UNITED STATES DEPARTMENT OF EDUCATION

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GAINFUL EMPLOYMENT
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 2

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MONDAY,
FEBRUARY 5, 2018

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

PRESENT

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

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

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

STAFF

STEVEN FINLEY, Office of General Counsel
GREGORY MARTIN, Office of Postsecondary Education
ANNMARIE WEISMAN, Director of Policy Coordination Group, Office of Postsecondary Education

A-G-E-N-D-A

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

(9:00 a.m.)

MR. RAMIREZ: All right. So let's go ahead and get started. There's one group that still is yet to come, but by the time we get through all of the beginning items here, hopefully they will be in attendance. So let's go ahead and get on the record for the gainful employment negotiated rulemaking. This is the second round and welcome everyone.

I hope everyone got some rest after that exciting game. It took me a lot to wind down after the game, but hopefully everyone had a chance to rest. A few important things. Women's restrooms on that side, men's restroom on that side. Food, cafeteria, back in there. Okay, so get that one out of the way.

And I could see that many of you, as I think most of us, creatures of habit. We noticed we caused quite a stir by changing your seats. But understand, we do that just so that we could get our notes straight of where people are sitting as well as the recorder, so that it makes it a little bit easier on us. If we wait until the last minute when everyone sits down, it just makes it a little bit more complicated.

So no other things going on there. So a few reminders. Table tents, pop them up if you want to speak. State your name for the record before talking, and alternates, if you want to make a comment, just make sure you get up to a mic so that the recorder as well as everyone else can hear you.

MS. BUCK: And when you do put your name tag up, excuse me Javier, make sure that you put it up to the side so that we can see it from the front. Thank you.

MR. RAMIREZ: All right. So is there anyone that's livestreaming today?

(Off mic comments.)

MR. RAMIREZ: Okay, all right. So we have a designated area, so if anyone changes their mind and wants to do that, there's a designated area for that, and we would ask that you also pause it during any breaks so that way any private conversations remain private.

A quick reminder on the consensus piece. We're going to be taking some temperature votes today. At least, that's the way I anticipate it going, and it's your responsibility to make sure you put the thumb down if you are not in agreement, okay, and these are temperature checks. So if your thumb is down, again remember that I'm going to most likely call on one or two of you to clarify why.

Let's understand what the issue is. Maybe I just didn't state the question clearly. You just need a little time to digest it, or there's an issue and you need to explain that as well as possible offer an alternative, okay. So it's not just no, no, no, no. If it's no, is there an alternative that we could review?

The discussion was great last time and I would remind you to remain hard on the issues, not on the people, okay. I think you all did a great job of not mentioning any organization names. We would ask that you continue to do that, and let's really just stay focused on the actual issues.

You all still remain empowered with the

ELMO, Enough Let's Move On, so if we're beating a dead horse and I'm not catching it, anyone could say let's move on. We've heard enough. There was one suggestion last go-around, because we had asked you that look, if somebody makes a point, don't line up at the mic to say the exact same thing.

We would ask that you do that again, because there was a request that we would like to at least let the Department know that we are in agreement with that, so that they could get a feel for how many people may be supporting or against something. So if you wish to just say second that, you know, fine, right. We could -- that doesn't take much time.

But to have to repeat everything that somebody just said just to make sure that it's on the record and you're in agreement with it, that's going to take up a little bit too much time. And to that point, those were suggestions -- that was a suggestion that you all gave us, and we're trying to incorporate the suggestions that make sense.

So if you have any other ideas, let us know and we'll do what we can to try to incorporate them. Another suggestion that was given was the public comment. So if we could give the people in the public an opportunity in the morning as well as in the evening. So we'll go ahead and do that again this go-round.

But let me just do a quick agenda review before I open the floor for public comment, as well as comments from the Committee. So we're going to start off with comments from Committee or alternates, then public comment. A quick review of the protocols, and actually it's just to make sure that everyone's agreement with them, that you saw the final printed version. There was no changes, so that should be pretty quick, as well as the meeting summary, and I have comment on the meeting summary when we get to that point.

An update on data requests, and then we're going to jump into the issues. When we go into the issues, I'm going to ask Greg to review the summary that he put on the top of each one of them, and to also give a rationale for that, for the changes that were made.

We'll go through all of the issues and

then close with member comments as well as public comments, okay? Any questions on the agenda? Okay.

Before I get into member comments, I would ask that if we can, if you could silence your devices, just so that we don't have any disruptions. I'm going to do the same. I made the mistake last time of being called out on that when my phone rang. Okay, all right. So I would open up the floor. Are there any public -- I'm sorry, comments from the members, whether it be alternates or leads? Yeah. Go ahead, Mark.

MR. McKENZIE: Good morning, everyone. I'm just opening. I was on the treadmill this morning getting ready to arrive, and someone informed me that, which I'm not sure why or how, some of the research I've submitted to the Department is mentioned today in the *Wall Street Journal*, and I just want my fellow negotiators to know that research is not intended to endorse one proposal or another or any point.

I always put out any of my research number one to get good policy, number two always to protect students and student borrowers, and maybe most important for this week, to make sure the Department's policies don't lead to any unintended consequences. So I just want you to know that, because I'm not really -- I haven't even seen it yet, but I got a bunch of emails this morning. So thank you.

MR. RAMIREZ: All right, thank you. Any comments from the public before we get started?

(No response.)

MR. RAMIREZ: Okay, and again there will be another opportunity in the evening. So just for the record, let's go around and make sure that we just introduce ourselves, so that we know everyone who's here. This is Javier Ramirez with Federal Mediation.

MS. MILLER: Rozmyn Miller with Federal Mediation.

MR. JONES: Bob Jones, Education Workforce.

MS. SARGE: Sandy Sarge, Sarge Advisors.

MS. FOWLER: Pamela Fowler, University

of Michigan.

MR. ELKINS: Daniel Elkins, Enlisted Association of the National Guard.

MS. ROSS: Good morning. Thelma Ross, Prince George's Community College.

MS. WHITFIELD: Christina Whitfield, SHEEO.

MS. KEITH: Kirsten Keith, Empire Justice Center. I'm the alternate for Johnson Tyler with Brooklyn Legal Services.

MR. MADAIO: Christopher Madaio, Maryland Attorney General's Office.

MS. METUNE: Laura Metune, California Community Colleges.

MR. FINLEY: Steve Finley from the General Counsel's office.

MR. MARTIN: Greg Martin, Office of Postsecondary Education.

MR. MIRANDO: Tony Mirando from NACCAS.

MR. GANNON: Chris Gannon, United States Student Association.

MR. JONES: Todd Jones, Association of

Independent Colleges and Universities of Ohio.

MS. MORRISSEY: Kelly Morrissey, Mount Wachusett Community College.

MR. ARTHUR: Jeff Arthur, ECPI University.

MS. BARRY: Jessica Barry, School of Advertising Art.

MS. BLUM: Jennifer Blum, Laureate Education.

MS. BUCK: Ramona Buck, Federal Mediation and Conciliation Service, and behind me is Crystal Smith, also from FMCS.

MR. RAMIREZ: Yeah. Crystal is the person behind the curtain for us, so she runs the show. I just want to note that the consumer advisory organizations, they're not here right now. We anticipate that they will be here, so when they come we'll have them introduce themselves just for the record.

All right. So the first thing I would ask the group is on the protocols. Did anyone notice anything that needed any corrections on the protocols? I wouldn't anticipate that there is.

There was nothing -- I really just added the names of everyone. All right. Let me see a show of thumbs if we're okay with what was passed out on the protocols.

(Show of thumbs.)

MR. RAMIREZ: Okay. So we have consensus there. And then on the meeting summary, the one thing that I wanted to note on that was the one that was emailed out had the wrong footnote in there. I don't know if anyone caught that or not, but in your -- in the hard copies that are in your packet, the corrected version is there. So any other corrections or comments on the meeting summary?

(No response.)

MR. RAMIREZ: Okay. Let me see a show of thumbs if everyone is okay with the meeting summary.

(Show of thumbs.)

MR. RAMIREZ: Okay, and just for your benefit. That's not the, you know, official record. We have the official record being recorded and typed up right now. So all right. So there was consensus with that.

Data requests. I would ask Greg or somebody that Sarah probably to give an update on the request of data.

MR. MARTIN: Thanks Javier. Yes. I'm going to request Sarah Hay from our office to come up and she'll give you an update on the data requests. Sarah's one of our directors and she's the one who's most involved with preparation of data.

MS. HAY: Good morning, everyone. How are you doing today? Good morning. I'm Sarah Hay. I'm the director of Policy Analysis and Forecasting in the Office of Postsecondary Education. We are working on data requests for you. We're working through very final clearance with upper management, and we hope to have something for you this week. So I'm sorry I don't have anything for you this morning, but we're hoping to get it to you really soon, okay.

MR. RAMIREZ: Any questions of Sarah?

MS. HAY: I know that's sort of non-answer today. I apologize.

MR. RAMIREZ: Sarah, any estimated ballpark?

MS. HAY: So we're hoping for tomorrow. It really is sort of final clearance things that we have to go through at the Department.

MR. RAMIREZ: Okay, great.

MR. MADAIO: I do have one question. If other data requests are made during this session, do you expect that they would be able to be potentially produced by the subsequent next session in March?

MS. HAY: So we absolutely will try and do that. I can't make any promises, but yeah. We are still considering data requests that you are submitting to us.

MR. RAMIREZ: Okay, and that question's from Chris, Chris Madaio. Anything else?

MS. HAY: Okay. Thank you very much, and thank you for your patience with us. I appreciate it.

MR. RAMIREZ: Okay. Whitney, could you introduce yourself for the record real quick?

MS. BARKLEY-DENNEY: Yes, I'm sorry. Traffic delays are bad this morning. I am Whitney Barkley-Denney, and I am a consumer negotiator, and my colleague Jan is also on her way, stuck on the MARC train. So she should be here soon. Okay, great.

MR. RAMIREZ: All right. So let's go to -- now we have all the groups that are represented, which is nice. All right. Then let's go ahead and jump into the issues, and for that I'm going to pass it over to Greg, and ask him that he review the summary as well as give some rationale for those changes.

MR. MARTIN: Okay. Thanks, Javier. We're going to start with the Issue Paper that's technical and conforming changes. So I'll give you a chance to get that out.

(Pause.)

MR. MADAIO: What we've done here is you can see we have a summary, and then we've presented the regulations with the strike through, so you can see the original text or how it's -- and how it's been altered. Hopefully we won't have to spend too much time on this one.

