and was an expert panelist for the Rand Corporation on Complimentary and Alternative Medicine.

Dr. McKenzie (phonetic) is currently a member of the Board of Directors of the Academic Collaborative for Integrative Health and has previously served in various positions on the boards of the Accreditation Commission for Acupuncture and Oriental Medicine, the Acupuncture and Oriental Medicine Association of Minnesota, and the Council of Colleges of Acupuncture and Oriental Medicine. I've had time to get to know Mark a bit and for obvious reasons, God forbid something should happen to me or I need to go do something outside of the meeting -- I would like to have an alternate.

Mr. Martin: I've also got -- this is Greg -- I've got Mr. McKenzie -- Dr. McKenzie's resume here since he had indicated an interest, so I will be passing that around.

Mr. Ramirez: Okay, excellent. Daniel? Okay. Whitney?

Ms. Barkley-Denney: Yes, just for decision making purposes, same question that Daniel had on the HBCU piece. Did people not apply for the alternate position? Were people declined the seat?

Participant: No. Any of those positions, we just didn't have anybody -- we didn't have anybody for that position. So -- or -- I'll have to check. Sometimes there -- there may have been applicants who weren't -- who weren't -- didn't pass vetting. But I don't know if that was the case with this one. I can check on that. But I don't recall.

(Unintelligible.)

Participant: Just -- it was just that he was the only -- okay. Then that's right, we didn't -- we didn't have a -- we did not have a nomination for an alternate. I can confirm that.

Mr. Ramirez: Okay. Daniel?

Mr. Elkins: I just wanted to know if the gentleman who we are currently discussing is familiar with the intricacies of accreditation on a regional level? I believe we have the national accreditation represented with you, sir.

Participant: He's asking are you familiar --

(Simultaneous speaking.)

Participant: Repeat the question.

Mr. Elkins: Yes, sir. I was just curious if you are familiar with the intricacies, higher education, surrounding regional accreditation?

Mr. McKenzie: Yes, when I was -- I was actually a dean at a school that was a national -- multi-discipline, and it was accredited by North Central. So I have worked in kind of all of those areas.

Mr. Elkins: Thank you.

Mr. McKenzie: Yes, absolutely.

Mr. Ramirez: Whitney?

Ms. Barkley-Denney: Don't sit down. I have a question.

Participant: Yes, not so fast.

(Participant.)

Ms. Barkley-Denney: Yes, so I was just wondering sort of the scope of the accreditation you do. How many schools are accredited -- or programs are accredited by your organization? It seems very specific.

Mr. McKenzie: Sure. We actually currently accredit 56 different institutions. There are 95 programs in the graduate level -- so master's and doctoral level. We do have the option to do certificate level, but we're not bachelor's degree right now. We have both non-profit and for-profit schools. Out of the 56, 30 are non-profit, 26 are for-profit.

We have about 8,000 students. About 7500 are in the master's, 500 or so in the doctoral program. Schools range from a small of 20 to a large of 600. Average is about 143 students in a particular cohort. And these academic degrees are fairly extensive -- master's degree is -- the smallest one is 105 credits and then it goes to 146 credits. So they're very large programs. All of these tend to lead to licensure. Currently there's licensure in 46 states.

Ms. Barkley-Denney: Just one more question. What percentage do you think of people who are doing these programs want to be acupuncturists versus want to use it as a compliment that they're already practicing -- whether they're doctors or --

Mr. McKenzie: Oh, the ones that are going through our programs, they all are -- 100 percent are acupuncturists. There are options throughout -- it depends on the state. There are options for medical doctors and chiropractors in some states to do abbreviated training at, like, 100-hour level versus a comparison, we're talking -- you know, anywhere from 2400 to 3000 hours at the master's level. So -- does that get to your --

Ms. Barkley-Denney: That's it, yes, thank you.

Mr. McKenzie: Sure.

Mr. Ramirez: Okay, looks like you're free.

Mr. McKenzie: Great.

(Laughter.)

Mr. Ramirez: Okay for now. All right. So there's one more vacant position -- the State Higher Education Executive Officer's alternate position. Are there any nominations for that?

(No audible response.)

Mr. Ramirez: Okay. Any other nominations?

(No audible response.)

Mr. Ramirez: Okay. So then what we'll do is -- we're working on getting the resume of Dr. Pierre. And what we'll do is, let's schedule an hour and a half for lunch so that way it will give you a chance to review the resumes. And what I would say is that, if you're going to go grab something, I am not familiar with the area. This is my first time here. I did see a little café as I was walking up. So I am assuming there's stuff in walking distance.

But we will have -- we'll just put the resumes at -- the resume of Dr. Pierre at the corner over here, so if you come back a little bit early, you can just grab it from there. Hopefully we have it ready to go by -- by that time.

Participant: And I just want to thank you for your work thus far. You know, you have indicated concerns. You've dealt with them, you've gone forward. So even so far, I just want to commend your efforts.

Mr. Ramirez: Okay, so let's plan on being here at 1:00. And there is a list of local eating establishments that's on the table in the back. Okay, thanks everyone. So 1:00.

(Whereupon, the above-entitled matter went off the record at 11:30 a.m. and resumed at 1:00 p.m.)

Mr. Ramirez: Okay, I believe everyone is back so let's go ahead and get started. We're going to -- we left a few things floating out there -- one of them obviously being the live-streaming, formalizing the -- the overall protocols, the nominations and then continue on to the agenda with the overview of the issues. So with that I am going to pass it over the Greg to talk about the live-streaming, and then we'll go from there.

Mr. Martin: Thanks, Javier. During the -- during the lunch period we -- we had the opportunity to discuss this -- the issue of live-streaming. On further discussion and on the advice of counsel we have decided that the issue of live-streaming is not covered by the protocols. Verbatim, if you read the protocols, you'll note there is no discussion of live-streaming.

I want to preface what I am going to say after this by stating that the Department has -- continues to have serious reservations about -- about the live-streaming taking place in that it was not announced prior to this, that having -- filming -- someone being filmed is different than -- than a recording and a transcript. I think we need to put that on the record -- that there is a difference and that some people are not comfortable with -- with that. And that some of those people are here. So they were not notified that this would take place, and to that extent we -- we do have some issues with that.

That being said, we understand that it is taking place, so we are -- we are -- and again, this is not an endorsement of that occurring. We are not going to include it in a vote or as per -- or as part of the protocol. We would ask that the persons doing the live-streaming maintain a respectful distance from the table and that it not become intrusive. If it does become intrusive, we will reserve the right to revisit the issue. So we would ask that those doing live-streaming stay in the back of the room, or alternatively in the overflow room where there is video being shot of it.

Overwhelmingly our concern with this is to proceed with these -- these negotiations. And none of us wants to see the process come to a grinding halt over this -- over this issue. I do want to say one more thing to those people live-streaming, please, during the breaks, refrain from having cameras in people's faces. I think people here -- around the table -- all of us deserve at least the 15 minutes or half an hour to mill about and, you know, perhaps scratch your nose or -- you know, something like that that you don't want sent out there.

And I think all of you doing this would appreciate the same consideration were it the other way. So we ask that you do not do that and that live-streaming cease during -- during the break. It was brought to my attention that there was some live-streaming going on during the break period. So, that is where we stand officially on the issue. And I believe we can move on, Javier.

Mr. Ramirez: All right, so if I understand correctly then, essentially what we are doing is remaining silent on the issue of live-streaming? We know it's going to be done.

Mr. Martin: Right.

Mr. Ramirez: Do it discreetly. Record the actual proceedings, nothing else -- in other words, the breaks -- shut it down. And try not to be obtrusive.

Mr. Martin: Correct. And just to say that the Department continues to have some serious reservations about it.

Mr. Ramirez: Okay. You know, let me ask a show of thumbs, is everyone okay with that? Okay, yes. I don't see any thumbs down -- a few sideways, but no thumbs down. So with that, I want to move on to the protocols because you all agree to every segment of the protocols. And that's somewhat how the -- the issues will work as well is that we will talk about individual pieces of it -- let's agree on the pieces that we could agree upon as we go, and then once we finish it, then we will take a consensus check on the entire issue, right?

So we agreed to all the individual components of the protocols. Let me see a show of thumbs if everyone is okay with approving the protocols as drafted. Okay, I have a thumbs down. I am assuming it's a question -- yes, that's fine. That's a good use of it.

Participant: I just have a question before we move forward, so I don't want to go -- so if we have other issues that come up as we're moving through issues -- that are questions that we think need to be addressed, how will those be, or can those be incorporated into the issue papers?

Mr. Ramirez: Yes, we're going to review the issue -- the eight issues that we're given in advance, we'll review those and then at the end of that we'll see if there's any other issues that the committee approves to -- to add to the list -- which would be to the agenda.

Participant: Okay, then I am a thumbs up.

Mr. Ramirez: Okay, yes. So this is just for the protocols. So again, let me see a show of thumbs for the protocols. Okay, so no thumbs down so we're good on -- on the protocols. Next I would like to move to the nominations. And I would like to see if we can deal with some of the low-hanging fruit on the nominations. And it appeared -- well, on the Higher Education executive officers, there were no nominations for the alternate there, but on the Accrediting Agencies there was one alternate that was nominated, Mark McKenzie. During the break you all had an opportunity to review the resume. Let me see a show of thumbs to add Mark McKenzie as the alternate for Accrediting Agencies. Okay, no thumbs down, so Mark is the alternate, then, for Accrediting Agencies.

And then we have the Minority-Servicing Institutions and there -- we have three nominations for that -- for that position. And during the break the facilitators were kind of scratching our heads, like, how are we going to do this one? Right? So we are going to try one thing first. Let's go through and we will take a consensus check on -- a temperature check on each of the three. And if one of the three doesn't pass the temperature check well then -- then the remaining two would be either an alternate or a -- or the negotiator.

If all three show that everyone is okay with all three of them, we have a plan B. But let's -- let's check the first one. So let's just go through, I guess in order of nominations, right? So I believe that it was Thelma (phonetic) first and then Joan (phonetic) and then John.

(Simultaneous speaking.)

Mr. Ramirez: Joan -- Joan, Thelma, John. Okay. So let me see a show of thumbs for Joan Zanders as the negotiator for the Minority-Servicing Institutions. This is a temperature check right now. So -- quite a few sideways, but no thumbs down. Then the next one is Thelma Ross as the negotiator. Okay, no thumbs down either. And then John. John Pierre. There is a thumbs -- one thumbs down for John Pierre.

Okay, so that -- that leaves Joan and Thelma as the -- as the two that are on there. Now, one thing that -- that I was thinking, and I want to ask the group what they -- what they think for this, Joan and Thelma, what would you all think if --

(Pause.)

Mr. Ramirez: I'm questioning my -- my question as it was in my head before I threw it out there. Give them an opportunity to talk and see if they have an idea of who would prefer to be the negotiator versus the alternate and see if they can come up with something and make a recommendation to you all that we could vote on. Daniel?

Mr. Elkins: We would just like to know -- I couldn't see who put their thumb down, and then their reason why.

Mr. Ramirez: Okay.

Participant: Sure, I -- the reason I -- I did that -- when I consider the institutions that they represent, both Joan and Thelma have considerable experience with gainful employment reporting and have -- and -- and whereas the other gentleman's institution has only doctorate graduates, and therefore hasn't really been involved in the intricacies and details and minutia of managing gainful employment. And therefore I felt that -- if we're -- when we're looking at candidates to contribute significantly to this process, that either one of the other two candidates have experience, have done it, and would -- should provide good -- good help.

Participant: Chris, did you have something that you wanted to share?

Mr. Madaio: Yes, thank you. Chris Madaio. I guess, you know, first -- and you know, I hate to go back on the three people again, I mean is it possible not to have two alternates? It seems like they're three qualified people. Dr. Pierre, I mean, is involved with the school itself as compared to a financial aid officer. I think he is extremely qualified. You know, we have three good people.

It seems like -- you know, it's very difficult to -- you know, because of consensus to have one individual, you know, control the process, it feels like. I am a little disappointed by, I guess, the process we just took. I might have voted differently, you know, if -- I guess -- know it could have ended like that. Perhaps I'd like to -- I know I maybe can't change my vote at this point, but, you know, I guess I am a little disappointed.

Mr. Ramirez: Okay, let me get -- John and then Whitney.

Mr. Kamin: No, I just -- there's nothing more I could add to that. I honestly thought that we were -- there was an expectation to have a more definitive conversation about all three because I didn't see a negative point about all of them.

So, I'm very surprised that one person was singled out in that manner.

Mr. Ramirez: Okay. Whitney?

Ms. Barkley-Denney: I agree. And, I also think it's important to think about who Dr. Pierre represents, not just southern, but an entire organization that is built around representing public HBCUs. And, that's an important voice to have at this table.

I think that I take your point, Jeff. But, we do have several representatives of community colleges here and financial aid administrators, so people who really understand those reporting requirements.

Whereas, this would be filling something that we don't necessarily have at the table.

Mr. Ramirez: Okay, good.

Jara?

Participant: I just have a quick clarifying question. The law school where he works is nonprofit?

Mr. Pierre: Yes, it's a publically funded.

Participant: So, can I ask him another question?

Mr. Ramirez: Yes, please.

Participant: So, and I -- and, again, this is, frankly, a crappy situation where we have to choose. I mean, so, and I guess we could consider, you know, having two alternates. But, I think that that gets into a whole different.

So, I don't think with the respect to Jeff, I think, you know, we have to make a decision. So, you know, it's not easy.

So, I just want to ask another question, though, just for clarification. As a nonprofit law school, do you offer any certificates or any other form of GE related programs at this time?

Participant: Would you come up to a mic?

Mr. Pierre: Yes, okay.

So, John Pierre, again.

So, the law school doesn't offer what you would consider certificates in the context of many propriety schools.

But, the gainful employment rules are very, very important to law schools because that's one of the big things that law schools are engaged in.

As far as accrediting requirements, the employment rates of graduates is extremely important. And, in fact, there have been at least two law schools that have been shut down because of citations to the gainful employment rule.

So, while you might not think of it in the traditional sense, professional schools are very, very concerned about this issue.

Participant: Actually, I am at the table in part because we have graduate programs. So, no, I'm quite familiar with the concept they're not law schools. But, we're quite familiar with the implications for graduate programs.

And, I don't entirely disagree with, you know, the applicability to grad programs, but, no, the reason I was asking and on the certificate question, I was not asking a question about nonprofit/for profit on certificate level programs are applicable regardless of tax status.

So, that's why I was asking whether you had any programs that were applicable to currently.

And, I understand, by the way, the future interest of, you know, future interests of applicability of this rule. So, I'm not --

But, I was just wanted to understand if you had any real time, you know, experience.

Mr. Pierre: No, I appreciate it. Thank you.

Mr. Ramirez: Chris, did you have something?

Participant: Yes, and you just said that there at the end which is the first question on Issue Paper 1 is, should this rule apply to all schools.

So, I don't really think it's relevant whether they have any cert programs or not. Okay.

And then, maybe, Javier, if you could tell us, you said you had an idea, I'm like in suspense what your idea was that if we had all three? Maybe that's something we could hear and maybe could resolve this.

Participant: It was to do pairs, but it would probably end up being a similar result.

But the -- is there a possibility to have another member?

Mr. Ramirez: Hold on a moment, it'll take about a minute, please.

Participant: May I ask a question in the interim?

Mr. Ramirez: Let me go to Marc.

Mr. Jerome: If you -- Marc Jerome, Monroe College.

If you were going to accept the three, I would suggest you have one primary and two alts. And, I would ask the group to think about that.

Mr. Ramirez: So, Marc, Sandy and then Whitney.