This is technical and conforming changes based on the proposed regulatory language, as well as those disclosure items in 668.41 that are pertinent to borrower defense and financial responsibility for consideration by the Committee.

For the reader's convenience, we have also included pertinent sections of the Department's regulations for which we are not proposing any changes, just to give you context. We were, as I think I pointed out in the previous session, we were tasked with dealing with disclosure items not only for our topic, but also those pertinent to financial responsibility.

So we're not going to spend too much time on that, but you will see in here how, you know, that language will be in here. It's a little confusing and I do apologize for that, but we'll take a look at it and entertain any questions.

Oh, I should point out that we will -- we'll have more on the disclosure later on this afternoon as Scott informs me, so can we just look through these conforming changes here?

I don't want to spend a lot of time with this, but what we've done is put these in here to conform those sections of the regulation that needed to be changed to accommodate the changes we've made with respect to gainful employment.

You can walk through this with me. You can see, for instance, under educational programs, we've struck references to gainful employment. This accommodates the change to the regulation where we will be calculating the rates not only for gainful employment programs but for all educational programs. So you can see those conforming changes there.

I'm trying to think if there's anything else we should talk about. Oh, we did make -- we did make a change in 668.10. You'll see down there under C, romanette 3, for an undergraduate program that has at least 300 clock hours, for less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree, that's obtaining the Secretary's approval.

That regulation is simply one that we

inadvertently removed earlier in the previous set of regulations and we're just putting back. Make our way through, I'm trying to think. The main one, let's go over to 668.41, reporting and disclosure of information. There you'll see under (h) that we've struck all the language for loan repayment for a proprietary institution for calculation of loan repayment rate.

So that strikes the disclosure for loan repayment rate, as we've removed that. We've removed the loan repayment rate from the regulations. I think you'll see that. I'm trying to think if there's anything else here that we need to look at, because again these are just technical and conforming changes.

That's all I wanted to say on that particular paper, unless we have comments, questions. But we will be dealing with the actual changes as we go through the Issue Papers themselves.

MR. RAMIREZ: So let me make a suggestion on that then. We could come back and take a temperature check on this one, right. Let's go through the actual issues, because I think that once we dig into that a little bit more, then that will probably give a little bit more context for this paper here. Does that make sense to everyone? Okay.

MR. MARTIN: Yeah, I think that will work, because we actually go through the papers, the issue papers and we can go back and focus on those technical and conforming changes.

MR. RAMIREZ: Okay, sounds great. Okay. So at this point then, any questions for Greg on this? And we'll revisit it, but for now?

MR. MARTIN: All right. We'll move on to Issue Paper 1. This is Scope and Purpose, and in here you'll see an overview of what we propose to do writ large with these regulations. We propose to change the focus of the regulations from programs that prepare students for gainful employment and a recognized occupation to all programs. So you'll see those changes made throughout the regulations. I should say all educational programs.

Significantly, we propose to remove the

provision of 668.401 that provides that Subpart Q establishes procedures under the -- under which the Secretary determines whether a program is eligible for Title IV program funds. We discussed this substantive change, changes to definitions and the issue papers corresponding to the topic of the defined item.

So we'll work our way through here. You can see starting in Subpart Q, changes from gainful employment or GE programs to simply "educational programs, disclosures and certifications." Working our way down, 403, again gainful employment struck and simply it becomes a debt to earnings framework.

You'll see -- and again, we're going to go through a lot of this in all the individual papers, so some of this I don't want maybe would be discussion. A detailed discussion should be reserved for those issue papers. But just as an overview here, you can see in 406 we've struck the DE rates alternate earnings appeal. As proposed, the regulations would have no appeal, would contain no appeal language and we've reserved that section.

Moving on to the next page, you'll note under 411 that we have struck the reporting requirements for GE programs. That section of the regulations is now reserved. Under these proposed rules, there would be no reporting requirements necessary for institutions. We'll discuss that as we get to that particular paper.

Disclosure requirements for GE programs simply becomes disclosure requirements. Disclosure requirements would pertain to all educational programs. 413, calculating, issuing, challenging completion rates, withdrawal rates, repayment rates, loan debt and program cohort default rate has been struck. That section is now reserved.

You'll see in 414 again, GE programs becomes educational programs. Subpart Q is changed from gainful employment to educational programs, disclosures and certifications. Moving down to Scope and Purpose, see again the reference to gainful employment has been removed, and we just refer now to programs offered by an eligible institution.

And procedures by which the Secretary calculates. We've removed -- as you'll note there, it previously read that the program is eligible for Title IV HEA program funds. There's no more determination of program eligibility under these proposed regs. So it's the program's debt to earning rates. We have also removed institutional reporting about the program to the Secretary, since as I mentioned earlier, no more reporting is required from institutions. No additional reporting other than what you do under -- currently under NSLDS reporting.

We have program level disclosure and certification requirements there. I'm trying to think of anything else. Going through 402 under definitions, again you'll see consistently GE program removed and replaced with educational program. The next major change that we talk about here, and again these will be discussed in more detail as we move on throughout the week, is our cohort period.

So you'll note that we have removed the four year cohort period. We are now using only or propose to use only a two year cohort period, and we note that the -- that the cohort period covers consecutive award years, the third and fourth award years prior to the award year for which DE rates are calculated under 668.404, and we give an example there.

If DE rates are calculated for the award year 2016-2017, the two year cohort period would be 2012-2013. 2013-2014 award, and then we talk about the fact that for medical and dental internship or residencies, it's the sixth and seventh year prior to the award year for which rates are calculated. We give an example for that also, which I won't go into there.

I'm trying to find anything else that we should -- if you go down to the bottom where we talk about the discretionary income rates, we've removed GE program. It's now the percentage of an educational program's annual loan repayment compared to the discretionary income of students who completed the program.

Again, this is calculated under 404. You'll see the removal of the four year cohort period. Let's move on. Let's see here. If you go to, let's see, we don't have these pages numbered, so second to the last little page on the flip side, where we talk about Metropolitan Statistical Area, we made some changes there.

The Metropolitan Statistical Area, which is published by the U.S. Office of Management and Budget, we made some additions there for an educational program offered by a foreign medical school.

The applicable MSAs are the MSAs of the program's clinical sites. For an educational program offered by any other type of foreign school, the MSA is Washington, D.C. So that just makes it easier for the schools to, when they did their disclosures, to report that. I'm trying to think of anything else.

Again, you see we've removed references to GE and just simply replaced that with educational program. Okay, and that's about it for the Scope and Purpose. So entertain any discussion.

MR. RAMIREZ: Whitney.

MS. BARKLEY-DENNEY: Yeah. I have

some questions about sort of the Department's thinking on this, you know. When we were here in December and we went around the table to get a temperature check on whether this should become a disclosure-only program, my recollection is that the majority of negotiators here felt that some sanctions were indeed appropriate, and that the discussion should really around what those metrics look like.

And so I have to admit that I was pretty shocked to get what seems to be a conversation-ender, which is a disclosure-only structure. So I was just hoping to get an idea of what the Department was thinking and kind of where we even go from here, given that the temperature check in this room was not favorable to or at least the majority was not favorable to a disclosure-only structure in these rules.

MR. MARTIN: Yeah. The decision to adopt a protocol here where we no longer have -- we no longer have program sanctions is of course I think the major change that is proposed. This does reflect the thinking of the Department that, in a couple of areas here, that we feel that the rates that we've had previously has had a profound effect on students and on programs.

A lot of schools have revisited the types of programs that they offer. We have also considered that the use of one, basically one metric to determine whether or not an institution's program will retain eligibility and have -- are convinced that that's not -- that applying that one metric to determine whether a school's program is eligible is not appropriate.

The other thing here is that we are expanding the rates calculation to all educational programs. So there -- and then we felt strongly about doing that, so that students and the community at large can compare -- can compare the rates across programs, that these rates shouldn't apply only to one specific part of the community. It should be that all programs should be subject to this, so people can compare it back and forth, especially students.

So the sanctions, the sanction part of this was limited only to gainful employment programs. So we feel that in this way there will be -- the information will be calculated for all programs. It will be disseminated. There will be language related to the -- or putting the DE rate into context.

We also feel that we still have the certification requirements as a check, and this represents basically the philosophy of the Department, currently where we want to go with this.

MR. RAMIREZ: Todd.

MR. JONES: I'm going to disagree with the description of the change of the rule here, and I know I'm probably going to get disagreement around the table, that I actually don't think the major issue is dropping of sanctions. I wouldn't go on as to why from a philosophical perspective and actually applicability of state laws and other reasons.

I think it's actually the Department's futile attempt to apply this to all programs under the federal aid program. It has diluted the idea of regulatory application so much that it will be almost impossible for the Department to, in any useful way, categorize what goes on.

I say that because there are very different reasons that we have higher education degrees. I know that seems obvious to anyone who gives it more than about three seconds' thought, but there is a fundamental difference between teaching somebody a certificate -- well, an associate's degree focus skill for a particular career, which is not intended to have a larger educational purpose for their life, and a doctoral degree or a law degree, which also has a great deal of specificity but also involves a much more comprehensive program of study.

I point to those examples because those in some ways, you could say there's a connection between what the educational program is and what people ultimately do. And then the big middle, which is the idea that baccalaureate programs somehow fit under a disclosure metric as being described here. The reality is that the purpose of a larger baccalaureate program, which is the majority of students who are going to be covered by -- or well not a majority.

A very large percentage of students covered by this, the connection between course of study and a particular job as projected forward is remote in many cases, but then it's not intended to be. So in fact the idea that one-third of students who enter teaching when they leave a baccalaureate program end up not being teachers three years later, which is a fact that has existed for a number of years, is not an indication that the degree has somehow failed them.

In fact, it's an indication that the degree was put to its intended use, that the student was educated in such a way that they are not required for their own self support to continue in the profession of teaching, which they have decided they no longer want to participate in.

The idea that someone receiving a History degree could go work for Google or could go work for the U.S. Department of Education, or could seek to spread the word of God in a remote part of the United States or Brazil and earn practically nothing, is an indication that there isn't an effective measure you can put to what earnings are intended to be from the degree program in most cases when you're dealing with that big middle of baccalaureate degree programs.

I could step back for a second and say, you know, and look at this from the 60,000 foot level. Is the real purpose of this proposal to not achieve consensus and then allow the Department to write whatever it actually wants for its own rules when those are released? That's what the Obama administration did. Maybe that's what the Trump administration wants to do.

That's fine. I mean that's a perfectly legitimate position for an administration to take about a negotiated rulemaking. But from that sense, this is not a serious proposal because it makes the suggestion that we can somehow apply these metrics to programs that they don't apply. It's as if you're asking a group of people, a large number of whom are missing their hands, to express what gloves are your preference.

That's not -- that's simply not something that functions within the physical limitations of the people you're talking about.

To attempt to apply these metrics to people who are -- to programs that are not intended to have a specific work outcome is simply not tenable either.

MR. RAMIREZ: All right. I have Kirsten, Whitney, Jeff, Sandy and Jennifer. So Kirsten.

MS. KEEFE: Here we go. So I agree. My point was back more towards the sanctions and just wondering are there under what was drafted with the removal of sanctions, and I appreciate that from a legal services standpoint? I probably understand the intricacies of the metrics the least at the table.

But are there any schools that wouldn't qualify now for higher ed dollars? You know, I think back to when I first started out in Legal Services, I had a client who, you know, his wages were getting garnished at the time for a correspondent truck driving school that you didn't need a license to attain, you know, like sort of the really bad trade schools of old.

And I appreciate that I'm in New York

and we have good certification requirements in New York state, so that might not be able to happen in New York state because of state level protections. But on the federal level, would somebody like that now be, you know, if there's a program like that be eligible for higher ed dollars?

MR. MARTIN: I'll respond to that. First of all, I certainly welcome all of the opinions around the table and I'm not -- I don't -- that's not my place to sit here and refute everyone as everybody comes up with that. I will give the Department's position. Regarding those safeguards that are in place, I do want to point out that the potential loss of program eligibility under gainful employment is not and never was the only tool the Department has at its disposal to remove non-performing programs from or non-performing institutions, I should say.

We never -- we can look at individual programs and we have said certain programs are ineligible. We have a lot of tools at our disposal to remove institutions from the program that are

-- that are problematic and not administering the programs in accordance with statute and regulations.

So I don't think that regardless of where anybody stands on the use of program sanctions for gainful employment, that that is the only mechanism that we have to look at the viability of programs.

So when talk about the truck driving programs that -- the abuses that occurred with -- the famous one was the person missing a leg or whatever that was in a truck driving program. Yes. Certainly, I think the Department, while we're not perfect, has made a lot of strides in removing those institutions from the programs that caused a great deal of problems.

So I don't -- I don't think we should look at this in the context of -- with a lot -- if we don't have the program sanctions for gainful employment, that somehow the entire system of regulating institutions that are holding them accountable falls apart.

I would point out we still have -- for

instance, we have limitations and termination, suspension, termination provisions. We routinely conduct program reviews. We've put, we've limited schools' ability to -- schools' abilities to expand. We use the program participation agreement. We still are going to have certification requirements. I should point that out as well.

MR. RAMIREZ: Whitney.

MS. BARKLEY-DENNEY: Yeah. I'm really interested in wondering if the Department can share the documentation they have that shows that the disclosures-only regime is effective for borrowers? That seems to go against a lot of social science and a lot of the research that we heard around this table.

So I'm wondering if that's something that we can see, the number of programs that altered the way they were operating due to a disclosures-only regime and even decided not to offer that program anymore, and not just the first release of gainful employment numbers, which we know actually did affect folks because of potential loss of eligibility but actually the ones that changed only because of a disclosure regime.

MR. MARTIN: Well, yes. I mean if you're asking me is there some way to sort out which -- those programs which were dropped or altered, I guess your point that you're making, your point is that they did that mostly because of the threat of loss of program eligibility. So to what extent loss of program eligibility or what extent was just simply having the rates for those programs disclosed?

I don't know that I'm willing to be able to produce data which will show which it was. I don't think I can do that.

MR. RAMIREZ: Jeff.

MR. ARTHUR: Yeah. I agree. There certainly may be programs where sanctions are not appropriate or perhaps the debt to earnings measurement is not as strong a consideration for those entering the program. But we really can't entertain sanctions until we have the data across all of higher ed, and while the current rule does exempt the vast majority of programs that are designed to lead a particular career, that's clearly true.

We have to start with the data. I mean that's a commonsense approach. But there's a real misunderstanding I believe about the number of students that are currently attending for-profit institutions. I think it's been -- some data has been presented that isn't anywhere near accurate currently.

If you look at the fall of 2016 and IPEDS enrollment data, which the most recent data on enrollments, I mean for-profit colleges only represent six percent of the 20 million students enrolled in higher ed. When you -- and that's after you take out schools that have closed, and I believe when you look at the fall 2017, it's going to be down to five percent.

So if we truly want to inform and provide students a framework to make -- for better decision-making, I mean it is appropriate to do this across higher ed. And again as I stated, how can you have a sanction until you understand the data for all programs that are similar related?

MR. RAMIREZ: Sandy, then Jennifer.

MS. SARGE: I think one of the things that has been -- what I appreciate about the Department going towards this way is that -- is it seems to have moved itself back into its position in the triad, where they are the lender of record and being a lender of record is not necessarily the area where -- where you would also then want to step into quality and purpose and intent.

I'll give you an example. If you're buying a home, for the most part lenders are going to assume you're going to live in it, or someone's going to live in it. It doesn't go down and look whether you're going to also have a massage studio in it or a yoga studio. It's not going to go in and look at it at the point of the lending, whether or not you're going to open a crack house in it.

It's not going to go down into that level as the lender. It's going to -- the lenders are going to depend on the states and the laws of the area in which that house is built, to determine whether or not the activities within that house are appropriate.

So for me, from a finance perspective, I look at the fact that you're stepping back into or moving into a role that is, in my opinion, more suited to the lender of record. I think this was a good move.

So Todd, to your point about intent, that's not the lender's role necessarily. That's the accreditors and the state authorizers, of looking at whether or not there are programs not intended to have a work outcome.

The question to a lender would be whether or not you should be lending for that purpose then, and that's between the lender. It's why 80 percent of the banks got out of lending to students, because it was an unsecured loan where they had very little recourse. The Department is pulling back and wanting to see data, so I'm going to -- I'm in favor of what I've seen. Thank you.

MR. RAMIREZ: All right. Let me get Jennifer, the two Chrises, first Gannon, and then Madaio, and then Todd and Kirsten.

MS. BLUM: Thanks. This is Jennifer Blum. So first with regard to Todd's reference to diluting regulatory application, I would say that, you know, I'm sure we'll probably have another conversation about this later. But the Department does have broad statutory authority over disclosure.

In fact, you know, I would say that this is -- this approach is actually less diluted than the twisting of gainful into pretzels over how to apply gainful in a way that makes sense from a metrics standpoint. So you know, I do think that there's -- you know, it seems pretty clear and of course the Department has done other disclosures, some of which we don't love either like the Scorecard.

But, you know, it seems pretty clear that they have the opportunity to do this and to apply it to anybody and so for that, you know, in terms of the applicability to everyone, I think that makes sense from a consumer standpoint, a consumer understanding standpoint.

Having said that, I will agree with Todd on another point, which is -- and I'm sure we'll get into the weeds of the metric and different issue papers. But the Department did go backwards as it relates to the metric a little bit and made it very, very one-size-fits-all.

So I hope that there is an opportunity, unlike you know, I don't want to approach this as the Department did this in order not to reach consensus. I do think regardless of consensus, there are areas where we can work together to get to a point where it makes some sense. In that regard, I do agree with Todd. Having the same metric for a vocational program as you do a doctoral program makes zero sense.

I also do think that as it relates to the rationale for having a disclosure, even if just a disclosure having a metric around debt to earnings when you have a degree like a doctoral degree requires some additional conversation. So I do agree with Todd that a one-size-fits-all disclosure without any regard to the type of program makes -- does not have a rationale behind it.

So I do look forward to that conversation, and I do agree with Todd that understanding the bachelor's piece in particular is, you know, I think the hardest actually. So you know, and the rationale behind that and earnings. So I do agree with that.

And then finally, I just wanted to address Whitney's question about data. I can speak from experience. I know it's pretty public, so I don't have any -- I'm not unabashed about it, and I think I brought it up at the last rulemaking. A good example for us at Walden of a program that we decided to teach out because of the metric, not because we didn't think it was a terrific program actually is the RBSCD, our bachelor in Early Childhood Development.

I think I mentioned this in the last go-around, that every single program was I think -- there may have been one in the nation that passed, but every other one was zone or fail. I think if this goes go to disclosure, bachelor of Early Childhood Development will be a perfect example to see at the bachelor level to Todd's point actually, what we're measuring here.

Early childhood teachers sadly don't make what they should and protecting all of our children and educating our children at an early age, and yet the states and accreditors require bachelor's degrees most of the time. So that's a very good example of a very specific bachelor's in Education where I suspect the Department will find nationally that there will be a lot of very good programs and low-performing.

And so that does require, like I said, a lot of attention in the metric. I'm not questioning actually whether or not there should be a disclosure around that program, but I'm just saying we better get it right.

MR. RAMIREZ: Gannon.

MR. GANNON: I believe that we left negotiations last time with the consensus that we need sanctions as part of this rule. I just find it very hard to believe that this Committee is here to do anything, that these negotiations are leading to anything if the Department's just going to go ahead and write their own rule and not take any of the recommendations, especially something we had total consensus on that the Committee has put forth.

MR. RAMIREZ: Greg, did you want to respond to that?

MR. MARTIN: Yes. First of all, I want to state unequivocally that it's not our intention to propose regulations to bait non-consensus. That is not our intention at all. Obviously, as with any administration, the issue papers, the proposed rules do reflect the feelings of the administration. That's perfectly understandable, and they are considered ones.

We are not in any way trying to seek, to put something out there which will ensure that there's no consensus, to allow us to write whatever we want to do. That's not what we have in mind at all, and we are here to entertain-- these represent proposed rules.

So we are here to hear your responses and your thoughts on whether or not you agree with these, and in what ways you do or don't agree with them. So that's why we're having this session.

If it were our intent just to write the rules, you know, I wouldn't entertain any of it or walk away, and we're not doing that. So you have the opportunity here to express your opinions on them and why you feel they're good or bad or what changes should be made, and we're here to listen to that.

MR. RAMIREZ: And similar to the first paper that we reviewed, I think that this is one that we would have to set aside and start getting into the components of each of them before try to take a temperature vote on the scope piece, right, because let's see how some of those discussions go. But Chris Madaio.

MR. MADAIO: Thank you. Christopher Madaio. All right, here we go. I have three points. I think first, obviously I want to go back to the Higher Education Act. That to me is the statute that triggers the need for all of these rules. It's the statutory cites that we've been looking at in this session and the last session, and the Higher Education Act contemplates that GE programs are different than non-GE programs.

I mean that's what the statute says. If, you know, we feel at this table that that's not accurate, then that should be changed statutorily and obviously there's discussions on the Hill that that's going to happen. But right now, the Higher Education Act is the law.