Ms. Sarge: Surprisingly need my mic. Sandy, again.

I would not be in favor of having two of the same group voting members. I think that as a contingency or as a community, I'd be more than happy and would encourage two alternatives and one member.

Mr. Ramirez: Okay, Whitney and then Greg.

Ms. Barkley-Denney: I was going to ask a question and I'm sorry, I didn't catch the name of the gentleman who's with Dr. Pierre, but could you give us a little bit more information about the organization that you represent?

Particularly, what kind of programs those schools offer?

Mr. Simms: Thank you, Whitney.

My name is Derek Simms and I'm with NAFEO, the National Association for Equal Opportunity in Higher Education.

Just a little background on NAFEO, Whitney, let me --

NAFEO was founded in 1969 and it currently represents all 106 of the historically black colleges and universities across the country as well as the 50 predominantly black institutions across the country.

NAFEO's membership consists of four-year institutions, two-year institutions, public institutions, private institutions, community colleges as well as professional graduate schools.

NAFEO also is a member of the Alliance for Equity in Higher Education. That alliance includes APIACU, the Asia Pacific Islander Association of Colleges and Universities, AIHEC, the American Indian Higher Education Consortium, HACU, the Hispanic Association of Colleges and Universities, and NAFEO.

So, with that alliance, there are over 600 institutions represented under that alliance.

And, as I stated earlier, NAFEO is in full support of John Pierre and he's also a member of HACU, which is the Hispanic Association of Colleges and Universities.

So, we feel that he brings a breadth of experience and a voice that, Whitney, you so accurately, identified as currently missing from this esteemed group of negotiators.

Mr. Ramirez: Okay, thank you.

Greg?

Mr. Martin: Greg.

What we've determined is that it is allowable. There's only one seat, MSI seat, so one primary.

We would -- it would be permissible to have two alternates. But, it would require consensus of the committee.

Mr. Ramirez: So, let's ask that question of the committee.

Would -- are you all okay with the idea of having two alternates? Let's see a show of thumbs.

Okay, one thumb's down. Go ahead, Todd, do you want to tell me what you're thinking there?

Mr. Jones: Well, I mean, as a practical matter, coming late to the game where we have, you know, someone who wasn't appointed and saying we're going to make up for that by appointing extra folks, I mean, there are, I'm sure, a lot of groups here that would be in favor of having another voice sitting behind them advising, sitting in in lieu of.

I don't think just because there was an absence of someone appointed, I mean, there were -- implicitly, there were more than -- there was more than one person appointed for most of these positions, I'm guessing. And, some were rejected.

The fact that we know the identity of one of the people who would hypothetically be rejected, doesn't mean we ought to say all in.

Mr. Ramirez: Okay.

Okay, so, here was my Plan B. Let's try this one.

(Laughter)

Mr. Ramirez: All right. So, those are the -- those would be the three pairings, right, of folks.

So, we could try the same thing as far as the consensus goes and go through and see if -- how -- if one of these pairs work for you. And then, we could figure out who's the primary and who's the alternate.

Okay, I'm going to let you digest that for just a couple of minutes before I ask you to -- yes.

Participant: I'm terrible at logic and like all like charts and stuff.

You're not necessarily spelling out -- not that I care because I'm not sure I have an opinion -- you're not necessarily spelling out who's primary and alternate?

Mr. Ramirez: Correct.

Participant: Or are you?

Mr. Ramirez: Not yet.

Participant: Okay. So, I just wanted to clarify that those aren't all the scenarios.

Mr. Ramirez: Right, right. So, it would be the pair now, which one's the alternate and the negotiator, we would take care of that next. But, which are the two that you would want to have on there.

You have a question about that, Tony?

Mr. Mirando: Yes. So, the question is, don't you have an alternate seat available? I mean, can we not place them in another seat or that wouldn't work?

Mr. Ramirez: I think the purpose of the alternate is to be a backup for that particular group. Right? And, what happens if that person isn't there? It doesn't quite --

Mr. Mirando: So, has there been a precedence set for this already?

Mr. Ramirez: No, we would expect both the primary and the alternate to actually represent that constituency. So, it's pretty much what Javier just said.

We wouldn't look at just to have an individual on the committee, put that individual in any seat.

Mr. Mirando: No, no, my question was, was there -- is there a precedent for having two for two alternates or is this something new?

Participant: I'd have to check with -- to see if we've ever done that before.

Mr. Ramirez: We didn't get consensus on that, though.

Participant: But, we didn't get consensus on the issue anyway. So, I think it's kind of a moot point.

Mr. Ramirez: Yes. So, that's why I decided to try the Plan B here to see if -- and, again, giving you an opportunity to think about that.

Whitney and then Jeff.

Ms. Barkley-Denney: I just had a question for Ms. Ross and Ms. Zanders, if that's okay.

Mr. Ramirez: Yes, please.

Ms. Barkley-Denney: So, Ms. Ross, I know that you're at Prince George's Community College now, but I think, I don't know all of the names, but it looks like all of the other places where you've served have been sort of what we traditionally think about as HBCUs, is that correct?

Mr. Ramirez: All right, let me ask Ms. Ross to go to the mic that's over there and turn it on and then you can make your comments into the mic.

Participant: It's on.

Participant: Oh, it's on, it's on.

Ms. Ross: Yes, they are.

Ms. Barkley-Denney: Okay.

Ms. Ross: They're all HBCUs.

Ms. Barkley-Denney: Okay.

And, Ms. Zanders, is that true for you or has it been mostly places where you have -- you're a minority serving institution and that there are more than 50 percent of minority students, but they're not traditional HBCUs?

Ms. Zanders: No, but there are other minority groups. So, like there --

Ms. Barkley-Denney: Right, sure.

Ms. Zanders: -- the college where I am now is on a PC and I think we serve more black students at Nova than any of the HBCUs in the entire state. But, we are not an HBCU.

So, it -- I have not been at an HBCU.

Ms. Barkley-Denney: Okay, thank you.

I'm sorry to have to put you guys against each other and ask these questions to try to get to a resolution.

Ms. Zanders: We're together.

Ms. Barkley-Denney: Oh, good.

(Laughter)

Mr. Ramirez: Okay. Jeff?

Mr. Arthur: Yes, I just wanted to clarify that, from my perspective, we're in a position to try to determine which two of the three would represent -- and this is what I wanted to see to have some discussion over who is most qualified.

I certainly appreciate Ms. Ross's diversity of experience and her background.

Mr. Ramirez: Okay, thank you.

Okay, so, with that in mind, I am going to go through each of these three and to see which one would get the highest level of consensus.

And, it may end up being -- looking like voting. So, but, I guess we'll sort that out next.

All right, so, Thelma and John, let's see a show of thumbs for Thelma and John.

No, both of those as a pair and then we'll -- then the next step will be to determine which role they play.

Participant: He means just pick one of the three.

Mr. Ramirez: Well, we're going to start off with Thelma and John to see --

Participant: There are three choices. They want to know if they choose one of the three, I think.

(Off microphone comments)

Participant: So, pair one, pair two or pair three, is that what you're asking?

Participant: Yes, so, we're starting off with one, two and then three. So, where do you stand on one?

(Off microphone comments)

Participant: So, one thumb down on number one.

All right, so, number two?

Two, three -- three thumbs down for the second one.

And then, number three?

Four thumbs down for number three.

So, there was one thumb down for number one. Kelly, could you speak to that?

Ms. Morrissey: I'm not sure I understand the process. Are we just voting for one of the three pairs or are we just weighing in on all three?

Mr. Ramirez: Yes, what we're doing is trying to see where the highest level of consensus is first. I know it's muddy and I don't have an exact how to do this. Right? So, I'm just kind of winging it. Right?

But, what I'm looking at here is that, where we had the highest level of consensus was with the pairing of Thelma and John. Then we would decide who's the negotiator, who is the alternate.

But, as going through this, it seemed like that was the -- it wasn't quite consensus but it had the least dissent.

Ms. Morrissey: Okay, and I -- my thumbs down was just because I would choose one of the other pairings first. So, that's how I was voting.

Mr. Ramirez: Could you live with that as a pairing with Thelma and John?

Ms. Morrissey: Well, it's not my first choice, but I could live with it, yes.

Mr. Ramirez: Okay. So, let's see a -- so, I'm going to ask on Thelma and John if that would be the two folks representing minority servicing institutions. Let me a show of thumbs.

Okay, why not? Jennifer?

Participant: I mean, like I said before, this is really not a fun thing to have to do. So, it's literally because we're making -- we have to make a choice, it's a negotiation and we're trying to get to consensus.

And, of the three, he is the one with the least real time. I'm not saying he doesn't have a vested interest for the future, but in terms of real time experience to get into the weeds of, you know, what reporting is like, what disclosure is like, what the impacts of the actual metrics are and all of that, he is the least equipped of the three. It's that simple.

Mr. Ramirez: Okay.

Jessica?

Ms. Barry: And, I agree with Jennifer. And, I think that I believe it's Thelma will represent HBCUs because she's worked with several schools previously and I think she has more experience.

Mr. Ramirez: Okay.

Whitney?

Ms. Barkley-Denney: Is there a compromise to be found here in the primary and alternate slots? I mean, the primary, you know, if we were to make Thelma the primary and Dr. Pierre the alternate, then we're not as worried about his lack of direct experience and we still get to have the voice of this organization that represents so many different minority serving institutions at the table.

Mr. Ramirez: Okay, I'm seeing some heads bobbing on that.

Sandy?

Ms. Sarge: Perhaps it -- perhaps we could also ask them if anybody is contemplating stepping out of their nomination. Because, at this point, somebody may say, you know what, never mind.

(Laughter)

Ms. Sarge: You know, I just want to throw it out there. Like somebody may have, you know, like, what did I get myself into? So, they could step out, argue amongst themselves, come back in and give us their answer. And, I'd be perfectly happy whatever they chose amongst the three of them.

Mr. Ramirez: Greg?

Mr. Martin: Well, I understand that would -- I know all of you are in a very difficult position. I think that puts them in a difficult position of having to, you know, it's like, do I still want to be homecoming queen, yes or no? It's not quite the same thing.

(Laughter)

Mr. Martin: But, it's certainly that you want to be as opposed to having someone else vote for you. That was a bad example, I'm sorry.

(Laughter)

Mr. Martin: But, I just -- I don't want to put them in more of a spot than they are. We have three very qualified, very good people, two of them I know, the other one seems very qualified as well.

And, I just don't want to put them in any worse of a more difficult of a position than they're already in.

Mr. Ramirez: All right, now, I'll tell you what, I saw quite a few heads bobbing when Whitney had thrown out the idea of making Thelma the negotiator and John the alternate.

I guess I would ask a question of Thelma, you have the dates that are -- that we have proposed. Are those dates that you would plan on attending?

Participant: Yes.

(Laughter)

Mr. Ramirez: That's all we need. Okay.

(Laughter)

Mr. Ramirez: All right, so, let me throw that question out there for the group. Right? With Thelma as the negotiator and John as the alternate, let me see a show of thumbs how you all feel on that. Again, keeping in mind the levels of consensus.

I'm taking that as consensus. I don't see any thumbs down. So, let's go ahead and have Thelma, we've got a spot for you up here to join the table. We'll get a table tent printed out for you.

John, you are the alternate. Okay? And, I think I need a one function after that one.

(Laughter)

Mr. Ramirez: My brain was kind of scrambled on that.

So, let's take a quick one function and then we'll come back and we will start talking about the overview of the issues.

Let's come back at five after one -- five after two.

(Whereupon, the above-entitled matter went off the record and then resumed.

Mr. Ramirez: All right. So, we're going to go ahead and start now with the overview of the issues.

And, what we're doing here is just to get an overview so that we can understand what it is that we're going to be dealing with, see if there's any additional issues that the group wants to check and see if we get agreement to add to the list.

And, the way I understand it is that we're trying to prevent a whack-a-mole situation down the road, right, that we think that we're getting close to a wrap up and then another issue pops up, right.

So, we want to corral the issues and we want to put a fence around them so that way we could set the agenda and know what we have to deal with.

So, let's start off with, Greg, you want to run through the overview and help us understand what we're dealing with?

# Overview of the Issues

Mr. Martin: Sure.

For the record, this is Greg.

I know it sounds awkward to announce our names, but I have to keep remembering that they need to know that.

Before we do that, I just want to point out one thing, on the list of -- I don't know if you all have my email, but I think it's incorrect. And, when you email me, should you want to email me, it's gregory dot martin at E-D dot gov (gregory.martin@ed.gov) not greg dot martin.

Unless you have a really difficult question to ask me, in which case you can send that to greg dot martin.

Okay, so, overview of the issues. I'll just briefly talk about what we're going to be discussing.

So, our first issue will be a scope and purpose discussion. And, it's going to be sort of a broad 20,000 foot view of all this.

Secondly, we're going to look at the gainful employment metrics. So, all of you who are familiar with this know that -- know what the metrics are and we'll be looking at the metrics in some detail.

Next, we'll talk about the debt calculations that go into the metrics. Types of debt included, the ways in which we should calculate that. We'll be looking at amortization periods as part of that discussion as well.

The next issue will be sanctions for programs based on DE rates. That'll be a discussion of irrespective of how we're going to calculate the rates, should there be sanctions based on those rates?

Issue five will be alternate earnings appeals, how they'll be structured, whether we'll continue with the current protocol for that or what changes we might want to make.

Issue six is disclosures, I think that's pretty self-explanatory. Those are the disclosures under 668.412.

Issue seven will be the reporting requirements. We'll be looking at what is currently required for GE reporting and how that -- whether that should change and if it should change, how -- what burden should be on schools. What might be able to be done by the department?

And, our final issue is certification requirements. We'll be looking at what institutions are currently required to certify and whether we should continue with those requirements, expand them and whether the certification requirement should pertain to only GE programs or they should be expanded to all programs.

Mr. Ramirez: Okay, any questions on those?

(No response)

Mr. Ramirez: All right. So, let's see if there's any other issues and see if they either fall under one of the ones that Greg outlined already. If this is the appropriate forum and if there are any that do not fall within one of Greg's issues and this is the appropriate forum, then we'll take a consensus check to see if we want to add it to the list.

Is there anything else that you feel you need to discuss?

Whitney?

Ms. Barkley-Denney: Is this the last chance to do so or will we have -- do we have the opportunity to do so as we go through if things come up?

Mr. Ramirez: You know, you all as a committee, by consensus, could agree to do just about anything as long as it's, you know, by consensus.

What we're trying to do here, though, is to identify issues so we don't have to come back later once we think that we're either getting close to the end of the process.

If you know of an issue now, let's go ahead and bring it forward. It doesn't necessarily mean that if something surfaces as we discuss that you can't bring it up. Just understand, we have to do it by consensus. Right?

Daniel?

Mr. Elkins: Just for clarification, it might not be a tangential issue, would you give a clarification as to whether or not under the issue of debt calculations, the issue of over borrowing above and beyond the cost of a student program or a degree or certification?

From my understanding, and for those of you at the table who are more knowledge on this than I am, there is no way to prevent a student from borrowing too much money above and beyond what they should borrow.

So, although that is not directly related to the GE calculation, I'm not an expert, but I was just curious as to whether or not that should be included in the discussion.

Mr. Ramirez: Greg?

Mr. Martin: Currently, maybe we need to clarify what you mean by over borrowing. I always look at borrowing in the context of -- and we're talking about federal, you know, federal Title IV loans here -- that there is a cost of attendance, which I would remind everybody the schools, the school sets. We don't dictate that.

That consists of not only tuition and fees, but also other statutory components.