So to me, it is shocking and I disagree strongly that all programs should be treated similarly in this rule, because to me this rule is supposed to arise out of the Higher Education Act's gainful employment statutory language.

So the fact that that language itself contemplates that programs, as defined under the term gainful employment programs, right, they're for-profits and your non-degree programs at other institutions, have to lead to gainful employment. So what Todd was talking about, I think that's an important point, is that those are programs that should lead to a job, a job in that field.

And this rule doesn't accomplish that, and it doesn't support that law when there's no way of if a program does not accomplish that, then what? I mean we just expect that students should be able to look at the disclosure and choose not to go there and the program just dies on its own? I think we know that that's really not the case.

What the case would be is that program will continue obtaining taxpayer dollars and putting students through a program that just doesn't comply with the Higher Education Act. So to me, if this rule doesn't accomplish that, I don't see why again we have a rule that doesn't do that.

And you know, I was thinking about it too. You look at even commercials or advertising that maybe a public institution does when it talks about its programs and you know, usually those are commercials that talk about the learning that a student does. And then you look at commercials done by some of the for-profit institutions, when they're obviously very specifically targeted at the career that that student is going to get from that institution.

So I think, I mean it's well known that for-profits, even ones that have bachelor's and master's and, you know, degrees that are not very hyper-vocational, right, your criminal justice or things like that, those are and there's a reason that the Higher Education Act requires even those programs, your bachelor programs at a for-profit institution from --

The Higher Education Act would require that those programs lead to gainful employment, compared to those same programs perhaps at a non-GE program. So I think that's a really important distinction that this proposed rule totally misses.

So my second point, it goes to whether the Department is the lender of record and therefore should completely wash its hands of any regulatory guidance and oversight whatsoever. So first of all, I disagree with that wholly. I mean that wouldn't accomplish a triad, if one part of the triad is completely separate from the other two parts.

They're an equal triad. The Department certainly has a regulatory role. I mean there's many regulations and rules and laws like the Higher Education Act that stand for that proposition. The Department has a responsibility to protect students. The Department has a responsibility to protect taxpayer money. The Department has a responsibility to ensure fairness and protect good institutions, and I don't think this rule accomplishes any of that.

I think many of the good institutions helmed by folks here at this table I think should be concerned at this rule, which will let bad actors in the field continue to propagate, continue to obtain Title IV money and put students through poor education that does not lead to gainful employment.

And lastly, you know obviously borrower defense is another rule that's being negotiated, and there was some publications about students who are successful in borrower defense claims not obtaining full forgiveness, but obtaining limited forgiveness based upon gainful employment data.

So I guess, you know, although I disagree with that concept, actually that's not why we're here, my question I guess for the Department would be is if they think that gainful employment data is appropriate to limit students' recovery from schools that are found to have committed misrepresentations and other forms of bad conduct, if that is sufficient for that why it is would be insufficient or inappropriate then to use that data to limit schools' access to Title IV aid.

MR. RAMIREZ: Okay. We have about six people in the queue. Todd is next, then Whitney.

MR. JONES: I like not having to intervene back in the conversation where I think I've said what I want to say, but I really need to respond to comments made about what I presented. The reality is that this data has no value for baccalaureate degree programs as I've said, and I'm sorry I have to state direct opposition to the idea that there is any serious value even for CFOs, even for lenders.

The U.S. made a decision -- the Congress and the President made a decision to nationalize this sector of banking a few years ago. That's a policy decision. It's been made. But the suggestion that there's value in this data for the federal government as lender is I think reasonably bogus, given the long-term period that we had a variety of other forms of lenders making loans, both private and guaranteed, from -- to students under these programs.

This was not the kind of data that anyone collected at that time, and lenders were fully -- had the full ability to ask for this kind of data. They made it on an institutional basis and they did it in broad categories. It was not done institution by institution. There was no need to drag this data out.

And to the extent it sounds like, and we also have the comment that of course because we can collect this data, it might have some value. I'm sorry. I just am not willing to ascribe to that any more than I am the idea that, you know, we can collect various forms of other data and distribute them widely and think it's going to have some sort of value about students' judgment for programs.

The reality is that there's recent poll data, I couldn't find it on my app, that there's a division among people who -- the public. What is the purpose of higher education, of a degree program? Is it to lead to a specific kind of employment, or is to lead to providing you with the thinking and educational tools you need to do better at life generally, including employment?

And if you have that kind of division, that means there are some people that believe that and some people that don't. But if you have data that doesn't have any relationship in a serious way to that kind of decision-making process, and I would argue applicability of this to baccalaureate programs does, lacks that, then you're not collecting data that has any use or value, and it creates a burden.

I mean any time you have a federal government imposition of data collection or regulatory authority, it creates a burden on the operation of the enterprise. It's something that Congress absolutely agrees with until the next time it wants to add just another reporting requirement because it's necessary.

Well that's true, but you have to understand that you shouldn't -- just because you can seek additional data because it's not, in this case it's not proving valuable and I'm waiting.

I'm waiting to find where exactly this data has been collected in a useful way about baccalaureate programs and distributed, and it has proved any value whatsoever for the enterprise we're talking about, which is the decision whether to attend or not attend.

I have -- I'm sorry. I had to say my piece, because those comments were directly addressed.

MR. RAMIREZ: Okay. Let me get Whitney, then Bob.

MS. BARKLEY-DENNEY: Yeah. So as Center for Responsible Lending's parent company is Self Help Credit Union, which is one of the fastest-growing CDFIs or community development financial institutions in the country. So I just felt like I needed to say something on behalf of our parent company, which is that as a lender, just as the Department of Education is a lender, we absolutely look at the debt to income ratio of a borrower before they borrow the house.

In fact, would posit that much of the mortgage crisis of 2008 was caused by lax lenders who didn't adequately evaluate whether a borrower could afford their loan. So as to the applicability of bachelor's degree programs or other things, we can disagree. But as a lender and just speaking up for an institution that is a lender, we absolutely do evaluate whether somebody can afford to pay off the debt that they have taken out.

MR. RAMIREZ: Bob.

MR. JONES: I just think as we go through the rest of these papers, it's going to be increasingly important to recognize that this is not about a judgment; it's about disclosure, and disclosure in fact is going to happen either through this process, the accreditation process, the changes in the Congress, whatever.

Secondly, the issue of disclosure for all programs is valid. The purpose and the quality of the program is a separate point that will be dealt with in the accreditation process. But the point of the not public knowing any program for any purpose, how long or how valid it is to repay is essential information.

MR. RAMIREZ: Okay. Let me get Mark and then Jordan.

MR. McKENZIE: All right, just a couple of comments. First, I guess to Chris. I appreciate your comments about the statutory origin. I guess what I'd ask you to and our members to think about is that the statute had not been defined for about 50 years, and as a result, these identical degree programs, particularly bachelor and above, emerged in the proprietary sector that were not vocational in nature.

To suddenly turn that rule on was a very typical thing for those of us who offer degree, bachelor and master's degrees to address. I guess the second issue is just the overall higher ed policy, which I think is very important to my colleagues at the table who actually work at other institutions.

The GE rule by defining a program with a debt to earnings at eight percent, as Todd has said, has either low performing and so poor that it's worthy of closure, has an impact on the rest of higher ed, and I think it's only coming clear now how big an impact.

I'm not going to get into the debate about whether it should have applied to litigation with borrower defense, but overall I think it's a fairly untenable policy to label a degree program in one sector low-performing and deserving of closure, and having the exact same degree program in another sector with worse outcomes untouched and still receiving the fountain of federal financial aid.

And so for a student, the data's the data, and I think that's something this group should reflect on. Two other things. I'm generally open to sanctions if in fact we were able to correctly identify high performing and low performing programs, and I'm not sure -- I think that's a very difficult task.

And then the third thing, the last thing for the group to consider is should the rule really focus on borrowers rather than programs? Because in my mind the rule is a little too lax right now, and I'm one of the few people who argues that.

MR. RAMIREZ: I'm going to get Jordan,

then Jennifer.

MR. MATSUDAIRA: Thank you, good morning. I guess I wanted to just follow up on something that Greg had said in describing why the Department had decided to kind of propose an all disclosure no sanctions sort of rule, and that was the notion that the use of one metric for establishing eligibility is not appropriate.

And just building off of something that Mark was alluding to, you know, what the proposal really is here is not just that one metric's not appropriate, but that no metric is appropriate, that essentially it's not possible. There could be alternative universes where we had a couple of existing metrics that establish eligibility.

So I'd ask you both to comment on that, and then also recognizing that we're not, as Mark was saying, trying to decide kind of high programming versus low -- high performing versus low performing institutions. We're really trying to establish some sort of lower, kind of lower bound to, you know, whatever space that we're talking about for consumer protection purposes, and saying that in a particular --

There's some category of programs that can be identified by some existing metrics that, you know, are sufficiently low quality that we don't want to allow students to borrow from the government or receive Pell grants to attend. So I guess what I'd ask is a combination of -- is it the Department's position that there's no data that are appropriate for making that decision, and that's true, you know, in the extreme.

There's no level of debt to earnings that the Department would find unacceptable for students to take on and attend a program.

MR. RAMIREZ: Okay, thank you. Jennifer, and Kirsten.

MS. BLUM: So Mark made the statutory point in response to Chris, but I do want to go a bit deeper on that just to be clear about the statutory provisions on gainful employment. So 50 years was the first time it was referenced. It was then added again the term in '92 in Section 481.

To be honest with you, the Department

in the last administration struggled, admittedly I think, with the applicability. 481 says nothing about tax status, and yet it mentions it in a couple of different places, and with no reference to for-profit or non-profit. The only place that that's done is in Section 101 and 102.

So the two have to correlate, and it's almost impossible to make them correlate, in part for the reasons that Mark said, that the -- that actually the for-profit sector grew up and started offering, which they were allowed to do, and started offering different types of programs at different degree levels.

So the provision no longer actually -- they don't correlate anymore, and in fact that's demonstrated in just on my finer point on graduate programs. In 1992 at the same time that they added gainful employment in Section 481, they actually created a different provision for graduate programs and did not mention the words "gainful employment."

So which is why I've constantly said that the graduate programs should not be part of the mix, because they weren't ever in the mix since

1992. So I just want to put a finer point on the statutory pieces of gainful. It's incredibly complex for the Department to be able to maneuver in a way that makes, to Mark's point, good policy sense, which is to have consumers, and this is going to be my next point, to have the consumers have an understanding across higher education of what a data point is.