And then, we look at the cost of attendance. And, in the case of subsidized loan, I also expect a family contribution minus estimated financial aid. And, that is what a student is eligible to borrow.

So, if I need to put some parameters around what you might mean by over borrowing. If by over borrowing you mean above and beyond what tuition and fees would be, I would not, from the department standpoint, that would not be over borrowing.

And, that may not be wise for a student to borrow in excess of what he needs for tuition and fees, but I would -- I always like to point out that those other components are in statute. So, obviously, it might be more important for a school to have a student borrow for tuition and fees.

But, it doesn't make any of those other components less important. And, by statute, students have the right to borrow for those.

So, I mean, so our rules would actually prevent over borrowing in that you're not allowed to borrow above the cost of attendance or, in the case of subsidized loans, the EFCL also factors in there.

Mr. Elkins: I appreciate the department's clarification on that. I'd love to hear from a few people around the table who are experts in this, but to give one caveat. You can borrow the maximum amount for the cost of a program and continually -- and use your GI Bill at the same time.

And, in my opinion, that would be over borrowing.

Mr. Martin: Yes, I would say, that's true by statute those -- we don't -- I mean, when we look at -- when schools look at EFA, or I'm sorry, estimated financial assistance, meaning sometimes people refer to as resources, other types of aids students have, they are -- it's mandated to exclude a lot of the -- to exclude like VA benefits, education benefits from that.

So, yes, that -- if your point is that a student can receive a large amount of those benefits and still borrow, that's correct. But, I think that would require a statutory change.

Mr. Elkins: Thank you.

Mr. Ramirez: Okay, let me Jennifer, Sandy and then Whitney.

Participant: Okay, I just want to clarify, though, that I'm not providing additional comment to Daniel. Is that okay?

Mr. Ramirez: Yes.

Participant: Okay, so I'm just moving -- I'm actually going back to something that Whitney had asked about additional issues.

I just want to ask a question about the questions that you have at the end at each issue.

So, I think my issue or, I can't -- I need to think of a different word other than issue or question -- but, is that I would like -- there are some areas within the issues that weren't covered through the questions that were posed.

Those questions are just meant to drive conversation, but they're not all inclusive as the questions that could be asked with regard, for example, in debt calculation.

You know, we have some other thoughts that weren't posed in the questions. So, there'll be an opportunity, I assume, to bring up other -- they're not issues per se, they're subcomponents of the issues presented. Right?

Mr. Martin: Yes.

Participant: So, I just wanted a little bit of clarification on that.

Mr. Ramirez: Sure.

Greg?

Mr. Martin: Yes, we would have no objections to looking at the papers if, you know, when we go through the questions, we'll go through those that are there. And, if you have any other things you'd like to add to clarify that particular issue paper, yes, not a problem at all.

Mr. Ramirez: Okay, Sandy and then Whitney?

Ms. Sarge: And, I'll go back to Dan and my understanding is that the calculation is based on the lesser of the institutional charges versus the total debt.

So, if you have situations where the institutional debt which would include tuition, books, tools, et cetera, et cetera, that -- and that is less than the debt that you actually took out, then you could use that as well.

But, I'm in full agreement with the need to figure out a way to statutorily add in the VA benefits because I am very concerned about the over borrowing that you -- as you present it. And, you and I can talk and figure out how we can band together and see what we can do there.

But, I think you can do the lesser of so that the calculation isn't based on the full, quote, unquote, cost of attendance which is also not student by student, there's averages, there's all kinds of things with cost of attendance.

Thank you.

Mr. Ramirez: Whitney then Jeff?

Ms. Barkley-Denney: I was just wondering if we even have the authority to address this issue in this rule making.

I don't think it's in any of the statutes that were cited to us as part of what we were noticed and preparing to do.

So, I guess that's a question for Greg.

Mr. Martin: Yes, I think our position would be that, certainly not to belittle the problem of over borrowing of students with too much debt, but what we're talking about and what was just advanced was that about what goes into the calculation of the metric, not --

GE was never a rule about over borrowing. So, it's -- while it's a very important discussion to have, I think that that would not be within the context of what we're discussing here.

Mr. Ramirez: Jeff?

Mr. Arthur: Yes, and I know not to get into the weeds too far right now, but I'd just point out that the borrowing, while it's limited to the cost of attendance, I mean, the debt that counts or the formula now is the debt is considered the first dollar, not the last dollar.

If it was the last dollar, that would be fine, but it isn't. So, effectively, debt that is taken out for living expenses does tend to count in the calculation.

Ms. Barkley-Denney: I was just going to suggest since we can't address it, we move on.

Mr. Ramirez: Okay.

So, I'm not hearing any additional issues. I'm hearing that there may be some diving into some of the issues that are currently presented.

So, we have the eight that have been identified to this -- at this time.

Jeff?

Mr. Arthur: Yes, just one kind of overarching theme, I guess I consider it could be an issue is to point that there is a real lack of program level data across all of IRID.

And so, the -- this whole process is a little challenged by a lack of data to help guide it.

Mr. Ramirez: Okay. I'm not hearing an addition issue, though, that we would add to the list. Is that accurate?

Okay, okay, okay, thank you.

Whitney?

Ms. Barkley-Denney: I guess the -- building on Jeff's point, I mean, certainly a data request, when are the right time to ask for that? Is it this point or is it during the issues as they come up?

Mr. Ramirez: I think that -- let's hold it for each of the issue, right, and then what we could do is at the end of each issue, we could see what information is needed for that issue. Does that sound okay to everyone? Okay.

Participant: Your name, please?

Mr. Matsudaira: Hi, Jordan Matsudaira.

Mr. Ramirez: You know, Jordan you could get to (sound interference).

Mr. Matsudaira: Is it on now?

Okay, so I'm Jordan Matsudaira.

I wanted to just make a couple of points about the data issue that was brought up. And, so, I'm a professor of economics at Cornell and do a lot of work on education and the labor market.

I was on leave at the Council of Economic Advisors where we kind of came in to the gainful employment conversation and tried to produce a lot analyses kind of germane to kind of having data driven kind of decisions being made in this area.

So, I just want to make the committee aware of some innovations in data that are available now to the department and their rule making. And, I hope that's something that can inform the types of data requests that you might think about as the negotiations continue.

So, the most important thing that I just want to flag is that one thing that we developed the capacity to do over my time at the council was to take the data that exists in the Department of Education and take the data on students who participated in gainful employment conversations and link that data to earning information from the Treasury Department, IRS earnings records, the earnings that are used.

And, staff in the Office of Tax Analysis there were able to provide a number of different sorts of analyses that really combine both debt and earnings for different types of students together to evaluate an array of different kind of permutations of the way a rule might be structured and what consequences that might have in terms of the programs that are identified, and, in terms of the desirability of different sorts of accountability metrics.

So I just wanted to kind of put that out there now so that, as we're thinking about what kinds of data might inform the conversation that we're talking about, you kind of know that that's a resource available to us.

Mr. Ramirez: I have a follow up question on that.

What's the turnaround on those information requests?

Mr. Matsudaira: I think that's up to the administration. I mean, this is the kind of thing that a well trained staff person in the Office of Tax Analysis can do pretty rapidly.

But, it depends, obviously, on capacity at FSA to be able to create the extracts of students who are in the GE database to be sent over to the Treasury Department.

There are templates that have been put in place, MOUs for those kinds of data sharing agreements between FSA and the Department of Education. So, all of those kinds of models existed at the time.

When I was at the council, the turnaround was really quite slow. But, a lot of that was because developing these initial data sharing agreements took a lot of time.

And, hopefully now, with some of the legal language in place already and the precedent that's less of an issue.

So, you know, I don't think there's a simple to answer to what the turnaround time is. It depends on what the ask is to some extent.

Mr. Ramirez: I understand.

Mr. Matsudaira: But, it's certainly something that can be done on a relatively quick time line.

Mr. Ramirez: Great, thank you.

Jeff?

Mr. Arthur: Yes, at the November 2016 FSA conference, Jeff Baker had commented that the score card, the plan was to parse that data at the program level.

And so, I just -- something to throw out there for the department to check out and respond to at some point through this process to advise us of what -- where that is. Is that something they plan on doing? Because it, obviously, could be extremely relevant to what we're doing here.

Mr. Ramirez: Daniel?

Mr. Elkins: I would agree with Jeff's comment to request any updates on the data that you do have available.

I do think it would help inform everyone around the table regardless of what side of the potential verdict they're on to inform them and inform the discussion.

Mr. Ramirez: Okay.

Any other comments?

(No response)

# Formally Finalize Agenda

Mr. Ramirez: All right, so, we have the eight issues then and, by default, that is what forms the agenda going forward.

So, notwithstanding the ability to dig in deeper into any of these particular issues.

So, what -- where we're going to go next is to have a discussion on the issues and really just to develop a deeper understanding of what it is that we need to or that we will be negotiating on in the next two meetings.

But, before we dig into that, that last break was for me to deal with that mental thing of the nomination piece. Right?

But, I do want to commend you before we go on to break, if you think about it, even what we dealt with this morning, we've already dealt with some unpleasant issues and you've been able to get there.

I call it sausage making, nobody wants to really see how it's made, you just want to know that it tastes good. Right? And, you guys are witnessing the sausage making. So, it's sometimes very unpleasant. But keep up the good work.

Let's take a 15 minute break. We'll come back and we'll start talking about the issues.

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

# Discussion of Issues

Mr. Ramirez: We're going to start with Issue 1, which is going to be pretty -- it's going to be all encompassing.

But, I'm going to go ahead and let Greg set that up and kick off that discussion.

Mr. Martin: Okay, thanks. This is Greg.

We're going to start with issue paper one. I do apologize for taking my glasses on and off, I know it's annoying to people. But, if I did the right thing, I'd have Progressives, but I won't do the right thing.

So, I can't see my papers with them, can't see you without them. So, it puts me in a difficult position. So I have to go back and forth as I know it's kind of awkward.

We'll be -- my wife is on me about it all the time. So --

So, we'll start with issue one which you can see is the scope and purpose. I want to apprise you of the fact that these questions we have here at the end of this paper are -- I want you to think of in terms of sort of generalities that we will be exploring them in more detail as we go to each of the individual issue papers.

But, we wanted to begin with just an overview of what GE was and -- or how it exists now and how we might proceed with it.

So, starting with the summary of the issues, noting that we did publish final regulations on October 31, 2014 and that we established standards and other requirements for Title IV eligible programs that prepare students for gainful employment and that those regulations took effect July 1 of 2015.

And, the regulations established an accountability and transparency framework.

First, we can talk about the accountability framework. This is the eligibility of a program, looking at the program eligibility based on that program's performance under a DE earnings rate measure or debt to earnings rate measure.

And then, the institution certification that the program meets certain accrediting agency and state requirements.

And, we're probably all aware of it here at the table, but I just want to state for the record that we are talking about program, not institutional eligibility with respect to GE.

So, that's the accountability framework. So, there are two parts to this, accountability and then transparency.

The transparency framework provides students, perspective students and their families with accurate and comparable information about the GE program so that they can make better informed educational and financial decisions about whether to enroll in that program or continue enrollment in that program.

And, finally, the GE regulations include reporting requirements to provide the department with information required under both the accountability and transparency framework.

So, that reporting protocol that we have is -- doesn't just enable the production of DE rates, it also enables the department to gather information which could be used for purposes of disclosure as well.

And then, we give the authority the department to act it under.

And then, moving to the bottom paragraph there and just paraphrasing this as opposed to reading it verbatim to you, a common criticism of the GE regulations is that one of the problems the rules aim to address which is students being saddled with unaffordable levels of debt in relation to earnings is an issue across all institutions not just GE programs.

So, we are going to be exploring that particular viewpoint.

In addition, some have argued that many of the factors contributing to poor student outcomes as measured by the DE rates are outside the control of the institution.

And, accordingly, some have suggested that the regulations should apply to all programs, not just GE programs and that the loss of eligibility from the resulting from poor DE rates is unfairly punitive.

We've also heard the criticism that reporting and compliance requirements are overly burdensome.

So, we mentioned here that in the issue papers that follow, we're going to discuss in detail the components of the regulations.

Here, we're just addressing the scope. So, bear that in mind as we address each of these separate questions.

And, I would like to -- the way I'd like to do this is to look at each question separately and establish a time frame that we are going to use to discuss each question.

I don't want to establish a time frame by, you know, figure out from the chair here, but I don't know what would be an appropriate time. What do you know, Javier, would be --

Mr. Ramirez: Why don't we determine that by each one? So, like, looking at this first one, should the regulations apply in whole or in part to all programs or just GE programs?

What do you think? And, again, it's just to start off with the block. If we finish earlier and we can move on, that's great. But, at the end of that time block, if it looks like it makes sense to add some additional time because we're having some good dialogue, then we add additional time.

Mr. Martin: Right.

And, also keep in mind that we're going to be discussing this broken down by, for instance, should sanctions apply, all these different things will be broken down in more detail as we move on.

We want an overview of where you are on this right now, not getting too far into the weeds.

So, we'll start with 15 minutes?

Mr. Ramirez: Sure.

Mr. Martin: Okay. And, if we need to go beyond that, you know, folks just make the case that we think we need to pursue this a little more and we'll certainly consider that, but we do want to keep moving.

Okay, so, the first question that we have here then, I'll just state, should the regulations apply in whole or in part to all programs or just GE programs?

Mr. Ramirez: Okay, let's start off with Whitney.

Ms. Barkley-Denney: So, I guess I have a question first for the department which is whether there's actually statutory authority to apply GE to all programs?

From my reading of the statute, GE seems to come up in specific sections of statute and those are not sections that regulate Bachelor's degree programs or other programs of that nature.

So, that would be my first question before we spend, you know, 15 minutes today and more in the future on this, is whether there's statutory authority or if that's something Congress has to address?

Mr. Martin: Yes, our position is and I think most people are aware that the accountability framework which is the DE metrics and the sanctions that are in place for the -- for those -- for failure to meet those thresholds is something which is applicable only to GE programs.

We are aware of that statutory limitation. And, I don't think -- for purposes of -- and, you're right to point that out. We're not unaware of that.

I think there would be a different answer as far as what we could potentially require in terms of disclosures from institutions might be a separate discussion than the sanctions one.

But, for purposes of this, what we're doing here, I just want to get a feel from everybody where you are on it, you know, just kind of setting asides perhaps that issue for now and just getting -- gauging how you all feel about applying some or all of this to all institutions or just keeping it with GE.

Mr. Ramirez: Yes, you want to reply real quick?

Ms. Barkley-Denney: May I follow up?

Mr. Ramirez: Yes.

Ms. Barkley-Denney: Yes, so, just one question that I think would be super helpful to all of us, if there's anybody who has a sense of why Congress created the statutory structure in the way that they did, I think it would be really illuminating for those of us who maybe aren't old enough to remember when that was happening.

So, if there's an expert who could come in and talk about that or someone who could address the congressional record on that point, I think that would be super helpful as to whether they envisioned, you know, what they envisioned gainful employment to mean.

Mr. Martin: I can take that back.

I know this thing is playing joke -- games on me. This is Greg again. You turn it on and it seems to go off. Right?

I don't know that I can address that here. I'll take it back and see if somebody -- if we have someone that could --

I mean, I feel that was a legislative process and I don't know that anybody -- that any of us would feel comfortable talking about what Congress intended when they -- when -- exactly what was intended in the committees when they did that.

Obviously, with GE, we've used the authority we believe we have and that's been supported judicially.

But, I'll take it back and see if someone can address that in further detail. But, I don't feel comfortable because of my relative youth, I just don't go back to that.

(Laughter)

Mr. Ramirez: Jennifer, would you want to give an unofficial perspective on that?