And whether it's a good point or not, we'll have that conversation later. But any data point for a consumer to truly understand how it compares, it has to compare at this point across. Chris, you brought up advertising, and I just -- with all due respect to "for-profit advertising," I would say that there are institutions in your own state and not to mention also New Hampshire and some western institutions, that do a fair bit of advertising that looks actually quite a bit like the advertising that any institution.

So I don't want to put even a tax label on it. But institutions advertise. They do, and getting that right and on the misrep piece completely agree. Getting misrep right makes a ton of sense in that proceeding.

But to talk about, you know, one group of institutions as if they advertise in manners at other institutions don't advertise makes no sense. That goes to my point about for the consumer protection purposes, we've got to figure out a way to have accountability across the board.

MR. RAMIREZ: Kirsten.

MS. KEEFE: Well my first comment is really a hear hear to what Whitney said about disclosure only, and harkening back to the subprime mortgage lending crisis. At that point in time, there were no mortgage practices that were prohibited.

Now there are. You have to make loans with an ability to repay and some other acts are prohibited. But that was the disclosure-only era, and that's where it got us.

The other thing that I would say is disclosures might work for a majority of the people, for a lot of people, a majority, whatever. But for a significant minority, disclosures will not work, and they will certainly not work for people who are also being targeted by the worst of the bad actors.

No one's ever going to be able to be or a lot of people are not going to be able to be self-informed or just understand the disclosures, and so I think we need also real protections to make sure that those folks, you know, aren't scammed and just, you know, given choice by disclosures but really don't understand it, or being targeted by the worst actors.

MR. RAMIREZ: Thank you. Mark.

MR. JEROME: Just a quick, I guess I'm going to float a proposal, and it really goes to Jordan and a little bit to the consumer groups. How about the Department, that the members consider limiting the disclosure to the degree programs that there's overlap between the sectors and that are generally considered career-related? And that would address some of Todd's concern. Not all of it; I understand that.

But the reason why it's important is because I think the data's clear that there just are certain majors where no institution would pass this metric, and you know, whether it's in for-profit, not for profit or even public, and I'm thinking of the Fine Arts.

So I'm floating the idea, especially to make sure consumers are not misled, that the disclosure goes to -- and we'll deal with sanctions later, the programs where there is the most overlap between the sectors, you know, bachelor of business, accounting.

That would deal with -- that would address the consumer issue. That may limit the concerns about the very liberal arts programs that people tend not to go into for salaries.

MR. RAMIREZ: All right. Let me -- just for the record, that was Marc Jacobs. We have two -- Marc Jerome, sorry. We have two Marks here, so that's Marc with a C I guess. And then let me throw out a suggestion here, because I guess the way that I'm looking at it is that the Scope and Purpose is somewhat setting the table, and the specific proposal that Marc or idea that Marc had thrown out there would be covered in one of the later papers, right?

So could I ask that we hold off on that one. Let's bring it back during that. Let's finish out these comments here. We'll take a break, and then we'll come back and start getting into the details of each of the papers, and then somewhat like we did with the first paper, come back to the scope and purpose.

I think that if we could nail down some of the -- at least get an idea of where there might be areas of agreement in the other -- in each of the papers, that might help us lock down the Scope and Purpose issue paper. Does that make sense?

MR. MARTIN: Yeah, I've written that down. We can certainly revisit that, and I think even maybe the issue paper, too. We can discuss that.

MR. RAMIREZ: Okay, all right. So let's -- let me get Mark McKenzie, and then we will -- then we'll take a little break and then come back and hit the first one, I'm sorry the second issue paper.

MR. McKENZIE: Thank you. Actually, I'm just going to -- this is a fairly in the weeds issue, but under 668.402 definitions, under the cohort period there was new language about -- under subparagraph two. "For an educational program, students can" --

MR. RAMIREZ: Mark, I'm sorry. Where are you at?

MR. McKENZIE: I'm sorry in the definitions section, 668.402, Issue Paper 1.

MR. RAMIREZ: Okay.

(Off mic comments.)

MR. McKENZIE: So in the definition under Cohort Period.

MR. RAMIREZ: Okay.

MR. McKENZIE: Okay. Just under the subparagraph two there, that it's limited to medical or dental. There may be medical, dental or other graduate health care issues that have residency.

We just want to pull that out as a potential, and then under the supervised training program, just a little lower, that the student required to hold a degree a doctor of medicine, osteopathy or as a doctor or dental science.

There also may be other doctoral degrees in other health care fields. So I just want to bring that to your attention.

PARTICIPANT: I'm sorry, can you repeat that question/comment?

MS. MILLER: I'm sorry. Mark, before you -- Mark. I'm sorry. Before you said, would you clarify what you were bringing to our attention about the medical or dental or residency?

MR. McKENZIE: Yeah. The new language is limited to just medicine, medicine, osteopathy or a doctor of dental science. There may be other graduate health care professions, director of chiropractic. We're looking at things in acupuncture where there may be doctoral degrees that also have residencies.

So if we're going to have that kind of a definition, I think it should be expanded to include the other graduate health care professions or doctoral degrees in health care that allow -- that have that same requirement.

MS. MILLER: Thank you.

MR. RAMIREZ: Jennifer.

MS. BLUM: So on this point, I'm sorry. I for some reason didn't know that we were going into the definitions section. So if we are, I just would second Mark actually on this point. I was planning on raising this as well, and again this again goes to the graduate issue. There are actually even masters that require residencies and internships as well.

Doctoral, certainly residencies or something like that, that do impact length of time. So I was, you know, obviously my, as everybody sort of already knows, you know, the applicability of any of this to doctoral I think is questionable. But if we're going to include doctoral and first professional degrees like medical, then they ought to be treated similarly because they actually have similar sort of roads to hoe as students, if you will.

So I would second Mark. I think we have to have a conversation about what we mean by -- I don't want to have this conversation necessarily, but residencies and internships. Those are pretty broad terms, and they exist across higher ed, at especially the graduate, well in particular at the graduate level.

MR. RAMIREZ: Okay. Anything else generally on Issue 1 before we take a break? Yeah, Craig.

PARTICIPANT: You know, I just thought this is going to be a little bit maybe tedious to do, but since we're referencing these papers, just we don't have page numbers on these papers. So what I'd ask everybody to do is in your spare time whatever, number them, one-two-three-four-five-six because it will be a lot easier when people are referencing things. They can say it's on page five and we can all turn there.

So if you wouldn't mind doing that at the break, or just going through your papers and putting some numbers on them that would be great.

MR. RAMIREZ: Well let's -- I'll get Chris in just a second. But when we break, let's take a 20 minute break to allow people to take a break and then also to number their pages. But Chris.

PARTICIPANT: Well, I just had a point. I mean Jordan I think had a few questions that seemed directed to the Department, that I don't know whether they had an opportunity to answer. So I was hoping maybe they could respond to those points.

MR. MARTIN: I will respond after the break.

PARTICIPANT: All right, thank you.

MR. RAMIREZ: All right. So let's go ahead and take a 20 minute break, and then we will --

PARTICIPANT: Jennifer has a question.

MS. BLUM: So I just want to like ask a procedural question. Are we proposing that we leave Issue 1 after the break, because there are -- I mean the definitions. I don't know about others, but I do have -- I mean I think I have a couple of other --

MR. RAMIREZ: Yeah. We'll come back then and we'll do that.

MS. BLUM: Okay.

MR. RAMIREZ: I guess the point that

I was looking at was that it seems like we need to get into some of the meat of the issues before we could take temperature checks on most of what is under Issue 1. So we'll come back and finish off with 1. Okay, so 20 minutes.

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

MR. RAMIREZ: Okay. Let's go ahead and get started back up here, and when we had broke, Jennifer had mentioned that there was a question or a comment on the definitions. So let's start off with that. Jennifer.

MS. BLUM: I just had technical -- well I think it's a technical question.

MR. RAMIREZ: What page are you on?

MS. BLUM: I'm going to be on page five, if we all numbered -- if all numbered similarly. It's the strikeout of -- well, it's the now new definition of educational program, and Greg I had emailed you and Scott because I thought I saw this, I think a couple of saw this pretty quickly and thought that there was a technical error.

But I wanted to confirm because -- and

this may go to the conforming technical changes too. So I just wasn't sure, and I don't want to get into the weeds, but I did want to highlight the reference to 668.8(c)(3) or (d). Those are not -- I think you want to strike that, but I'm not 100 percent sure. So I'm just highlighting that.

MR. MARTIN: Was that the point that those -- that regulation references GE programs; correct?

MS. BLUM: Correct.

MR. MARTIN: Right. Yeah. We'll take a look at that. I think you're probably -- you might be right, but we're definitely -- I don't want to say 100 percent, but we'll take a look at that, and I thank you for bringing it to our attention.

MS. BLUM: Okay, sure. I just wanted to -- that was it.

MR. RAMIREZ: Okay, great. Greg, right before the break there were a couple of questions that folks were hoping to get responses from you.

MR. MARTIN: Yes, and there were. This is Greg. There were a couple of questions. The most important one is are the Eagles the best team ever and the answer to that is unequivocally yes.

(Laughter.)

MR. MARTIN: Sorry, we're not going to have any consensus. It's a done deal. I made the decision from here, although I shouldn't say that. One of my supervisors would definitely disagree. So just I'll quit while I'm ahead. All right.

So the first, we had a couple of questions. One of them was the use of -- well no, wrong set of questions. Here we go. One of them was regarding the use of GE data for making decisions in borrower defense, and whether if that's the case, if it was decided to do that, then if it's used for those students by student decisions then why not use it for determinations of program eligibility?

First of all, we don't -- I don't see that the two are the same. It is an apples and oranges comparison. We do feel that the GE data is useful data, and for that reason it is being considered in making borrower defense decisions. We regarding our compliance efforts and borrower defense -- and GE rather, though we don't propose to have any program sanctions we -- this also goes to the other question of would there be a program, could there be a program whose debt to earnings is so bad that it would prompt us to --

I think the question was phrased that that program would lose eligibility. We're not proposing a protocol where there are -- where this is loss of program eligibility for certain, at certain break points in DE measures, as is currently the case with the regulations.

However, we do have ongoing compliance efforts. If a program was that bad, we could include these measures in our metric for risk analysis and whether or not we're going to do program reviews at institutions. So I don't -- the Department is not precluded from looking at that data or considering that data in other ways.

I'm trying to think if there was anything else. Did I have any other outstanding questions? I was trying to remember all that I was asked, and if I didn't ask them, answer them rather, please remind me of what they were, because I want to make certain I addressed everything.

MR. JEROME: For those of us who weren't there, it's Marc Jerome, can you just clarify? Is the Department -- is there a proposal at the BDR that GE data will be used in connection with that regulation?