Participant: Sure, I mean, I'll give a little bit at least from my own interpretation. I've spent a fair amount of time over the last seven years looking at the Act and the legislative history. And, I'm by no means, you know, I missed it by a year or two when they started writing in the language. So, I wasn't there in real time.

But, if you look at it and actually even if you look at just the language of the statute itself, and this is something that my organization and some of those that I'm representing do care a lot about because I will say that, in our -- in the proprietary sector, you know, has changed a lot since the laws were written.

And, at the time, it's pretty clear, if you look about -- at the applicability to the nonprofits and to the for profits, that it's pretty much meant to be vocational learning. And, that seems pretty clear from the statute itself.

And, there's not, unfortunately, there's not a ton of legislative history. And, I have scoured and maybe the Department of Ed and Congress, CRS or something can do a better job than what I could scrounge up.

But, so, I will concede that there's not a ton of language, you know, of sort of descriptive language.

But, it does seem pretty clear from where the words are used in the statute that it was meant to apply at the vocational level.

And so, actually, I do have a twist on the first issue which I'll hold because I know other people -- I don't want to cut the line.

But, I, you know, I think understanding what the applicability is today in today's world is an important one when we talk about transparency.

Mr. Ramirez: Great, thank you.

So, we have Sandy, Jeff, Daniel, Kirsten and Jennifer.

So, Sandy?

Ms. Sarge: All right, thank you.

I guess I'll be the first one to sort of ask a question about the actual issue here.

So, my reading of this says that whether these statutes should apply to all or just the GE programs.

And, I'll refer to the transparency framework which clearly states that we're looking to provide students, perspective students and their families with accurate and comparable information.

So, forget about whether it's about GE or not, why wouldn't that information be very valuable regardless of where it was taught?

So, if I'm taking accounting online at a big for profit proprietary school or if I'm taking accounting at a community college or I'm taking accounting at a four-year university, academic university, research company, what matters to me would be what's the quality of that education? Or -- and/or let me have all the points so that I can compare it as a parent.

Mr. Ramirez: Jeff, Daniel, Kirsten, Jen, Jessica, Whitney and Todd.

So, Jeff?

Mr. Arthur: Yes, I think when we take a look at the efforts with the college score card where there is wage data, seven, eight, nine, ten years, all four of those after attending a college, we can see that data there.

There's a New York Times article this weekend that indicated if you want to know how much your earnings would be for any given program at any institution the data is not there.

You look at the Institute for Higher Education policy that put out a framework for transparency in a paper in the last month that was outstanding.

And, you just -- there's a cry for consumers wanting to understand wage information by institution, by program.

And, I think we owe it to the American people and the American student prospects to have a better understanding of where the opportunities are in higher education.

And, especially with employment. I mean, at our institution, we consider employers to be our customer. And so, if we meet their needs, the students will be successful.

And, I believe when we take a look at this question as to whether it should apply to all institutions, the data should be available on all institutions whether it's under the GE framework or not.

That would be a foundation that we could lay -- a foundation that we could lay to then understand that data better and be able to decide, okay, what is appropriate to be eligible for Title IV eligibility? What -- which programs maybe are outliers?

Where -- but to try to determine that in a vacuum only for a set number of institutions really is not effective. And, especially it's not effective when it's only helping 79 percent of the students in higher education when we have an opportunity to try to help all students in higher education improve their prospects and help them chose.

You know, I often say that the program choice, depending on what your goals are, your career goals and your income goals, choosing the program is sometimes more important than the institution.

But, it certainly does vary from institution to institution. We -- one would assume and some of the research has been done, limited research, but that's really --

When I look at this question, that's the way I look at it. Let's lay the foundation with the data and go from there.

Participant: I just want to thank those people who put their name card down when they heard something that they had been going to say. That's very helpful because we have limited time. So, thank you for that.

Mr. Ramirez: Great point, thank you.

Daniel?

Mr. Elkins: My first comment is to the department, I think it is very interesting that -- to the question I had before as to over borrowing. You said that it was not in the statute, yet here we are having a discussion hypothetically on what is not in the statute.

I will move on, though, to the first point. Should the regulation apply in part or in whole, so perhaps we would say for speculating that it should apply.

But, perhaps it should be reduced to only apply to programs with certificates and perhaps that the two-year and four-year institutions should be eliminated.

So, I think the verdict for us is yet to be seen. We're very interested in having these substantive discussions with everyone around the table and asking some very hard questions.

Mr. Ramirez: Thank you. Kirsten.

Ms. Keefe: So, I think my first question has been answered regarding all institutions and what the department means. So, you are talking about all degree programs, is that correct?

Mr. Martin: No, by all institutions, we mean all institutions, all programs, not limited to GE programs.

Ms. Keefe: Okay.

And, then, I did have a question because in the narrative on the first page that you read about students being saddled with unaffordable levels of loan debt.

I did try to research the legislative history as well of this and it seemed to me like the GE rule was really designed to combat very high cost, low quality programs initially.

I couldn't find anything that linked it to high debt ratios at the point in time. It was really to combat ineffective, you know, certification programs and other programs like that.

But, if there is legislative history to that extent, I would be interested to see it.

Mr. Martin: Greg again.

I think where we say the high level -- well, the beginning of that last full paragraph there, a common criticism is to address students being saddle with unaffordable levels of debt in relation to their earnings.

So, that's a different discussion from just how much students borrow. And, we're talking about does the student earn enough money -- and I'm not singling out any particular type of school or programs here, just in general, just does a graduate earn enough money to support the debt they've taken on to complete the program?

That's what we mean here. And then, you know, currently, that only applies to, you know, in every respect only to GE programs. We're talking about should any of that be expanded whether, you know, as far as disclosure or any other means to include all institutions. That's really what we're talking about here.

I don't think we're so much talking about what the -- going back to thinking about what the congressional intent of the statute was at the time.

Mr. Ramirez: We have Jessica then Whitney, Todd and then a few more.

Jessica?

Ms. Barry: Jessica Barry.

I just want to give a quick example in reference to what Jeff was talking about.

So, when a student comes to the School of Advertising Art and they're interested in enrollment, they are a lot of times a first generation college student and they're there with their family.

They have no idea the difference between a for profit and a private nonprofit and a public. They're looking for really good return on their investment.

You know, how can they get the best education possible, get out there, get a good job and be able to pay down those loans?

So, I'm not sure why we wouldn't want them to have as much information as possible on wages and on debt. And it needs to be reliable information.

So, I believe it does need to be applied to all programs so students and parents can make the most informed decisions.

Thank you.

Mr. Ramirez: Whitney, Todd, Bob?

Ms. Barkley-Denney: Thank you.

So, I think I'm a little confused about where we're going for a couple of reasons.

One is, what we're actually talking about then would be eliminating, as you were saying, the accountability metrics and just going to a disclosure metric which I think it's a different issue.

Because we can't, we talk about applying them to all -- these rules to all programs, unless that's something that we want to do. So, I think that's a bigger and broad discussion.

But, two, you know, Jessica, definitely hearing what you're saying, but if somebody was coming to your campus looking at a GE covered program, they would still get the same information in that program at a community college as long as it was a GE covered program.

So, what we're really -- like what -- oh, because you're Bachelor's okay, I'm sorry, I thought you were talking about just --

Participant: We're an Associate degree.

Ms. Barkley-Denney: Associate degree?

Ms. Barry: We, yes, we're Associate degree. So, we are an Associate degree program and the local community college has an Associate degree program that is not a GE program.

Ms. Barkley-Denney: Okay, got it, thank you.

Mr. Ramirez: So, we have Todd and Bob and then Jen.

Mr. Jones: This is Todd.

And, I guess I have to go back to what Whitney was saying, this is an interesting philosophical discussion. We'll have those in college.

The reality is, here it is, Section 101, Institutions of Higher Education, A, you know, determine what institution of higher education means. And then, the words gainful employment do not occur until you get to subsection B where it talks about any school that provides not less than one-year program of training to prepare students for gainful employment.

The statutory scheme has a very logical structure to it. That is that there are colleges providing degrees, Associate's degrees, Bachelor's degrees, Master's, Doctorate.

Some of these have very practical career focus, law degrees come to mind.

But, the point here is that there is a distinction in how this is structured where some institutions have gainful employment keyed and some do not.

I would ask the department at least it applies not to the data piece, but to the piece where applicability of enforcement measures and sanctions to explain how, and to provide in writing, how this statutory scheme allows application to other institutions or otherwise, we're just having a nice philosophical discussion.

And, it'd be nice to talk about what Jeff said, but the reality is, that is not inside the bounds of what we get to talk about here in terms of rules that we can even recommend.

There's a wonderful discussion on this topic happening right now several blocks from here on the House side, soon it'll be on the Senate side. And, everyone who believes this can take it up at that point.

But, it cannot be taken up here. It cannot be taken up now. If we want to talk about on data piece, that can come later, but let's not pretend it is what it isn't.

We can get into some other philosophical things about data disclosure and just to signal early here, it's about privacy and not being obligated to turn over your personal data to some larger machine that chews it up and spits it out for the, quote, value of comparison that one wants to draw.

In fact, I have to step back for one philosophical second. Look, there's a reason we've gone down this path in the first place.

There is an administration that wanted to, frankly, strangle a number of for profit programs. And, those programs were, in their view, bad actors.

And, I was here eight years ago and I said, you have the tools you need to go after the bad actors you want. And, the answer, and I'll paraphrase, was, well, we can't do it quickly enough or effectively enough with the mechanisms in hand so we're going to use these.

Well, you know what? Then, you set up a statutory scheme that does that and then everyone, and I'm going to make a generalization here, portions of the for profit sector want to shove it on to traditional high ed because they see that as a leverage point to prevent this from being applied to them because they know then the weight of traditional higher ed is going to weigh against this because, well, first of all, it's a bad idea philosophically.

But, there's no need to go down that entire path if we go back to what the law says. And, we can have our philosophical discussion, but this is a process about regulatory -- this is a regulatory process. This is a rule making process. We can only make rules or recommend the creation of rules that are consistent with the statutory scheme.

And, expanding this for enforcement purposes is absolutely outside it unless the department, and I'd be glad to see this in writing, would be pleased to put that before us.

Mr. Ramirez: All right, did you want to comment or keep moving on?

Mr. Martin: Let's keep moving on. I'll address that momentarily.

Mr. Ramirez: Okay.

So, we have Bob, John, Gannon and a few more.

Bob?

Mr. R. Jones: I don't disagree with Brother Jones. But, I do think it's probably worth us all taking a step back and remembering we're sitting here regulating for the future, not the past.

And, a lot of the data upon which this is based is quite old, quite different database. Today as we're sitting here, the accreditors and the institutional accreditors across the country are using this data, wage, placement, outcomes, debt --

Participant: Excuse me, Bob, can you speak directly into the mic? They're having trouble hearing you. Thank you.

Mr. Ramirez: You can pull the whole mic up closer.

Mr. R. Jones: I think it's just important to recognize that this issue is moving beyond us at a fairly rapid rate in other venues in terms of the accreditation process and almost all the accreditors, WASK (phonetic) was leader in establishing this and it's moving now and every other system.

And, I think it's important to separate two things, disclosure, transparency versus enforcement.

If we look at it from the transparency standpoint, I would disagree. I think, there, it is almost required at this point in almost every standard that we look at and every part of the system.

On Thursday of this week, credential engine will be announced in the full time major new initiative that takes every degree and every certification and everything else and puts it into a worldwide system.

And, in that database is all of these items from every school, all standard, all in the process.

So, I think we're in a step but it's important to look beyond this step and around us at what else is happening. This is fairly open information.

Participant: I just want to give a time check. It has been 15 minutes on this topic. I'm not saying you have to stop, but it has been 15.

Mr. Ramirez: How's the group feel? Do we -- all right, so, we'll add on ten more minutes, okay, and then we'll do a check in again in ten minutes.

So, we have John, Gannon, Chris and Marc.

Mr. Kamin: So, I appreciate all the points on the philosophical discussion. And, the only thing I could offer is, yes, I'll take it back to the Legion and we can discuss it.

I'm not equipped to talk about that here, but it does make me reflect on if we're talking about now, why wasn't it talked about back in the '60s when the Higher Education Act came out and we started to see this bifurcation between higher ed and career technical training?

And, what I would posit is that there was -- it was originally developed or thought of way back as a statutory basis from an accountability framework where public institutions have the full faith and credit of their date.

And, private institutions have a hell of a lot more hoops to jump through and get, you know, the money and the profit and are governed by a Board of Trustees.

There was an idea that maybe career technical training schools and such don't have comparable levels of protections and accountability structures.

So, for access to Title IV funds, perhaps one could be designed around what the net gain is. And, if that is a starting point, then I think it perhaps still exists today in terms of, all right, well, what is the accountability framework?

And, we keep on throwing around that word of accountability, it looks to me that that still might be the case.

And, as far as the interests for Veterans go and where do Veterans fit into this? Research that came out earlier in 2017 on where the GI Bill is spent showed that at public institutions, 56 percent of Veterans are using that and they account for 34 percent of the costs.

Private, it's 17 percent, accounting for 25 percent of the costs.

For proprietary and career schools, it's 27 percent of Veterans who are using it at 40 percent of the expenses.

So, just from being good and faithful stewards of the GI Bill, we are very interested in seeing the products of what that 40 percent is.

So, that means following the framework that has already been developed. We want to -- that's our first priority before we move on to a philosophical discussion about what to do later.

Mr. Ramirez: Thank you.

We have Gannon, Chris, Marc and then Jennifer.

Participant: I'm sorry, this is Rosalyn. Kirsten, can you turn your mic off, please? Thank you.

Mr. Gannon: This is Chris Gannon.

Just a question for the department. I noticed in paragraph three you have a list of criticisms. Do you happen to know where the department got these criticisms from or how they gathered these criticisms that you have listed here?

Mr. Martin: The criticisms are general criticisms we received, you know, I think all of us have heard in terms of we've received, you know, mail from various sectors, people representing various sectors of asking questions about this.

We've received, you know, sometimes people will make those their points known through their elected representatives. So, it's a generalization of those concerns.

And, I think we have to understand that these -- or keep in mind, rather, so we understand this, these papers are meant to provoke discussion among all of you so we get a feel of where you are. We're not necessarily saying that, you know, that the department's laying out a position right now.

It's just meant to provoke discussion. And, it has served that purpose quite well.

I would say, also in reference to the gentleman, Mr. Jones assertions about the statutory limitations that we have, we can see that there are statutory limitations with regard to imposition of sanctions.

However, we don't see that those limitations exist with the transparency aspect of this. So, even if you're only addressing it from that perspective, we would like to have that discussion.

So, no, I don't think we have any exact source for these, but we -- but, I can tell you as someone who's worked in this for a couple of years, these are criticisms that we have received from various quarters.

Mr. Ramirez: Okay, thank you.

So, we have Chris, Marc, Jennifer and Daniel.

Mr. Madaio: Thank you, Chris Madaio.

Just to follow up on that point, could you give a little more clarity on where you are seeing the potential statutory basis for disclosures for non-GE programs?

Mr. Martin: I don't want to speak -- that's more of a question for an attorney.

I don't think -- we don't see anything that prohibits us from requiring that.

Mr. Madaio: Okay.

Mr. Martin: And, also, note at the top of the paper, we list our statutory cites which we feel -- we believe give us the statutory authority to do that.

Mr. Madaio: Okay, thank you.

So, I guess is that kind of what you're saying is that the cites listed here are the ones that you would potentially use to give authority for disclosures?

Mr. Martin: Yes, our cites -- our listed cites would be those that give us authority.