MR. MARTIN: I want to call on the borrower defense people in the back. Hold on a second. I don't want to speak to borrower defense, because I'm not involved with it. The question again was is there a proposal in borrower defense to use GE data for purposes of determining loan discharges is the question?

MR. JEROME: That is the question.

MR. MARTIN: Okay.

MR. RAMIREZ: All right. So while they're getting that response, Laura.

MS. METUNE: I had a follow-up question regarding the ongoing compliance efforts that were mentioned. So my understanding of the difference when you look at GE is we're looking program specific and that information can help an institution evaluate a very specific program and what they might want to do to address it failing the metric.

So I was just wondering if you could talk through a little bit more about the other compliance methods the Department has, and whether or not those are institution-wide or program-wide. Yeah, that was my question.

MR. MARTIN: Yeah. With respect to other compliance activities, I mean I don't want to -- again, I'm not in any way disparaging anybody's opinions about the necessity for program sanctions if you feel they should be there or not. But I do want to point out that I don't think we should look at this in terms of this being the only -- that absent this, that there's no compliance, there's no accountability for schools either at a program level or institutional.

Most of our efforts, admittedly most of our efforts in compliance are geared towards the institution itself. Are we going to review -- if we're going to review an institution, if we're going to limit an institution's ability to expand. But we do within the context of looking at an institution's compliance and the participation in the programs, look at individual programs they have and what goes on in those programs.

For instance, we have often deemed individual programs to be ineligible for a various number of reasons, and we continue to do that as well. No, there's no -- there's no metric that's applied other than GE to a particular program. So it would -- so but the individual program I think has to be viewed within the context of the institution when you're looking at compliance efforts.

So I don't -- anybody that would think that we would just -- that if -- that the earnings rate were terrible for a school, that we would be precluded from considering that information in any way in looking at our compliance efforts for the program, I think for the institution as a whole would be an error.

MR. RAMIREZ: Let me get Whitney than Dan.

MS. BARKLEY-DENNEY: Yes. I just wanted to follow up and make sure that I understand. So I'm actually going to defend institutions, which is something I don't usually do.

But so if a program, so the things that you have to use enforcement Greg are institution-wide. So is that possible that you're throwing the baby with the bath water, out with the bath water, when you could use a much more precise way through sanctions of GE to actually identify poorly performing programs instead of denying something to entire institution or shutting down an entire institution.

MR. MARTIN: I'm going to let our counsel address that.

MR. FINLEY: Yes. So the answer is there's a lot of oversight tools available to the Department if a program has very low debt to earnings ratios, and it's looked at for other reasons. You can still -- I've addressed enforcement actions against schools for specific programs when the problem was at a program.

There's no license to lie to students, to misrepresent the students. The outcomes on a program and that's the kind of question we would ask if we were looking at this. Were the, you know, were the students properly informed? Were misrepresentations made to them when they were enrolling. There are a lot of things we could look at where an institution would run afoul of other requirements of the program.

MS. BARKLEY-DENNEY: So these are kind of general Unfair Deceptive Practice Act principles, lying or misleading a student, versus like a specific statutory metric that you're looking at?

PARTICIPANT: Yes, and based on what's in front of you, just a score on the debt to earnings ratio is not going to be a basis for an enforcement action.

MR. RAMIREZ: Thank you. Daniel.

MR. ELKINS: Similar line of questioning to Whitney's, this is Daniel Elkins. I was just curious to, you know, have you elaborate just a little bit more on what current enforcement you're able to exact against programs versus the school as a whole. If you could just clarify that just a little bit more for me.

MR. MARTIN: This is Greg. We do, just to reiterate what Steve was saying. When we look at compliance actions with institutions, we have -- we have oftentimes looked at an individual program that a school offers.

If we're looking at an institution and the problems we have at an institution revolve around a given program, we'll take action against the school based on the problems with that particular program.

We've had issues with locations a program is offered at or we've had issues other -- I'll give you another example. We've had issues where an institution has claimed that they are offering a certain internship or experience of a program, and we have found that the school doesn't really offer that.

The students are left on their own to try to find that internship. So it's not what we consider to be legitimate, and we've taken action against a school based on that particular program's issue. As Steve pointed out, we're not going to use -- we don't propose to use debt to earnings as a determiner, determining factor as to the eligibility of a particular program based on those rates.

But again, I think your compliance efforts, they run the gamut, and they -- and we do target those oftentimes to individual programs.

PARTICIPANT: And I'm going to add to that. I mean it's quite possible that a low debt to earnings rate is really just an indicator of other significant problems of an institution or at the program, and those are the kind of things we'd be looking at for root causes.

It could be that an institution's practice to identify unearned funds to be returned to the program are just not being done correctly in a program. It's leading to lots of students that are actually dropping early. So we're going to -- by dealing what the R2T4 problem, you're actually dealing with the problem associated with that program. There is an overlap of things that get considered.

MR. ELKINS: Thank you. This is Daniel again. Could you make one more clarification? Do you feel you have the statutory authority currently to revoke Title IV from a school that is -- meets any of these criteria, or is that an oversight? I just am trying to get a better understanding as its germane to this, what protections or what actions you are able to take against a school that you deem as, you know, abusing students.

PP Well, as far as our statutory authority goes, it's fairly broad. I mean we have currently under GE there's the regulatory authority to -- where a program loses eligibility based on rates. Under the proposed rules, that would -- under these rules, that would no longer exist.

So without that no, we would not be in a position to go to a school and say, look at that given program and say based on a debt to earnings ratio alone, we're going to for instance terminate or limit that school. We can limit schools and say we'll limit you and you can't use that program.

We wouldn't have any -- we would no longer have any regulatory -- there would be no regulatory loss of program eligibility. But that wouldn't preclude us from using this data to form more of an overall picture of a school or look to where there were other problems.

Generally, when we seek to limit a school's eligibility to participate, there are a lot of -- there are other factors involved. We don't have anything where it would just be like you're below a certain threshold. So no, I don't think -- we wouldn't carry those old rules over to say that that would be a compliance action. But it certainly is something we could use to evaluate the school or program as a whole.

MR. RAMIREZ: Let me get Jordan then Johnson.

MR. MATSUDAIRA: Thank you. It's Jordan Matsudaira from Cornell. I just wanted to follow up about the kind of existing compliance oversight regime, and ask whether, you know, if we look backwards at the set of institutions that were operating over the last, you know, ten years or so, those institutions, you know, that would end up populating the data that we have about the performance of GE programs.

Obviously it survived the oversight and compliance review that the Department had. So I guess I just want to ask the question that I asked before, with a little bit of a finer point to it, which is you know, is there no existing metric that we have, whether it's debt to earnings or otherwise, that you think could be used to establish that some of those programs about which we have data in the past, you know, given that they did pass oversight and so on, that there no kind of measure that would have shown you that those programs would be unacceptable from the Department's standpoint to offer students financial assistance?

MR. RAMIREZ: Jordan, can I make -- I want to make sure that I understand. Are you saying, are you asking is there one specific metric or a combination of metrics, or is the question truly just one specific metric?

MR. MATSUDAIRA: Greg had earlier said that the Department's view was that there was no one metric that was appropriate for establishing eligibility.

And so what I want to ask, since the Department's proposal is for no metrics to be used to establish eligibility beyond the existing oversight and compliance review, is that given that we've kind of seen the performance of the existing compliance kind of set up at Ed as history as kind of shown it to us, is that the Department's position, that all the programs that were operating before should be receiving federal financial aid?

MR. MARTIN: Well first of all, this session is about hearing what all of you have to say, and you certainly are welcome to propose anything. We'll take -- we definitely will take that into consideration. I think that, you know, going back prior to any GE regulations, that the Department had a fairly robust compliance functionality, and just because there would be no loss of program eligibility per these metrics, I don't think that changes.

And also, to put it into that context would also be to say that every program, then every program in the country which has DE metrics which might be low, should be -- should lose eligibility. We don't feel that's the case, and there are -- I think there are programs which the DE rates are low that are not -- that are not bad programs.

That's been pointed out around this table, where that it's not the case that they don't prepare students well for occupations. There are other things, other matters in play. So I don't -- I don't agree with the assertion that the DE rate, the DE metric itself would suggest a program is "bad" in the compliance sense of the term or should be removed.

So I don't -- I don't ascribe to that. So therefore I wouldn't say that, you know, our compliance efforts in the past were remiss.

MR. RAMIREZ: Johnson then Wendy.

MR. TYLER: Hi. I would -- I'd like to backtrack a little bit and just tell you my -- my first impression about for-profit schools came out in the Frontline piece in 2010 about Corinthian, and you guys were working very hard to get them into compliance, to monitor them and they did not go under until 2014.

I thought the whole idea behind gainful employment was to create ways of doing things, so you don't have to rely on very time-consuming, people-intense investigations of talking to employees about what was offered, how many people are getting compensated for attracting people to programs, that sort of stuff.

There's been a lot of hearings about this in the Senate and other legislative bodies, and many attorney generals doing this. So I'm wondering, are you guys going to put more resources into this if there's going to be no sanction related to, you know, coming out with a bad score?

Because you've got to -- it seems to me you have to have a lot more employees, a lot more attorneys.

MR. MARTIN: Well Greg again. With that particular institution, I mean obviously their problems went way beyond having one or two programs or, you know, that had poor, that would have poor debt to earnings rates.

So I don't think that -- I don't think we should look at this as neither we're saying that -- I don't think that GE was ever meant to be a substitute for other types of compliance.

You know, regarding the resources the Department has put into compliance, I don't want to recount all of them. But recently we have, we have stepped up our efforts. We have -- we have a multi-regional review team that looks at certain larger types of institutions. We have an Enforcement Division.

So I think that we have -- we have done that. I mean I agree, it is complex. It takes time to take even a bad player out. There are a lot of -- there's a lot of due process, which I think is a good thing. But I don't -- I don't -- again, and you know you don't --

You can either agree with this or not and I don't know that it does much good to continue to debate it, except for the fact that I'm not going to -- I don't concede, because I don't believe it's true, that absent these metrics being applied to program eligibility that somehow we're bereft of any compliance.

MR. RAMIREZ: Okay, thank you. Whitney, then Daniel.

MS. BARKLEY-DENNEY: Sure. I don't want to belabor the points since Johnson said some of what I was going to say. But I just kind of want to recenter this conversation. Nobody on the consumer side or the AG side, or Johnson at the legal services side, is suggesting that sanctions require only the debt to earnings ratio.

I think that all of this would be open to discussing other ways of evaluating a program's effectiveness. Whether that includes debt to earnings ratio plus figuring a way a repayment rate could be compliant or plus something else that could be used to evaluate a program. The problem is the complete lack of teeth and accountability in this structure.

I for one would like to recenter this conversation on the very people that Johnson was talking about who were at that school, which I think we're not supposed to say but it rhymes with

Corinthian Colleges from 2010 to 2014, who are now having to fight tooth and nail to be relieved from those loan payments.

Those are the people that we should be concerned about in this conversation, and those are the people that we should be talking about because nobody tells them well we evaluated this for years and it took a long time to comply it and now we don't need to just use one metric.

All they know is that they have a $50,000 price tag on education that they can't use, and that's who we need to be thinking about and talking about as we go through this, and also can stop -- we need to stop talking about this as sort of well, it's -- because we don't like the metric, we can't have sanctions, when in fact we are around this table to figure out a way to make the metrics work.

MR. RAMIREZ: Daniel, Mark, Ahmed and Jennifer.

MR. ELKINS: I want to second what Whitney just said, and I -- there are an incredible, astronomical number of veterans who were unfortunately severely impacted by one sector, and I am a very strong advocate of the proprietary sector. I think that they do serve students, in some cases very, very well.

But students still need to be protected. So I just -- I think that we need to figure out how to make the GE metrics work. I think that I understand, you know, to Mr. Silverman's point last session that the current rates maybe don't do it justice. Maybe there needs to be a different appeal process. Maybe we need to factor some other things in.

But at the end of the day, the compliance prior to this wasn't working, and students were being taken advantage of.

MR. RAMIREZ: Thank you. Ahmad.

MR. SHAWWAL: Ahmad Shawwal, University of Virginia. Thank you Whitney and Daniel. Can someone explain to me the philosophy behind the suggestion that we probably not ought to name specific bad actors, etcetera? I feel that if we are here negotiating, we have to be fully transparent. If we don't do that, it's incredibly easy to make very normative statements that don't really get us anywhere. Thank you.

MR. RAMIREZ: I believe that you could address the issue, the facts behind it, without necessarily having to get into the individual names.

MR. SHAWWAL: Why is that?

MR. RAMIREZ: I don't want it to start bleeding off into -- again, hard on the issues, not on the people. I don't want to expand the argument.

MR. SHAWWAL: I'm sorry. I don't think that makes sense.

MR. RAMIREZ: Okay. Greg.

MR. MARTIN: I agree with what Javier just said, and the reason why we ask that is in previous negotiation sessions, we've had different names of -- it's all well and good, especially when you're talking about a large one that we can all agree did a huge disservice to students and is closed. That's one thing.

But in the past, we've had a lot of school names bandied back and forth, where people felt that their school was tarnished, their reputation was tarnished by someone bringing up, just using that school's name as an example. So I think that it's not to suggest that there aren't schools out there which are doing students a disservice.

It's just to -- just I think for protocol sake and so that we all can get along here, it's just best if we don't, if we don't raise names. I don't think that's necessary to make a point. I don't concede that, and in the past it's caused -- it has caused a lot of problems.

MR. RAMIREZ: I also do believe that was one of the protocols that you all had agreed to as well. But let me get to Marc, Jennifer and then John.

PARTICIPANT: So I guess I'm going to agree with Whitney and Johnson and address Ahmad's comment, because I think it all goes together. We all would love a regulation that got to bad behaving institutions. The thing this group has to think about is GE, is about outcomes data. Has nothing to do with behavior, and maybe that's a problem.

And then when you go to outcomes, low outcomes are endemic across all sectors for any institution that serves low income students. That's why we get to Ahmad, why you don't want to name the institutions, because right now you're focusing just on debt to earnings in the proprietary sector.

If you started going to the other sectors, there are institutions that poorly perform. There are other institutions that poorly perform on graduation rates, default rates and you go on and on and on, and then it becomes a very unpleasant experience.

So that's why, especially when you come to outcomes. So I'd ask this group to think about it. I'm not sure I know the answer, and maybe there's a combination of how you get to a rule that combines outcomes and behavior.

But with it just being on outcomes, the Department goes down the slippery slope of identifying some good programs in all sectors that would be designated poor performers, and that's what happens.

MR. RAMIREZ: Jennifer.

MS. BLUM: Yeah. Just a quick technical point. I do, without referencing anybody, I do just want to point out and the metric that existed, both metrics, Gainful 1 and Gainful 2, that it would have taken several years for a program actually to close. So to the extent that you're talking about it as if it were some new immediate tool of losing Title IV eligibility, the soonest the program would have lost eligibility, unless they on their own decided to close it was Year 3 and Year 4 for a zone.

So I just want like level set, that it was not an immediate loss of Title IV eligibility, and I think that that's -- and there are lots of reasons around that because there was trying to be a sense of recovery, if you will, for the program and other reasons. So I just want a level set on the facts of what the metric was.

It's not really that relevant for today, but I do think that how it gets portrayed is relevant, because it was not -- to be honest with you it wasn't that much more immediate than what the tools in the toolbox already have in terms of time frames.

And then I did want to ask a procedural question. I thought we were moving to Issue 2. So I mean I just think a lot of this gets meted out, you know, when we get to the next part.

MR. RAMIREZ: So let's close out with Bob and then Whitney, and then we'll move on to that issue. I'm sorry.

PARTICIPANT: John.

MR. RAMIREZ: John was first, yeah.

MR. KAMIN: Oh, I'm sorry. You say I was first?

PARTICIPANT: Yeah.

MR. KAMIN: Yeah. I just -- this is definitely an interesting environment for us to be in, because I feel like most of the negotiators are kind of on the same page here. Personally, I agree with Jennifer about the concerns for bachelor degrees versus career training. I think Mark brought up an excellent point that needs to be reiterated over how for-profits have overgrown a rule when this was initially designed.

I guess in my heart of hearts, I thought that we would be able to or in a dream world be able to surgically the deficiencies within this rule. Then once we apply this test, kind of patient zero framework on proprietary rules as it stands, we can say all right, now it's time to look at all institutions or institutions that are career-related, regardless of what HEA looked like originally.

What I think the bewilderment comes through is how this rule can be applied when we strike all definitions of gainful employment within the gainful employment rule, and how we can even call it a gainful employment rule when there's no remaining factors within it. Perhaps it's worth discussing what do we want to rename it, and that's going to have pretty significant implications over what the intent is.

So even -- if we were to take consumer groups, veterans groups, non-profits out of this, I would appreciate an understanding over what the Department of Education views as the precise utility of the proposed rule as it stands, and maybe from that we could better define that it is we can accomplish within that paradigm.

Now just to throw a bone, the 2014 gainful employment negotiation's intent seemed to be to establish an accountability and transparency framework for gainful employment programs. Can you clarify if that remains the intent for this negotiated rulemaking or if it's changed?

MR. MARTIN: I think these, you know, these rules -- first of all yes. To the point that it does change the whole -- regulation as a whole, yes it does. These are no longer -- you saw we renamed the subpart. It's no longer Gainful Employment.

So yes, I'd stipulate that. Is this still about transparency? Absolutely. We will continue to calculate DE rates, publish those rates. Schools will still have to disclose those rates.

If anything, we've expanded the number of programs for which students will now be able to obtain those rates. As far as accountability goes, obviously we have proposed to change the program sanctions aspect of this. But I don't think that it's -- that there's -- that accountability goes away. There is, I think, accountability associated with the calculation and publication of these rates.

So it is perhaps not the same as it was before, but I don't think -- I don't think that goes away. But yes, the nature of the rules has definitely changed from GE.

MR. RAMIREZ: Okay. So I'm trying to get to the issues, and understanding that we're going to get deeper into all these as we go through to the issues. Let's hope we can close it out with the remaining three tents that are up. Bob.

MR. JONES: Yes, and my comment really does go to the next paper. But I think it's really important for us all to focus on the fact that the word "low performing" has nothing to do with GE. All we're doing is describing in a transparent way to everybody what the programs you're looking at are above average, average or below average and time it takes to pay it back.

It is not a quality descriptor. Quality will be determined by the standards, the accreditation process and whole series of indicators about that. Some programs, as Todd points out, may take a longer time to pay because of their relationship to employment. It has nothing to do with the fact that those are good, bad or indifferent quality programs, just the difference in time it takes to pay.

So we need to carefully look at our language, and separate performance from GE.

MR. RAMIREZ: Okay, thank you. Whitney.

MS. BARKLEY-DENNEY: Yeah. Just really quickly, because this is also going to come up in 2. But I just wanted to address Mark's comments really briefly, which I think that again, just to reiterate what I said earlier, all of us around here understand that the institutions have some issues with the way DE was calculated, and all of us are realists enough to know that it's going to have to change in some way and that we would like to work together on that.

The problem with this proposal is that it leaves folks who are consumer groups, legal services groups and attorney generals groups with absolutely nothing, by removing all of the teeth from this rule and allowing the folks to come to our door to continue to enroll in programs that, you know, have a 20 percent annualized debt to earnings ratio and a 990 percent, which doesn't in fact exist on the GE spreadsheet discretionary debt to earnings ratio.

So that's our problem is we're not starting from a place where the worst programs would somehow be sanctioned by the Department.

PARTICIPANT: Just one quick question, just one response. Are you open to having a sanctions framework for the worst performing programs across all sectors?

MS. BARKLEY-DENNEY: So I can't speak for everybody. But I think that that would be a much more constructive conversation than what we are having with simply saying there are no teeth in these regulations.

MR. RAMIREZ: So let me just remind

folks as well that although these papers are intended to give some direction, we normally call these positions straw man positions. It's a place to begin the negotiations or the discussion. It is intended to give some direction, but it's not a final position, okay.

So just keep that in mind, that these are -- it's not -- the Department's not coming in and saying take it or leave it, right. So with that, I'll go with Todd and then circle back to Greg, to see if there's a response on the borrower defense question. Okay, Todd.

MR. POWERS: This is actually Tim Powers for the private non-profits. So I just have a question, and this might be a Paper 3 issue, but one of the things we haven't discussed, and I don't think it came up in sort of the framing sessions last time around, was on changing the sort of cohort reporting size from 30 students all the way down -- I think in Paper 3 it's down to ten.

And then getting rid of that four year rolling cohort and just having that two year cohort. I'm truly just looking for maybe some justification or some explanation for why that change is proposed, because I don't think it was discussed. So again, I'm just -- it's truly a question, and if you can provide some illumination on that. But again, it might be -- it might be an issue for later.

MR. MARTIN: Yeah. I'll definitely entertain that when we get to Issue Paper 3.

MR. POWERS: Okay.

MR. MARTIN: If I don't, then feel free to remind me.