Mr. Madaio: Okay.

And, the reason I ask that is because, I mean, this is a rule about gainful employment. I mean, that's what the session is called, that's kind of what the rules refer to it as.

So, you know, in my mind, if we're looking for language that would match a gainful employment as the rule is -- as the statutory language is written for the GE programs.

So, you know, I guess, I don't see obviously the term preparing students for gainful employment in any of the other statutes that were listed in the cites provided.

So, that's a big, I guess, concern is that we are kind of, you know, to invent a requirement out of a statutory basis that really doesn't seem to be there, and that could be something that could be subject to a court challenge.

I mean, it's, you know, a lot of folks have concerns about agencies legislating, you know? And, I think that we should be sticking to what the statute is and there's a statute that talks about gainful employment applying to certain schools and it just seems that that's what we should be sticking with and that's what we're here to do.

And then, my second point is just that I mean, looking at the Higher Education Act where it does refer to gainful employment, and as John made this point before, there is something different.

I mean, and Congress clearly had some intention in writing the terms gainful employment into the statute. And, I mean, clearly, they overwhelmingly apply to folks seeking careers, I mean, as is spoken here.

So, I think that's a point I would stress, is that, we should be sticking to what there's a statutory basis for.

Mr. Ramirez: All right, so we have Jen, Daniel, Whitney and then a time check. I'm sorry, Marc, yes, you're next, Marc.

Mr. Jerome: So, I've been doing this intensely maybe longer than anyone here. And, I am probably one of the people who's given the department the data that raises some of the criticisms.

And so, I would ask that this group, especially the consumer groups and maybe even the Attorney Generals to think about the regulation, not about institutions, but about students.

So, when Todd brings up the issue about the statute, the statute, it is relevant and it's relevant that we cannot apply this on the accountability.

But, on transparency, once the data comes out, it's going to inform the conversation and it's going to make this table, hopefully, it will come out, look differently on the current standard.

So, I am pretty confident, and I'm hoping it's going to come out that the data -- the rule right now is supposed to identify programs that burden students with unaffordable debt and lower earnings.

And, the department has concluded those programs are so bad they lose Title IV and eventually should close.

When the data is put out for all programs, including law schools, I believe it's likely to show that almost all historically black colleges would fail the metric, that a huge percentage of independent colleges would fail the metric and that's what the data I believe is going to show.

And, that's going to make us think, it doesn't mean a program is good or bad, it's going to make us question whether the 8 percent, the 12 percent and the current framework is an appropriate framework.

And so, I'd ask the group to think about this, not from an institution standpoint, but from a consumer -- from a student standpoint.

And, when we do that, it changes the way you look at the rule.

Mr. Ramirez: Okay, Jennifer, Daniel, Whitney, time check, and then time permitting, Todd.

Participant: So, I just want to go back to the statutory authority questions a little bit.

On the GE -- I just want to clarify something about the references to gainful employment and probably everybody knows it, but I think it's really important.

The terms are not used in enforcement sections. They're literally just there to define what a certain type of institution offering a certain type of program is, and that's to prepare students for gainful employment in a particular field.

So, I just want to clarify that if the -- if Congress, and of course, we have to read tea leaves, but it's in -- are enforcement sections in the Act, they're not in the enforcement sections, they're in the sections that define institutions and an eligible program.

So, I just want to clarify that when we're talking about, and again, I don't want to get into who it's more broadly applied to, but in the context of how it is applied, there is nothing in the statute or, I think, even in the statute -- in the legislative history that speaks to, you know, enforcement around rates and things like that.

It's literally, they are defining particular programs back in 1965. So, I mean, let's, you know, keep that focus.

On the disclosure end on the statutory authority for disclosure, I did take a little peak around on this. And, it is in actually more of an enforcement section.

I think the department has broad authority in the section on PPAs. There's a section of the Act that allows the department basically, for better or for worse, to have the authority to protect students under the PPA agreements and those would, of course, be applicable to everybody.

Mr. Ramirez: Daniel, Whitney and then a time check.

Mr. Elkins: I think we have a few questions for the department based on some research that Mark Cantuitz (phonetic) has done. I believe most of you around the table are familiar with his work.

But, he essentially says that the 8 percent threshold is fairly arbitrary and it's not even within the metrics that the department had previously used which was 10 percent.

He further goes on to paraphrasing very broadly here, I believe all of you have probably relatively familiar with his work, but, a better threshold would be in between 10 and 12 percent and that the 8 percent threshold came as a result of underwriting requirements used for mortgages.

I know when I graduated college, I was not able to qualify for buying a house right away. So, I think that that to piggyback on where Jennifer is going with this, I do think that there needs to be a further look in the next section we deal with that is to how the rate is -- it should be amended or eliminated.

And, furthermore, to the issue of transparency, I don't think anyone can say we shouldn't protect students across the board.

So, if the data is available, I think that it might not necessarily drive students to different schools, but it will absolutely drive institutional behavior across the board in all sectors.

Mr. Ramirez: Greg?

Mr. Martin: With respect to the current rule in effect now, I don't want to take too much time here, you know, talking about the reasons for what -- for why we reached those thresholds.

They are explained at length in the preamble to those rules.

The purpose of this negotiation is to -- at this particular session is to just get people's ideas out there and what's going to go on in the future.

So, I don't want to talk in detail about our reasons for those thresholds which I think are explained thoroughly in the preamble to the final rules.

When we get to the section on -- the issue paper on DE rates, we can entertain a discussion about whether those should -- whether those thresholds should be different. We do have -- we will have that opportunity.

Mr. Ramirez: Okay, we're going to do Whitney and then a time check.

Ms. Barkley-Denney: Building on that, the arbitrariness of -- or lack of arbitrariness of those thresholds have been litigated by a federal court, is that true? This rule was litigated after it was finalized in 2014?

Mr. Martin: Yes, yes, you're correct, it has been litigated. And, but, again, the purpose of this proceeding and the ones that will come after is to determine should we revise it?

So, I think we're looking forward, but yes, those -- that was litigated.

Ms. Barkley-Denney: Oh, right, I understand, I just was point out, you know, the, quote, unquote, arbitrariness of that 8 percent has actually been settled by a federal court.

Participant: So, there has been additional 15 minutes, just to clarify.

Mr. Ramirez: Yes, so we've doubled the original time block. But, last two comments and then move forward. Everyone good with that?

Todd and Tony?

Mr. Jones: Well, I have to respond being directly called out by Mr. Jerome.

I can smell bogus statistics a mile away and let me just forewarn everyone when we're talking about these alleged ratio issues, we're talking about the difference between debt taken on in certificate programs that last weeks or months and lead to specific skills and specific jobs.

And, more generalized Baccalaureate degrees which lead to a lifetime of flexibility but require four years to conduct, and that is not only an important distinction.

But, let me also -- well, we can have -- I'll leave it at that.

Mr. Ramirez: Okay, thank you.

Tony?

Mr. Jerome: Can I respond to that?

Mr. Ramirez: You know what? I don't want to get too deep into the weeds here.

Mr. Jerome: Okay.

Mr. Ramirez: So, I'm going to go with Tony and then we'll move on to the next question.

Mr. Mirando: Thank you, it's Tony.

I'm sitting here and I'm listening to my colleagues on both sides of this issue. And, it is a very complex issue. And, you know, between what the law says we have to and maybe what's the right thing to do.

And, you know, what we have been doing in the past and where should we be going in the future?

And, you know, as an accreditor, it worries about hundreds of thousands of students, I keep coming back to the student piece for me. It's what I get up in the morning for, it's what makes me work all day long. It's what keeps me going these long hours that I put in.

And, I keep saying to myself, even though the transparency issue of this, where is the wrong in this by giving students more information than less?

I mean, I'm just trying to understand that piece. I mean, as person who's been to school a lot over my 57 years, I would have loved to have more information sometimes so that I can make, you know, the proper decision as to, you know, what school I wanted to go to.

And, back in the years, back way back when, they didn't have any of those disclosures.

And so, I'm just trying to understand where is the harm in giving students more information?

So, you know, whether it's legislatively required, but where is the harm? That's what I'm saying.

I only see a positive in this, a win-win for the kids or students, I call everybody kids. Some of them are older than me. But, where is the harm?

That's the piece that I stumble on every day is don't these students deserve to have this information?

Mr. Ramirez: Okay.

So, again, what we're trying to do here is just to get a deeper understanding of what is it that we're going to be negotiating. So, without getting too deep into the weeds, let's get on to the next question.

Mr. Martin: Okay. Greg again.

The next question is, should the department retain, amend or eliminate the accountability framework?

And, I'll go through the subparts to that question I think we should address this holistically.

Should the department retain, amend or eliminate the DE rates for all programs of just GE programs?

If retained or amended, should the DE rates measure be used to determine eligibility, result in other sanctions, for example, warnings or other enhanced disclosure and/or be used as a disclosure?

If retained or amended for purposes of disclosure, should this pertain to all programs or just GE programs?

And, finally, should the department retain, amend or eliminate the certification requirements for all programs or just GE program?

Mr. Ramirez: Okay, you want to give an estimate as far as what you think would be appropriate for this one because it's a chunk there.

Mr. Martin: Should we go with a half an hour?

Mr. Ramirez: Yes, okay.

So, we'll try 30 minutes and see where we're at in about 30 minutes.

All right, so we have Jeff, Daniel and then Sandy and then Whitney.

Mr. Arthur: Yes, I mean, I think the point we made earlier is we need the data to make informed decisions on sanctions.

Until we have data for all programs --

Participant: Excuse me, Jeff, this is Rosalyn. Can you pull the mic a little closer?

Mr. Arthur: Yes, until we have data available on all programs and institutions, how can we possibly have sanctions on programs? Especially the sanctions that were in place were going to impact potentially 30, 40 percent or more of all programs at proprietary institutions.

So, I think we've got to start with the data.

Mr. Elkins: Yes, we think that the rate absolutely needs to be adjusted to reflect more accurate, wider acceptance across people who are experts in the area of what acceptable debt is.

And, we think that that rate would closely resemble the 2010/2011 final outcome of GE.

Mr. Ramirez: Okay, Sandy, Whitney, Susan and Jordan.

Ms. Sarge: This is Sandy.

The question about eliminating the certification requirements, I would want, at some point, some clarification on that unless that's what's in number eight.

If those are the certifications in eight I know where to look now, but I --

Mr. Martin: It does refer to the certifications.

Ms. Sarge: Okay, thank you.

So, the biggest issue I have from an accounting and finance perspective is the -- there are several things.

The rate is a derived or contrived calculation that doesn't necessarily use information that is specific to a student.

So, for example, you do a calculation to do the annual loan amount versus actually going out and getting whatever that borrower was able to negotiate on how to pay back the loan.

So, in a mortgage situation, if you go into a loan modification situation, I worked in the mortgage business for 15 years so I'm pretty versed in the mortgage industry, if you go in for a loan modification, the institution that built the house would not be sanctioned or even held accountable to that loan for -- from the perspective of the arrangement with the borrower and the lender.

And, if you did the loan modification, the original note would be -- wouldn't be brought up again.

So, some interesting things. And, my example on that would be, if a student goes in and does some sort of an arrange with a servicer on a pay as you earned basis, which allows them, by the way, never to pay off their loan in some cases, but if you make good faith payments for 20 years, the rest, quote, unquote, the rest of the principle would be forgiven in those situations.

If that is what they're using as the student's real annual debt payments, then that's what should be used in the debt calculation.

So, from my perspective, I couldn't abide -- I'd be very -- it would take a lot of convincing to retain the current way we calculate, mainly because I don't think it's apples to oranges.

There's no consistency. It's contrived at best, it's not based on real, real statistics and information.

The earnings element, going to the denominator on this, is so lacking in transparency that you, you know, I'm a, as I said to someone earlier, much to the chagrin of my husband, I'm a trust but verify person. So, when he uses terms like trust me, I say, honey, I'm an accountant, please don't ever ask me that again.

I'm going to want him even to show me the regs behind almost every decision in our family.

So, the E on that coming from the, you know, somehow we're going to get the information from SSA, but we can't have it because there's privacy issues so we're going to allow them to go in and put them in order.

God forbid there's ever a systems issue because we know that's never happened in our government, you know, that they've gotten the data wrong. We can't even verify it.

So, from an accounting perspective and an auditor, I have no faith in that. So, on both sides, I, at the very least, I want to talk about amending this but I'd probably, at this point in the game, I'm siding more on the eliminate.

Mr. Ramirez: All right, let's do Whitney, Jordan, Jennifer and Jeff.

Ms. Barkley-Denney: Thank you. This is Whitney.

Yes, so I actually come down on two things on this that I think are important.

One is, coming from a legal services background, and there are other people who are still in that background who can speak to this, I think there's a lot of evidence out there that pure disclosure requirements don't work.

I mean, we still had the 2008 mortgage crisis despite the existence of the Truth in Lending Act. Right?

And, particularly, for the populations that we work with every day, you know, who are first time college attendees, possibly first generation college students, they don't necessarily know what all of those numbers mean and what all those comparisons mean.

Specifically, when they come one after the other in a disclosure form.

So, I think it's really important that we think about both the carrot and the stick of disclosure and sanctions.

I also wanted to say, one thing that bothers me a lot would be any elimination of certification requirements. I think everyone around here in good faith wants to be sure that borrowers are actually being able to work in the fields that they attend school for.

And, if you go to a program that doesn't have the proper programmatic accreditation, then that's almost impossible.

So, those are the two things that concern me most in this list.

Mr. Ramirez: Thank you. Jordan, Jennifer, and then John Kamin.

Mr. Matsudaira: Thank you. (Inaudible.)

Participant: Umm.

Participant: What?

Mr. Matsudaira: So, I just wanted to say a couple of things about the kind of idea of targeting and the issue that's been brought up of trying to extend some of the disclosure metrics, in particular to the broader higher-ed sector.

And I think what I want to point out is just that -- So, I'm not one to argue against having more information out there. I think most economists support the idea that, you know, any kind of person who consumes a product or any kind of service or chooses an institution, wants as much information as possible to make the choice that's best for them. That said, I don't think -- or I don't understand the logic of why we would try to kind of get rid of information that exists in one part of the sector.

So, given the fact that we know the Department of Education has the authority to have these disclosure requirements, what I would caution against is the idea that, you know, if we can't expand this across every institution of higher education, then we shouldn't do it. Okay.

The research evidence that is out there on the kind of concentration of low-labor market outcomes, poor-labor market outcomes and poor-loan performance outcomes in this sector, relative to other sectors, is so much stronger than it was when this initial rule was legislated. The research community has kind of used better and better data, including some of the administrative data that I mentioned earlier, to really document that the struggles of students is really disproportionate in the (Indiscernible.) sector relative to other areas.

And, so, given that the Department of Education can do something about that, I think it makes a lot of sense to do that, and keep the (Indiscernible.) in place, regardless of whether we think it might be a good idea to extend them to other programs or not.

The other thing that I want to say is, as Wendy was just starting to mention, you know, we might start to think that disclosure is insufficient. Okay. There's actually a lot of research evidence that providing disclosures about the outcomes that different students have when they're choosing colleges, does influence their decision and lead to better outcomes -- either loan performance outcomes or labor-market outcomes.

So, it's a really important tool, but it's a limited tool, because it doesn't dissuade everyone, and in general, it tends to favor students who are more advantaged, have more support in making the choices. They have high-school counselors and so on that are able to walk them through how to interpret these different kinds of information and so on. And it still leaves in place programs that can be quite harmful for their long-term prospect. So, I think the combination of disclosures and sanctions together is really a well-justified (inaudible).

Just to allude to another concern that I have about this kind of -- the kind of accountability regime that's here, you know, I think higher education, to some extent, has what economists refer to as a lemons problem. There are, you know, maybe a limited number of bad actors on the market, but in an environment where it's hard for students to figure out the quality of the institution that they're attending next (Indiscernible.), the kind of sense in the media, in, like, talking amongst their friends, and so on, that there are a number of places that could really be harmful if they attend, hurts everybody in the market. And, so it's really in the interest of the sector at large to have these kinds of, you know, minimal standards in place.

And that's the way I view these accountability standards, is very minimal consumer protection standards that are just meant to kind of provide a floor, a quality floor, for institutions in the labor market. And I think they play the useful role of just trying to give students confidence that attending an institution where they're eligible to receive aide, is going to kind of guarantee them some sense of at least not being harmed by attending that school. And that's important for just maintaining our nation's push to kind of educate more workers to contribute to growth and a kind of personal betterment.

Mr. Ramirez: Okay. Great. Jennifer.

Participant: Yeah. I just want to -- actually, it's relevant to what some of the -- what Jordan was saying. I just want to quantify a little bit some of my concerns, or our concerns with the enforcement piece. And, actually, also, it does tie to the, even at the disclosure level, to be honest with you, the way it's applied right now.

Our research of -- and I mean, we do now have, actually, obviously, gainful data. And, so, we are able to use that to make some observations. And I hark back -- harken back to -- I won't say which negotiator it was, but at the first GE, a particular negotiator said, I'm terribly concerned about social engineering. And that was a quote, social engineering.

And, so when we -- we, my organization did some research to see what the results on GE were. You know, it was no great shock to us to learn that most -- most business and IT-related professions, at any degree level, pass, and arts, music, and for us, my institution's a very socially motivated. So, we do a -- we teach a lot of teachers. We teach a lot of nurses. We teach a lot of social workers. And we teach a lot of mental-health counselors, none of whom make a lot of money right out of school. They ultimately do fine, but in the first three years, teachers are, you know, woefully underpaid in this country, as we all know.

So, you know, to look at the data and to see, it's no great shock that on a debt-to-income metric, business degrees are going to pass, and teachers are not necessarily -- education programs are not.

And, so, I would keep in mind that when we're thinking about what we're trying to enforce, how that looks. The data, at the degree level, I would also say, is quite interesting as well. You know, again, I would say that we teach primarily at the -- almost exclusively at the graduate level. And I would say that there's no there (Indiscernible.) for this type of metric at the doctoral level, for example. And, of course, if we look at statutory history, it wasn't meant to apply at the doctoral level. So, that was just the first point, as it relates to that first question.

I do want to -- on the certification piece, as with one particular institution that's entirely online, their certificate. And we'll talk about it more. I think there's more opportunity later to talk about the certification requirements. But, again, this is a place, where if you're requesting institutions to -- particular types of institutions at the doctoral and master's levels, to certify on licensure, and you're online. And I know that the Department, you know, tried really hard to get that language right last time. And we are grateful for their attempt. But, again, from a transparency standpoint, most of our students, at my institutions, are choosing between -- because we're graduate, are not choosing between one sector and one sector.

And, so, I would just hold out that on the certification discussion, and we'll reserve it for later. But I will say that there's -- should be a full conversation about its applicability.

Mr. Ramirez: Okay. John Kamin, Jeff, Kirsten, and Laura.

Mr. Kamin: Thank you. So, I'm just going to pull out my neophyte card for a second, because there's some -- I think I'm having a little bit of trouble wrapping my head around, kind of, what the narrative and what our focus is on this. And I'd also like to get the student's association's opinion on this as well, because they're the most powerful group here, for the ripples that this rule is going to have, and the narrative that's going to be structured around the regulations that come up.

But if we're talking about -- you know, a philosophical discussion about applying it to all types of institutions, is this under the presumption that it is a good enough rule for us to apply it to all institutions, or is it for another reason? Because, again, I don't -- this is coming from a mentality of not understanding this. It kind of seems like a playground. Something would happen in recess, where someone says, it's not fair that's it's happening and, well, how come he gets to do that when I don't? If you play a game and something goes wrong.

And I know that's not the case, but I hope that it's not just about the -- maintaining competitive fairness, because -- it's -- I'd like to believe that there's more prior -- that we prioritize more than equalizing for the sake of that. But, perhaps I have this wrong, but it is -- it is leaving me a little bit upset to think that this is, we're trying to occupy two spaces. One, finding the deficiencies within a rule that is, by the very nature of us being here, has some significant problems, and two, propagating it, as something that needs to, in all haste, be applied to all institutions.

It's just something I'm having difficulty with. But, again, I'm curious what the students think as well.

Mr. Ramirez: Let's get Jen, Kirsten, and Laura.

Mr. Arthur: Yeah. I think that's the -- that's a good question. I don't think we know the answer to it. That is part of the problem, John. We're not against, or I'm not against accountability, but, I mean, the devil's in the details. And I'd leave that to the math experts that understand standard deviations to look at the data -- look at the data that we can gather, if we ever get to that point, where we have it. And we will certainly. But to identify those outliers statistically, before we take drastic action that's irreversible.

You know, at eight percent DTE to me doesn't seem like a minimal standard. It seems extremely aggressive.

Mr. Ramirez: We'll do Kirsten, Laura, Chris, and then a time check.

Ms. Keefe: Thank you. Kirsten Keefe. I just want to further stress, disclosure alone is never enough. I actually spent 15 plus years, primarily in the mortgage world, working in legal services, and it was all about disclosure, through the whole sub-prime crisis. The Truth in Lending Act was all about, just tell borrowers what their rights are and what -- how much they're paying, et cetera, and that's all we need.

And, clearly, obviously that was not enough. And Dodd Frank, you know, has tried to combat that and tried to put in an ability to repay standard, et cetera. So, I think from that, we really learn that disclosure is never enough. And I really agree and appreciate the points that Jordan said. You know, you need disclosure and sanctions as well to have real accountability.

Mr. Ramirez: Okay. Laura.

Ms. Metune: Thank you. Laura Metune with the Community Colleges. I just wanted to start by saying that I absolutely support the concept of data and transparency for all programs. California has actually been a leader on this front. We have something we call Salary Surfer, which evaluates wage outcomes for all of our programs at two and five years after students graduate. It's really important that this information is available.

But disclosure without accountability is really, is meaningless. And I think that if our choices here are to add additional disclosure and take away true sanctions and accountability, then I would definitely fall on the side of retaining the current structure.

The other thing I would note is that, we -- California was really hard-hit by the closures of some of the big-name for-profit institutions that we all know. And many of these students ended up in our system. And we're now working to support and protect them. So, I did want to push back a little bit on this idea that maybe we're not facing the same problems that we were over the last five years. I think this is still a problem. We are still seeing institutions close and students come to our doors with mounting debt and little to show for it.

So, just, again, data is wonderful. Additional disclosure is great. But without true accountability and sanctions, I don't think it will work. Thank you.

Mr. Ramirez: Let's get Chris. And then we'll do a quick time check. And then Sandy and Daniel.

Chris.

 Mr. Madaio: Thank you. Chris Madaio. I mean, I agree with where Kristen and Laura are coming from, in that accountability is a crucial aspect of any rule. The Attorney General's office and the Consumer Protection Divisions get complaints from students all the time about having, an -- essentially mountains of debt and an inability to get a job.

And we hear issues related to their school. Sometimes those are issues related to, perhaps misrepresentations and things unrelated to gainful employment. But a lot of times we just get complaints from students who say, I have all this debt, and I don't know what I'm going to do.

And, you know, that's frustrating for us, because, you know, that may not be a violation of state law, but it's something that we -- we feel that we need to help and try to hear from, and try to protect our state residents. So, I do want to raise that point.

As far as needing accountability, the Higher Education Act, essentially -- right, requires programs to prepare students for gainful employment. So, if the rule just requires disclosure, how is that really accomplishing what the Higher Education Act requires, which is gainful employment?

So, I think that's an important point to think about, is this is the law we're working with. I mean, again, if we don't like the law, then Congress should change that. But that's the law we're here for. So -- so, again, I think we need to think long and hard that if we're moving just to disclosure, how that really accomplishes the rule. And I would posit that it doesn't.

In essence -- right, maybe a clumsy analogy, is it's like having a criminal code with no prison. I mean, how can, really having -- telling someone to do something, but having really no measure of accountability at all to ensuring that that's actually met, is an important point.

And then, lastly, I guess, a question for the Department. I mean, clearly, the rule's been in effect. Aspects are delayed, of course, but aspects are still in effect, including the debt-to-earnings calculations. Numbers were put out in January of 2017.

# Next Steps

## Meeting 2: February 5-8, 2018

Mr. Madaio: Obviously, when we come back next time, it will be February. So, is the Department expecting to put out debt-to-earnings numbers in January of 2018?

Participant: We are expecting -- we are expecting to put out new numbers. I don't know exactly what the time frame for that will be. I can -- I can check real quick.

Mr. Madaio: Thank you. Yes. I'd be very interested to know what the expected time frame is.

Participant: In terms of a time check, it has been about 25 minutes on this topic. And I'm glad to see Chris' name up too, because I know when John spoke, he wanted to hear the student response.

Mr. Ramirez: Yes. So, we have a few minutes left. So, we'll go ahead and continue on with Sandy, Daniel, and then Gannon. Then we'll do another time check at that point.

Sandy.

Ms. Sarge: This is Sandy. So, we're making so many very interesting and deep points, I think, here. So, I'm flipping back and forth between my pages.

So, one of the things that I've noticed -- as I've been in this industry for about ten years is that we -- we seem to waffle between the students' sophistication in one area and then lacking of sophistication in another. We're inconsistent.

Again, students are sophisticated enough and know what they want to be able to take the money that the Department lends them or gives them through aid and do whatever they want with it, and by gosh or by golly, no one at a school should tell them what they want to do with that. But at the -- on the other hand -- so, therefore, they're sophisticated enough to know what to do with 57 and a half thousand dollars in undergraduate debt, maximum, but on the -- at the same time, they're not sophisticated enough to know how to read disclosures and to do research, which I would argue, almost, at this point, kindergartners are better at it than many of my generation, because of what they learn in triangulating data now in schools.

So, that's one point, I would caution us. Like, we can't argue on one hand that they're sophisticated, on the other hand they're not. One way or the other.

The second point is to John's neophyte perspective -- and thank you, I'm right there with you. If we're going to be deciding on a higher level -- while it's -- I understand and I get what everybody's saying about the statutes, I do think it's still a relevant conversation to have, because we need to understand where the perspectives are, so that those us in the room, those of us hearing the live-streaming, and those of us who are going to be tweeting and re-tweeting about this, know that we probably need to go out and discuss this with our Congress members.

And those at FSA last week have known me for five years, who have spoken up. And nine times out of ten, they're going, you know that's statutory, Sandy, right? And I'm like, dang. And it's not regulatory, right? So, my issue is those are still relevant and important questions.

And then, finally, to the point of, gainful employment is in the statutes. However, these rules were -- my understanding is these rules were put in place to define that. So, it really -- the question is, was it correctly or appropriately defined when we came up with these statistics?

So, I don't recall in the statutes that anything says that the definition of gainful is to be defined originally. I know that it's out there now, but the question is, by whose judgment? And what is gainful.

And to a point I heard when I was at the public hearings in Dallas. A mother has a student -- has a son who has a traumatic pain disability. And the only thing that was able to help her son was acupuncture. So, she went to an acupuncture school, she took on the responsibility of that tuition, and she learned that for no other purpose than that she would not have to -- she got licensed -- she got degreed, got licensed, became a licensed acupuncturist, so that she could administer the acupuncture to her son in his home rather than to go out. Would she claim that as gainful employment? She surely would, even though she didn't earn a salary.

So, my point is, there is no definition -- or was no definition, until we started this conversation several years ago. So, what is gainful, and is this the best definition of gainful employment? That is, really, I think, at the end of the day, what we're trying to come up with. Do we think that? Thank you.

Mr. Ramirez: All right. Greg, you had a comment on that?

Mr. Martin: Yeah. I'd just like to request a function break for maybe five minutes, please.

Mr. Ramirez: Okay.

(Laughter.)

 Mr. Ramirez: All right. So, we'll do a quick one-function break. And then we have a few more people that are on the board speak on this one. And then we'll close it out and move on to the next one. So, a quick five-minute function break.

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

Mr. Ramirez: Okay. Just a quick note, I am not tracking who or how many folks are doing live streaming, but it was brought to my attention that there was some live streaming going on during the break. That's something that, you know -- it's not something that officially we're monitoring. So, it's not always on my radar. So, I'm asking folks that if you're doing it, please respect that protocol.

If it gets out of control, we probably are going to do something to address it. So, let's try to keep it the way that it's intended.

So, we have Daniel, Gannon, Whitney, and Ahmad. We'll close this one out and then move on to the next question.

Daniel.

Mr. Elkins: I just wanted to respond to some of the comments earlier on disclosures without teeth -- is potentially not effective. We've had some conversations with the Association of Independent Colleges and Universities on the national level, and we've been made aware of multiple programs that GE applied to that shut their programs down, because they thought that they wouldn't reach the metrics that had currently been imposed. And we've also heard this from various programs on the -- the for-profit side as well.

So, I do think that there is -- that just adds an interesting side to things that the knowledge of these things can drive institutional behavior, and perhaps, always -- or perhaps that it's not always necessary to have these massive regulatory teeth to disclosures.

I'm not saying that it's not necessary to have prisons in reference to law. I do think that prisons are probably a good thing to have. But I do think that there is a precedent to another side. So, I just thought that that was an interesting thing that we all could benefit from hearing.

Mr. Ramirez: Gannon.

Mr. Gannon: Yeah. There was a question posed to me, whether or not I thought disclosures at all institutions would better inform students. And I think my answer to that is, disclosures at all institutions provide more accountability, but they don't provide -- without the sanctions -- if they don't provide the sanctions, that's not something that's going to help or defend students in any way.

Mr. Ramirez: Okay. Thank you.

Whitney.

Ms. Barkley-Denney: Yeah. To Daniel's point, I hear you, but I think that what you can't take out of that equation is the fact that they knew that sanctions were possible for that. You know, they weren't operating in a space where no sanctions were possible, and so, they just shut their programs down. To me, it's a little bit like, you know, if I'm driving -- and I always go the speed limit. So, this is hypothetical, but --

(Laughter.)

Mr. Ramirez: Of course. Ms. Barkley-Denney: -- I see a disclosure that the speed limit is 40, and I don't see any cops, I might keep going 50. I see a cop, that, you know, foot, is hitting the break.

So, and I also just wanted to talk a little bit about how we characterize borrowers. And I want to be really careful in this, because why people borrow is a really complex thing. And actually, there's a lot of research that shows it has a lot to do with wealth, and particularly whether or not parents can help borrowers through their college education.

And we see this actually breaking down on racial lines. Right. So, 34 percent of white parents are able to help their kids when they go to college, and that means that maybe they don't have to borrow so much. But for African American families, it's only 14 percent.

So, when we think about, you know, why people are borrowing, or their relative sophistication, I think that we're missing a lot if we don't think about what their family situations look like and what they're borrowing in order just to make it through that program. So, I just wanted to make that point to be really careful about we talk about borrowers.

Mr. Ramirez: Okay. I'm seeing more table (Indiscernible.) pop up here. So, what I'm going to ask is that, let's keep the comments concise. And let's try to get through Ahmad, Tony, Bob, and Jennifer, and then move on to the next one.

Tony.

Mr. Mirando: Thank you. So, --

Mr. Ramirez: Oh. I'm sorry, Tony. Ahmad. I'm sorry.

Mr. Shawwal: Ahmad Shawwal, the University of Virginia. Seeing that as we're about to wrap up this question, I'd like to emphasize what Jeff had mentioned earlier and what Jordan was touching at. I really do feel like we ought to have a data-driven focus. We owe it to our students. We owe it to our institutions.

And Jeff, if I could, maybe I'd lift the Congressional ban on the student-unit record system. But even without that, I feel like we have a treasure trove of data available that accreditors can use and that can be validated by third parties.

And, so, if we do choose to revise these frameworks, I feel like our language ought to reflect that data-driven focus. Thank you.

Mr. Ramirez: Okay. Thank you. Tony.

Mr. Mirando: Thank you. So, I was listening to what Daniel had said and what Christopher had to say, and I can appreciate, you know, all my other colleagues' comments on the accountability piece and, you know, transparency, for me, is paramount to, I think, every student's success. They should understand what they're getting themselves into. I do agree that there should be accountability, but I think it should be fair accountability.

And when you're dealing with a premise that's flawed, I don't know how you can wrap your hands around it. I think, at first, you know, before I can kind of go anywhere with this, I would say, at the present state we're in, I would say, at the minimum, we're going to need to amend.

And then, if we can't come to a premise that is not flawed -- one which is, which would be characterized by all stakeholders as being effective -- which is what this is all about, then I think that we need to eliminate, if you can't be effective.

So, you know, I appreciate your fact about saying, you know, you've got to have laws, but you can't -- if you have prisons, that will make people pay attention to the laws. But, if you're constantly putting people in prison who are -- are there because of flawed laws, then you don't have the prisons available for when you have the good laws.

So, for me, we just need to have an accountability process that is true, fair, effective, for the students. For -- so the institutions they go to are there and match the transparency that they're being given.

And for me that just makes it real simple. I mean, I know this is a very complex problem. But for me -- for my mind it just becomes very simplistic. As long as it's real and it's true and it's effective in all areas, then it's good -- let's go with it. But if it's not, then it's flawed, in which case, then, we've got to do something about it.

Mr. Ramirez: Bob.

Mr. Jones: (Inaudible.)

Participant: (Inaudible.) hear.

Mr. Jones: Sorry. I think, while it doesn't necessarily directly fit into the regulatory debate, I think it is important for us to keep a sense of -- we are sitting here discussing, blaming institutions all the time, everything from K through 12 through higher education.

But to this day, we don't have one data system providing educators at all level demand occupations, salaries, outcomes, benefits, and what the story is. We don't have one system in this country providing schools, counselors, or anybody else, the valued certifications, licensures, badges, degrees, all the way up and down the line. None.

So, meanwhile, we're going to blame them for the outcome at all levels. That's not a system that's going to work. Sooner or later, with the markets changing the way they are in this country, you have to start providing that kind of information up-front, and then decide what your sanctions are in the process.

I think it's also important to say, we're not talking about sanctions or no sanctions. I would repeat, we are in the midst of a discussion that says that the accreditation system for every institution, no matter who they are, will include this kind of data. And you will be accredited or not accredited or put on probation, whatever -- sanctions will be taken. Universally, that's going to be required by the Congress, by everybody else. It's already well under way in the six regional creditors, and some of the others.

So, we're going to have sanctions. It's only a question of which ones are effective and which ones are universally applied.

Mr. Ramirez: Okay. Let's -- Thank you. Let's close this out with Jeff, and then we'll move on to the next section.

Mr. Arthur: Yeah. And Ahmad, great point.

And I would point out that we may be on the verge of not having to deal with that prohibition. The Prosper Act Re-Authorization Bill actually is allowing aggregated salary data by program, by institution for loan borrowers. So, that's approximately 70 percent of higher ed. And I think it would be a fine and effective proxy for that portion. And really, that's who we're talking about today, are people that borrow. So, I believe we're on the verge of being past that.

Mr. Ramirez: Okay. Thank you. All right. So, next question, Greg?

Mr. Martin: I would like -- what I propose here, is to look at these last two questions, are somewhat similar to what we've already discussed or an extension of that. And the bottom one sort of flows from the next-to-the-bottom one. So, if it's acceptable to everybody, I'd just kind of like to look at these together, if that's okay.

Mr. Ramirez: Yeah.

Mr. Martin: So, I'll read both of them. Should the department retain, amend, or eliminate the transparency framework, for all programs or just GE programs, if the DE rates are removed from the accountability framework, should DE rates be used for disclosures under the transparency framework? And are program disclosures alone effective in enrolled -- helping enrolled and prospective students identify lower-performing programs with respect to job earnings?

Mr. Ramirez: Yeah. So, I know that -- you're right. We did discuss some of this already. So, folks won't need to make the same comments on there. But if there's anything new in relation to this, we'll (Indiscernible.). So, we have Jeff and then Daniel.

Mr. Arthur: Jeff. I would point out that the transparency framework as it exists right now is not limited to debt-earnings. It includes a number of data points, and the Secretary may choose those.

But I want to give an example of one data point that was changed in this year's disclosure template from the prior year. The gainful-employment programs are required to disclose an on-time completion rate. And what that means is, if you have, like, we've got a -- we've got a four-year cybersecurity bachelor degree. And it takes actually two and a half years to complete that. It's 50 -- they attend 50 weeks a year, and they attend a lot of hours. Very intense. But what we have to do is instead of disclosing the median completion time -- in the prior year for us the median completion time was 2.6 years, this year, we had to change the disclosure to the cohort of starts that completed with -- at -- that had graduated at exactly the 100 percent point.

And so that's a completely useless number for most people to determine that's how the program's success is measured for that element.

And that's at a time when right now the recent -- recent events or recent news has concluded that, you know, we're measuring the success of many programs -- associate degree programs at the 400 percent completion rate, and we're declaring that their combined graduation and transfer-out rate at the 400 percent point of the program -- which in that case, a two-year calendar program, if they graduate within eight years, here's the graduation to transfer rate.

So alright. Congratulations. Good job. You've got, you know, 42 percent that graduated within eight years with an associate degree. But yet for our bachelor degree in network security, you know, shame on you that only 38 percent graduated at two and a half years.

Mr. Ramirez: Okay. Daniel.

Mr. Elkins: I have a question for Mr. Jones. And if you can't answer it right now, that's totally fine. I was just curious, if we were to get the DE rates correct, do you think that that information, with just disclosure, would help, neutral, or hurt students at your institution in making decisions as to what programs they going to across your institutions?

Mr. Jones: This is Todd. Part of the reason that we have a difficulty discussing the topic of these rates is the flawed premise that the vocational end of a degree program is the end sought by attending a college.

A four-year college -- graduating to go spread the word of God, you know, in Middle America, or to dig wells in central Africa or to work for an inner-city school for couple of years is not a remunerative activity. But it's also not the activity for which one attends the school. And when attends for the purposes -- for the purpose of gaining an education that allows a lifetime and a variety of career aspirations.

One of the things our liberal arts colleges love to discuss is that when you study traditional liberal-arts topics like history or philosophy, your earnings when you're in your prime-earning years, or your 50s -- wait I'm in my 50s.

(Laughter.)

Mr. Jones: When you're in your prime-earning years -- are several percent -- actually, I think the number's five or six percent, higher than they are if you attend the same -- even the same, similar institutions or state colleges and have a specific vocational end to them. So, I'm saying, those degrees at private liberal-arts colleges, compared to other private colleges and state colleges -- that is not something that goes into a ratio like this, and it's because that's not the purpose of the degree.

So, when we talk about that, that's why -- I mean, it's part of the reason we have the statutory structure we have now. The nonprofit colleges -- there are those, you know, unique certificate programs you'll find everywhere, often nursing programs -- but the point of the institution is delivering associate, and particularly baccalaureate and higher education. So, it doesn't fit with the conception.

Mr. Ramirez: Okay. Jennifer, then Chris.

Participant: Actually I kind of like that Todd just went, because I agree, actually with a lot of what Todd just said. But the problem is, and the real quandary is here, is that, you know higher ed has changed so much since the Act. And so, we're really dealing in this very strange situation, where the structure is the structure of the Act. But the fact of the matter is -- is that institutions have moved beyond, in terms of --

And, so, at my institutions, we're in the same sort of similar situation. We offer, you know, doctoral degrees, master degrees. We're teaching teachers. We're teaching head, start teachers, and the return, I feel like, in this dialogue -- I've felt this way since the very beginning of gainful, that we've lost the concept of a longer-term investment in higher ed.

And I have kids at liberal arts schools. I went to a liberal arts school. I'm a true believer in liberal arts and its purpose. And I believe in the long-term investment that comes from attending any -- almost any -- vocational might be different, to be honest with you. But in terms of graduate-degree level learning, for example, if you're taking -- getting your masters in social work, you know I can -- I mean it's very difficult, you know, to talk about salaries when you graduate with a masters in social work in the short term relative to the tuition.

And, so, it is a very difficult conversation, but the problem for us right now is that that problem is basically compounded that it's only applying to certain institutions and not to others. And so, I'm not suggesting, just for the -- you know, I'm just saying that it's a real quandary here, because the applicability of the data -- And by the way I do want to second what Jeff said on the -- on the -- not just on the debt-to-earnings, but on the completion-time issues as well. There's not a lot of room in those disclosure requirements to sort of explain or anything. They're very difficult. And we'll get into that later.

But the world in which we are living in and those disclosure requirements -- the idea that we have to fit into boxes, and then these boxes are only applied to certain institutions, is, you know, a real quandary. Because, and I don't think in terms of transparency to students. I'm not sure they're very well served.

Mr. Ramirez: Okay. Chris.

Mr. Madaio: Thank you. Chis Madaio. I think the other point of transparency is to ensure that students are getting the disclosures. So, you know, one thing, as far as when the students are getting them -- I know we'll discuss it even more later, but I think as far as if we're considering amending it, we feel very strongly, from a state-AG perspective, that a disclosure needs to ensure that a student gets it. So, just to disclosure on a website really doesn't cut it. Right?

Having a disclosure that a student is going to see, either in the marketing materials, which is what students clearly see -- I mean, a lot of schools spend a lot of money in marketing materials. So, you know, from a -- at least the capitalist perspective, they wouldn't spend it if it didn't work. So, certain people must be seen them. So, that's why, clearly in the current role that -- speaks to that.

And then having students have to see disclosures before they sign on the dotted line and take out all those loans, is something that's really important. So, I know that we'll get to that later, but those are two key crucial things.

And, again, from an AG perspective, you know, we see -- we see problems in those disclosures. I mean, so that -- they're so important. I mean, obviously we're all kind of assuming that schools will tell the truth on them, but obviously, that doesn't happen. And we saw that with Corinthian. I mean, the collapse was because the job placement rates that they had to disclose because of this rule -- was what brought down the entire school and caused so much hardship to so many students. So, clearly, it's a crucial thing, and obviously, we need to get it right, but we need to make sure that students are actually getting it.

And then, turning to the delay, I guess I would just ask the Department why it did delay the disclosures to students in marketing materials and pre-enrollment.

Participant: I'm not going to speak to that any more than when we put out the -- we put out the notices for those delays. We gave our reasoning for that in those notices. So, any reason I would give would be just simply to reiterate what was in those notices.

Mr. Ramirez: Todd.

Mr. Jones: In some ways I'm shocked and amazed that we got to actually the crux of what I think is one of the issues with this rule-making process on the first day.

But, from my conversation with Jennifer, the issue is, we have a problematically-designed accountability system for certain institutions. And there is occasionally, out to the public, a recommendation that the best way to fix that system is too expanded to other institutions. If this thing isn't working, expanding it will not make it better. We shouldn't question that. It's a matter of fixing it where it is.

There are some legitimate reasons for having these distinctions that still remain. Half of the institutions in my membership in Ohio have student-loan-default rates of 5 percent or less. There's a public institution it's near that an Ohio. It's a very large one with a football team.

(Laughter.)

Mr. Jones: And after that it skyrockets. The nearest community colleges 17 percent. The proprietary average is well up there. I don't put this up to put down other sectors. I put this out to explain the rationale for the structure, as it still has some reasons today. There are reasons for that.

And I can't let a second issue go that is -- has gone -- been repeated multiple times today about the purity and necessity of transparency. Like everything else we know in public policy, there are trade-offs and what we do. And let's not lose sight -- and let me put a marker down that I'm going to be bringing it up regularly as we dive down into the weeds of transparency, and that's something called privacy.

In the state of Ohio, some wonderful distinctions in this area. We have Ohio University, which I think had three separate break-ins of personal information. We had the IRS scandal emanating from the Cincinnati office Of the Internal Revenue Service. In fact, we can go down the list of misused Executive Branch use of IRS data going back to the Nixon administration, to be -- in my bipartisan sense.

And to point out that I am one of probably a couple dozen or more people in this room got that nice letter from the federal government, telling me my personal data had been disclosed, because I'm a former federal employee.

So, let's not forget that one of the trade-offs of collecting and disseminating, and moving around data is risk of disclosure. There is no reason that we need to tell -- not tell students their data is being collected, shifted to some other authority and allowed to use be used in ways they have no idea, all for some greater common good that everyone swears is transparency.

Because he'll make another wonderfully bold statement, nobody uses this data for any decision-making that's worth anything. There, I said it. Yes, we talk about that students should have more data, but the reality is, a lot of them don't. And even worse than students not using it, policymakers in Washington don't use it.

There's lots of data we're going to talk about for weeks here, and the wonderful counterpoint of so many of these is, nobody actually uses it to formulate policy. And for everything we're going to stick out here, and say, this -- say, well, politically, this had to happen. Yeah. You're right.

That's how we have -- to the messy system we have. The solution is not going to be collecting more data. The solution is not going to be, quote, transparency in many of the ways that people around this table, including people who would suggest the ridiculous idea of a student-unit record data system have.

Ohio has the distinction of collecting less data about students at nonprofit institutions than any other state in this country. There's a reason we have a policy structure like that. We think it's a good one. And it's going to remain that way. And the federal government's not going to roll over that.

Mr. Ramirez: Okay. So, we have Chad, Whitney, Jeff, Sandy, Jessica, and then time check.

Mr. Muntz: Sure. Chad, for the record. So, I agree with, you know, many of the things that have been said. I echoing on some of the things that John had pointed out earlier. You know, transparency protects the students. Whether they use this, the disclosure, I think is important. A student might decide that digging wells, if they have enough to pay their student debt, might be worthwhile. But it's their decision, and they can make a decision as they go forward.

But accountability protects the taxpayers. So, echoing on what John was saying about, where's the disproportionate amount of money going? Where's the default rate? What I just heard from Todd. I don't know all that data. I don't know if we can get that from the Department, to know, where's our greatest risk, and how can we look at that, maybe differently as we're working through these rules? So, those are my comments. Thanks.

Mr. Ramirez: Thank you, Chad. Whitney.

Ms. Barkley-Denney: I don't have any more to add.

Mr. Ramirez: Okay. Jeff.

Mr. Arthur: Yeah one of my rules at my institution as chief information officer and also managing the financial-aid operations -- and I can assure you, that all of the data we're talking about is already at the Department of Education.

Every single loan that you originate includes program and level in the record. They have the enrollment status through involvement reporting. They have income information through the FAFSA. All that information that we are talking about -- transparency, debt-to-earnings -- all that data is already all there in those databases.

And, you know, one of the -- we're one of the largest cybersecurity trainers in the country. And I can tell you, there are systems available that protect that. And there's a lot of people working hard to protect data. And while I understand the concern, it feels to me like that ship has kind of already sailed.

Mr. Ramirez: Okay. Sandy.

Ms. Sarge: So, you bring up a -- this is Sandy. Todd, you bring up a really good point when you talk about the trade-offs, the risks of privacy breaches.

And, in fact, I had a school come up to me and ask if I would make this point here. And when they were -- and I know that we'll talk about this in more detail when we get to appeals, but when they were going through the appeals process for gainful employment, she said the biggest comment we got from our graduates was why are you asking me these questions? That's none of your business.

So, to -- to your point, we -- again, we sit in a world of inconsistency, where in one moment we're all -- every day we hear something about a security breach, and don't tell anybody what you make and your social security number and du-du-du, and all that kind of stuff. And at the same time, we sit here and say, but give us your income information, so we can make sure we pass a rule that's, in my opinion, contrived and arbitrary -- and that's my opinion -- mathematically.

And so, we are asking students to come forward, and their first thing is, who else is going to get this information? And the FSA team will say quite loudly financial-aid people are not supposed to be tax experts. Right? So, yet you know, if your career placement team is going out and asking students, the first thing they're wondering is, are you going to tell the IRS?

And you put the schools -- this all puts the schools at a real quandary with their alumni and their graduates. If we don't get this data, that school that they hold her licensure with, or their -- or their resume is attached, to could go out of business. But, at the same time, every day we're hearing about yet another breach in privacy. So, we sit at a real quandary, about what are we getting to.

So, to the thing that Chad just said, accountability protects the taxpayers. And that's -- I wonder at times, as a finance person, as a lender, like is that really the question here? Are we, should we be discussing whether or not the government lending anything to our students is really the right thing? If you want to support education -- and education is not free in this country.

And forgive me any Bernie Sanders fans, but, you know, at the end of the day this is a debt transaction. There's a borrower and the lender involved. And if you want to make an un-collateralized, un-experienced financial person a loan, that is your prerogative. But as the taxpayers we should be questioning that, quite frankly.

Not -- there's a reason why 80 percent of banks got out of private loan -- private student-loan lending, is because it was so high risk. It's high risk. And at the day we are here also, in some manner, not just to protect the students, but also the taxpayers.

So, thank you for bringing that to the table, Chad.

Mr. Ramirez: Okay. Let's have Jessica and then a quick time check.

Ms. Barry: I just -- I wanted to add to what Todd said. At my institution, we serve mostly traditional students. And I would with Todd that many times I think the students make a very emotional decision at that age in where they go to school. But I do want to put something out there that we brought up a little bit earlier. It's that parents are very involved in these decisions too, and I think they do care about disclosures.

At my institution we have a -- we have really good completion rates and placement rates. And, you know, we survey these parents. And they say that that is a very big part of their decision. So, let's remember that parents are involved in these decisions and they are part of the borrowing process.

Mr. Ramirez: Okay. So, we've been at this for almost 20 minutes on this question here. And have Jen, John, Todd, and Jordan left. So, let's get through those, and then let's see if we could wrap it up after that.

Jennifer.

Participant: I just had a question for Todd. On the CD -- you mentioned CDRs, but I wasn't sure why. So, I just wanted to understand what you're reference to the CDR was before and we, actually, at our organization we are pretty proud of CDRs, because they're pretty comparable to your CDRs. We have one that hovers around one or two percent, maybe zero. And the other one is quite low, on our two major institutions.

So, but I just want to understand. Because, actually, I think if you drill into the CDR, you know, I think it -- you end up seeing pretty basic information about, you know, demographics and types of, you know, two years have an average of X, and it doesn't matter what your tax status is, and then if you -- so, I'm just curious. I mean, I wasn't trying (Indiscernible.). I just want to understand why you were even raising CDRs in -- in your references.

Participant: Todd, I'm actually going to ask you to hold that, since you're next after John Pierre (Phonetic.).

Mr. Jones: Sure.

Participant: Thank you. John Pierre.

Mr. Pierre: Well I've been listening very intently, and it's a very interesting conversation.

And one of the things that really is hitting at the heart is, what's the function of higher education? If the function of higher education is to provide access and opportunity -- to uplift a group of people who might not have these opportunities, then perhaps we're looking at this the wrong way.

And I have lived in a state where they have slashed funding for higher education to an abysmally low-level. And the dollars have shifted in terms of the cost to students. But the reality is, because of the low level of education being delivered in that state, higher education is needed more than anywhere else.

I just want everyone to step back and think about what the function of higher education is. And if the problem is really that folks want to disinvest in higher education, then perhaps some of the statistical rules -- because I'm looking at what happens at least from a professional school's record and other perspectives -- I call it the US News and War Report Arms Race. Everybody wants to check off a box. Everybody wants to be in a scorecard. We're all involved in a ball game.

And that's not what the function of higher education is. Because higher education serves a lot of different communities in a lot of different ways we've got to be really, really careful about how we frame this question as it relates to what the outcomes ought to be.

Mr. Ramirez: Thank you. Todd.

Mr. Jones: I love these buttons. They clearly work.

I think I'll answer the question first, and then go to the point I was going to make.

The reason I bring this up was to talk about the overall nature of the statutory scheme and the reason we had distinctions here, going to my point that we don't need to spread tests that aren't working to others to make them somehow work more equitably. If you have a bad test or you have a bad standard, you don't need to spread around for no other reason than you think, you know, that that leverages some sort of false equity.

And instead, I said it reaffirms there is a reason why we have these distinctions in the statute, and I don't think they disappeared with time. There are degree programs that are primarily centered -- there are institutions whose degree programs are almost exclusively centered, as a sector, on the kinds of degrees that are for not one particular job. Mine -- mine is one of them.

And there are multiple ways to slice data to look at why there's a difference. One I'll use is the non-profit purpose of my institutions. The money, quote, made, by my institutions is not taxed, because they're tax-exempt organizations, not nonprofit.

But the money that is made is driven into more need-based aid or is driven into other philosophical-community based purposes. That is a different end, and that is why we have a distinction in the statute.

If that -- if that statutory scheme for other sectors doesn't work anymore, it is incumbent upon them -- in fact, if I look at the draft House bill, it looks like they have been actively encouraging a change in the statute, that can be done through the means of the statute, but it doesn't have a place here. And I think it is appropriate to look at other reasons why we have the statutory scheme. So, that's why brought that up in that context.

But I want, because I brought up privacy earlier, I wanted to dispel a second myth related to that -- because I know we're getting to the end of the day here, and I want to make sure this theme is understood. It is a fallacy that data is ubiquitous.

Almost a third of students don't engage the federal loan system, and yet some of the things we talk about, particularly with unit record, suggest that you have to fork over more data to do that.

My -- my daughter does not attend an independent college. She attends that very large, public university in Columbus. And I write a check, and so does her mother. And if I didn't work for nonprofit, you couldn't look up what I make. But -- and you can't look up what her mother makes. But that kind of data is the kind that unit-record data is discussing.

There is no reason to know what my daughter chooses to make her first year out of college. She is not obligated to do that, and she shouldn't be forced to. She shouldn't be forced to have some central repository gather the nature of the classes she's taking. And it shouldn't be for your family either, or for anyone else. There isn't a need for that, and we can draw all of the policy conclusions we need from data that existent, if these are the concerns. We don't need this grand central repository.

And that's the trade-off I want to talk about when I talk about policy. So, with, you know, due respect to Jeff, we don't have all the data. They're big chucks of it that we don't. There are significant numbers of institutions where you have very little of that data, and there's no reason to get the federal government deeper into the data business to that end.

Mr. Ramirez: Okay. Thank you. So, we have Jordan, Ahmad, and then Daniel. And then -- and then we'll wrap up.

Mr. Matsudaira: Hi. So, I just wanted to respond to the point that is being made about, kind of, privacy and the kind of benefits of having transparency and so on.

So, I just don't want to have the illusion out there that the information isn't useful and it's not being used and isn't helpful. So, we actually have a lot of good research evidence about this, and I'd be happy make that information available to people.

So, we both have information recently about the release of the college scorecard and evidence that people responded to the metrics in scorecard when they were choosing schools. And we have a number of kind of well-done, randomized experiments, where people are given information, and we kind of see that that impacts their choices about where to attend colleges and where to go. So, I'd be happy to talk to anybody about those things and relay those papers to the Department for distribution, if that's of interest.

And just on the privacy point, I completely respect the point is being made and think it's important to be considered. But, you know, I think we should also think about differential policy, and it, you know, it really depends on what's being considered here. So, as you say, the Department doesn't have a lot of information about non-federally aided students. But if we're talking about just disclosures that are based off of students that are already being federally aided, then the gainful kind of regulations that (Indiscernible.) exist right now don't really impose a lot of differential privacy risk, relative to what already exists. And the trade-off is that we get a lot of information that we know really does impact students' choices and outcomes.

Mr. Ramirez: Okay. Thank you.

Ahmad.

Mr. Shawwal: Sandy, I was curious if you could, for our edification, clarify some of your earlier comments, because I know this is not the conclusion that you were trying to reach, but it seemed like you were saying, maybe, individuals from lower income or poor backgrounds maybe ought to not take out that loan and go to college. I was wondering if you could clarify that.

Ms. Sarge: I'd be glad to, but I'm not sure what -- can you give me a little bit more, because that certainly wasn't what I was trying to --

Mr. Shawwal: And Daniel, feel free to chime in.

Ms. Sarge: Oh. I'm sorry.

Mr. Shawwal: What I heard was that the students that tend to make poor choices about taking out these loans tend to be the ones from the lower income backgrounds.

Ms. Sarge: Oh. No. No.

Mr. Shawwal: I didn't know what the conclusion was that you were trying to draw from that.

Ms. Sarge: No. My point, I think is, when I said that we have to decide whether or not we see the students as being sophisticated enough -- is that when -- okay? Is that when it was?

Mr. Shawwal: Mhmm.

Ms. Sarge: Okay. So, we have rules in the -- currently, right now, that put schools in a situation where we are literally unable to stop a student from taking additional debt. We cannot counsel them or tell them in any way -- and feel free, my financial-aid experts over there, to jump in.

We literally -- so, not to inappropriately pick or appear to pick on vets, but vets can get 100 percent of their tuition and living expenses and all their costs funded by the VA, in some cases, and then also come into the school and say, I want all of my loans as well.

And we cannot say, but you're already paying for everything over here. So, why would you need that? And we can't stop it, because statutorily, it is not in the needs calculation, which is something we should take to the Hill, all of us, and try and get that fixed, because I don't think that those particular benefits were there at the time that that needs -- statutory needs calculation was put together.

So what I was trying to say is, you can't on one hand assume a student has all the sophistication necessary at a young age to -- or whenever, at any age really -- can't say that they're -- they've got that much sophistication to handle all that debt responsibility and all that, and then at the same time say they're not sophisticated enough to look at statistics and make informed decisions or go find data.

So, right now we say on one hand, we have to protect them from us or from unscrupulous whatevers, but on the other hand they are grown-up and sophisticated and should be able to be left alone to make all the decisions. One way or the other. Does that make more sense?

Mr. Shawwal: Understood. That helps.

Ms. Sarge: Yeah. No. No. I would never, never ever differentiate by socio-economic class.

Mr. Ramirez: Okay. Great. So, that wraps it up for that issue. And what I would say is, let's conclude for today, because I don't think that it would make sense to start a new issue, when we would need to save at least 15 minutes for -- 10 to 15 minutes for public comment -- at least allow for that opportunity to do so. So, let me up go ahead and open up the floor and see if there's any folks from the public that would like to make any public comment.

To the mic please. State your name, and then make your comment.

# Public Comment

Mr. Halperin: My name is David Halperin (Phonetic.). I'm a self-employed lawyer. I'm supported to work on higher ed by nonprofit foundations that are concerned with the quality and affordability of higher education, especially career education. And I will say, that I make these comments with great respect to the people around this table, knowing that you work hard and that you're concerned about students and concerned about these issues.

This proceeding is blocking regulation that was carefully considered, carefully crafted, to protect students and tax payers from well-documented abuses by some career colleges. Blocking the gainful employment rule means that more students will enroll in programs that will ruin their financial futures. These students, as before, will be veterans, single mothers, people of color, immigrants, and the forgotten Americans that Donald Trump promised in the campaign that he would help.

Many will enroll because of false promises about the selectivity of the school, about the urgency of enrolling immediately, the cost of attending, transferability of credits, job placement, and starting salaries. Many will enroll in programs that aren't strong enough to help them succeed. Even if these students graduate, and many of them don't, and even if they get the job they dreamed of, and many of them won't, they may not earn enough to pay down their loans, because the tuition was just too high. That is the problem that the gainful employment rule addressed, implementing a law passed by Congress, as we discussed, in 1965.

My colleagues and I know hundreds of these men and women by now, who are buried in debt from attending dishonest schools or simply overpriced schools. And these are good people. All they wanted was a chance to pursue their dreams and make better lives for their families.

But instead of standing with them, Secretary DeVos seems to be standing with the people who caused the harm, the people who have pocketed billions of dollars and require taxpayer bailout after taxpayer bailout.

The gainful employment rule would save money for taxpayers by pushing the Department to remove from federal aid those schools that leave students worse off than when they started.

But the issue papers prepared by the Department for this meeting suggest its determination legitimate protections for students and taxpayers. I know, and I respect some owners of for-profit schools and executives of those schools. Some really do want the best for their students. There are also very good teachers in this sector. And there are many student success stories. And I know many of those students as well.

Some owners expressed legitimate concerns during the past rule makings, but over eight years of the last administration, the Department took concerns into consideration. I believe we ended up with rules that are more than fair to schools, rules that would penalize bad actors while rewarding colleges that actually help students train for careers.

The Department announced in January that about 800 programs failed the GE test, less than 10 percent of all GE programs. I'm dismayed that owners whose programs passed or came close to passing don't want to step up and make their programs work, instead of fighting to dump regulations that would put their most unscrupulous, irresponsible competitors, the ones that have harmed the industry's reputation out of business.

This process today is, I believe, about the corruption of the system and the process. It's about the blatant desire of some colleges, which are associated with friends and appointees of this administration, to go back to the recent bad old days, when they could act with impunity, deceiving and abusing students in order to maximize profits. Their misconduct, which has led to scores of federal and state law enforcement investigations, and is still ongoing, has been a scandal. And if this proceeding -- in this proceeding you don't do the right thing, you will extend that scandal.

I will conclude. State Attorneys General, Republicans and Democrats will continue to fight against fraud in this industry. Responsible members of Congress, the media, and advocates for students and veterans, will continue to produce and expose the truth about bad actors, even if the Secretary continues to weaken enforcement efforts, relax oversight of accreditors, approve sham conversions to non-profit status, and gut accountability rules.

The Department will be on the wrong side of history, the wrong side of students, the wrong side of justice. Keep the existing gainful employment rule. If you do, you will improve the effectiveness, integrity, reputation, and ultimately the success of career colleges in our country, and you will help these students.

Mr. Ramirez: Okay. Thank you, David.

Any other public comment? Okay.

Then, just a quick note. I would ask that, for the folks that the negotiators and alternates -- I'm not going to have everyone stick around for this, but we normally like to do the plus delta, things you want to make sure that we as facilitators are doing well that you want to keep doing, right. And then things that maybe we could do different. So, we'll be here. So, afterwards, if you want to come up and let us know that.

Don't forget to turn in your badges. I guess, the red ones. Turn those into security as you're leaving. And, again, be conscious of the security for tomorrow. Make sure that you get here with plenty of time. And we will see you at 9:00 -- or, any other comments before we break?

Participant: No other comments. I just want to thank everybody for their time and professional demeanor.

Mr. Ramirez: Okay. Great. All right. Thank you, everyone.

# Adjourn

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