MR. RAMIREZ: You want to go ahead? Do you have a response on that borrower defense question?

MR. MARTIN: No. I would like to wait til after lunch. I get to confer with our borrower defense people and --

MR. RAMIREZ: And you don't even have to answer it if it wasn't relevant. I just brought it up because you brought it up.

MR. MARTIN: No, I'll definitely answer it. I just want to make sure I -- I'm not on the borrower defense team. So gainful employment is taken up enough of my mind that I don't have anything left. So I have to -- have to defer to my colleagues on that.

MR. RAMIREZ: Okay. Johnson, you're going to close this out then?

MR. TYLER: Thank you. First, from a legal aid perspective, people who come in with no skills and a lot of debt, whether they go to a for-profit or a non-profit, it's a tragedy. It is a tragedy, and so the earnings certainly controls how that GE, the debt to income ratio would work itself out.

But so does the tuition, and having schools charge a huge amount of tuition when they're not providing -- when they have an open admission policy, where everyone comes in and they just sign papers away and take out a lot of loans, Parent Plus loans too, really does a disservice for those people.

So I -- so from a legal aid perspective, I think we would be in favor if there was a metric that could be used that influences the way people charge tuition and the selectivity of their process. We would go for that.

The other thing is low performing. I mean everyone who doesn't go to Harvard, Yale, whatever, in their mind they're going to a low performing school. It is not a transparent -- excuse me. It's not a transparent. It's a meaningless, it's a meaningless label --

PARTICIPANT: Descriptor, I agree.

MR. TYLER: --for people who are going to community colleges, who are going to another school. They know. So I just don't think it has any meaning from a consumer standpoint, because everyone would want to go a higher-performing school, and they're accepting that.

MR. RAMIREZ: All right. Then I would say let's go ahead and move on to Issue No. 2. Greg, you want to start us off?

MR. MARTIN: Sure. This is Greg. We're looking at Issue Paper #2, DE Rates. We propose to amend Section 668.403 so that programs are no longer considered to be passing or failing based on their debt to earnings rates.

Instead, we propose to refer to

programs as acceptable if they meet the established standards, and low performing if they do not meet the established standards.

We also propose to remove the concept of a zone from the regulations. Finally, we propose to remove the provision that a program is no longer eligible to participate in the Title IV HEA programs based on poor debt to earnings rates. We also propose that if the Secretary does not calculate or issue DE rates for an award year, an educational program would disclose the program's DE rates for the previous year.

Looking through the regulations themselves on page one, you can see that we've struck 403, Gainful Employment Framework, and that's where the -- it was not an eligible program. If it was not an eligible -- it was the program eligibility reference rather was there.

Moving onto page two, at the top of page two you'll note the change from passing to consider to have an acceptable DE rates measure, and the retention of the rates measures we currently use. You'll see below that an educational program.

We've struck "failing" and "is deemed to be a low performing program" under the DE rates measure, if the discretionary income rate is 20.

And remember, we've eliminated that. We've eliminated the zone. So all references to that are taken out on three -- on page two, rather. And then yeah -- and then page three just continues with the program, the program outcome. So the combination of how many years a program can fail for have a combination zone failing rate has been struck because it's no longer applicable.

And then you see finally we talk about if an award year, that Secretary does not calculate or issue DE rates, that they would disclose the rate for the previous year if that rate is available. I would point out one thing too, you know. With reference to the comment before about whether or not a -- about low performing.

When we use the term "low performing" here, we're not -- we're not intending that to be is the school low performing academically or how does it compare to a more prestigious, a more prestigious. It simply is as it relates to these rates, and the regulation makes that quite clear. So I wanted to point that out.

MR. RAMIREZ: So let me -- let me see if we can take a slightly different approach, and I'll ask the group are there -- is there any low-hanging fruit in here? Is there anywhere that we could possibly say that yeah, we're okay with these modifications, and then save the more -- with greater discussion after that? Jeff, you have an idea on that?

MR. ARTHUR: Yeah, I think so. You know, I think we can embrace -- we've heard the concerns about how a program's labeled, and I think regardless of what the intent is of a -- using only a one-size-fits-all debt to earnings metric to declare something is -- on either side acceptable or lower performing is going to be misleading to students.

But I think we can embrace the format of the College Scorecard and be consistent. As Bob mentioned, in the way it's done there, you can present the information and use a standard or a median or an average for all of -- in this case you'd want to do it for all related programs, all the same zip code and level, and present that as a below average, about average, above average performance.

But when you're presenting that they're on the Scorecard, it's alongside the other data. We've got, you know, average annual cost. You've got graduation rate. You've got salary after attending. We've got a number of things that are all presented in that same format in a bar graph. I think when you put it alongside that data, it allows somebody to put it in perspective, because if you -- you could have a program with a four percent graduation rate, and the Department's labeled it as passing.

Or you could have a program with a 58 percent graduation rate that's -- when the average across all sectors is 42 percent and declare it low-performing. I think this is really the format that we talked about last time, and it's referenced in the disclosures later to leverage the Navigator Scorecard platform.

So this is the place to put this

information, and as we take the whole scorecard to the program level, to the -- and even when you talk about salaries and all that. So you want to be able to see the performance of a program across all these metrics in one place, and that's the way to do it.

MR. RAMIREZ: Let me -- you know, let me show of thumbs if you all would be okay with using that approach that Jeff had lined out?

(Show of thumbs.)

MR. RAMIREZ: All right. Jennifer, what are you thinking?

MS. BLUM: That with all due respect to the Department on the Scorecard, I have about a two page list of issues with the Scorecard as it relates to each metric is based on a different cohort, and so it actually in terms of student information, it actually currently really doesn't provide accurate data. It's interesting, and the data points are the right conceptual data points.

But in execution we have, you know, their earnings could be based on three students and the loan debt could be based on another different, by the way, ten students. There's no correlation between cohorts on each of the data points on the Scorecard. Of course, and Jeff did point this out, it doesn't work also currently because it's at the institutional level and here we're talking about the programmatic level.

And so the point that I was going to make, if I can since my card was up, I completely agree with the term "low-performing." I don't think that that term has meaning. I understand Greg what you're saying about you just mean against the metric as a whole, but not in terms of necessarily quality or whatever as it relates to the program, but tell that to a consumer who's looking at it.

So we have to be very careful about that. And then the second point I wanted to make is because it is at the program level and I'll just keep coming back, and maybe I'll change a different program. Maybe I won't keep using Early Childhood; maybe I'll use Social Work just for a change of pace.

So a bachelor's in Social Work -- you

know, and I think ours is fine by the way, just for the record. But I'm just saying that those are going to be low earning students right off -- I mean low earning, sorry, graduates right off the bat. They just are, and so if at that zip code and we'll have a conversation later about zip codes and programs, but if we at that zip code level every program in the country.

We won't say every, but let's just say the majority. So let's just say, you know, 52 percent of the programs that offer -- the programs in the country in bachelor's in Social Work, I don't know if this is true or not, so forgive me. But let's just say in any program that more than 50 percent are low performing, then is our program low performing against what the -- every other program is?

So I think that if we're going to stick with programmatic, which I don't disagree with by the way. I'm just saying that then there's a different analytic to what the measure is. And so that's why, you know, the Scorecard is this huge, and I think actually the Department may have even had -- I think I've had conversations, just because, again, there's no graduate programs. The Scorecard is only undergrad only, just for the record, too.

And that is part of the reason the data gets very skewed in weird ways too. So that's my hesitation. It's not that I don't think the format is nice and whatever. But when you peel back the onion on the Scorecard, the data is not particularly accurate with all due respect again. So that's my issue.

And then just my point on low performing. You know, I think low performing against what is really the question here.

MR. RAMIREZ: Okay. So what would be the alternative?

MS. BLUM: Well I was -- so one of the things I was going to say is it's very hard to talk about -- and I'm happy to do it -- but it's kind of hard to talk about Issue 2 without talking about Issues 3 and 4. So I mean I reserved my language on -- I do have ideas about low, and I think other people will too, about the language in Issue 4, which is really where the disclosure --

I don't want to use disclosure, because that's Issue 6. But the -- no, the sanction. They call it still "sanctions." But the warning or I don't want to call it warning either. The disclaimer that you have to release about each of your programs is in Issue 4. So I mean I don't want to offer.

But like I said, I think it's going to be hard to juggle back and forth between Issue 2, 3 and 4. I don't know how you -- so I can propose it now, but it's in Issue 4. I think we should wait.

MR. RAMIREZ: Sorry. Just hold on then. Let's go to Daniel.

MR. ELKINS: I think that it would be great to get a consensus on removing the concept of the zone. I think that that might be low-hanging fruit. I think that --

MR. RAMIREZ: Okay.

MR. ELKINS: --everyone may agree on that.

MR. RAMIREZ: What do you think?

Let's see a show of thumbs if everyone's okay with the elimination of zones, and these are temperature checks, right? Laura, it's hard to tell where that thumb is at. Oh, sideways. Okay, okay.

(Show of thumbs.)

MR. RAMIREZ: Yeah. I don't think I saw any thumbs out. Is that accurate? All right. So there's a -- there's an area of agreement. So thank you. All right. So you found the first jewel. All right. Let's continue the treasure hunt here. Bob. Okay. Kelly. Oh yeah. Go ahead, Bob.

MR. JONES: No, I'll stay. I'll wait.

MR. RAMIREZ: All right. Kelly.

MS. MORRISSEY: Kelly Morrissey. I just think it's important to react to Jeff and Jennifer's comments about the Scorecard. I think that my immediate reaction was that the Scorecard would perhaps be more meaningful for students because it does provide some basis for comparison, whereas otherwise the two labels that are being proposed do not.

However, I think that in terms of

students at community colleges, for example, where borrowing rates are very low, the cohorts when you're looking at a programmatic level, the cohorts are very small and the measures become less meaningful. So I think that we would probably have to refine the way that the Scorecard is being used if we decided to instead move in that direction.

MR. RAMIREZ: And there was actually -- the Scorecard idea had significant buy-in, not full. So when we get over there, maybe we could see if there's tweaks that could be done to some of the metrics that might allow for that to happen. We'll see what other alternatives there might be. Let me get Chris next, Chris Madaio.

MR. MADAIO: Chris Madaio. As far as -- well I guess one, first a preliminary point, you know. It seems to me that if we're not going to be addressing programs that people have like a criticism with, I'm not sure it will be appropriate for people to be addressing programs, even their own, for folks who represent a specific program that they feel positive about, right.

So if we're not addressing a program,

it probably wouldn't be appropriate to address them from a positive light and a negative light. Is that accurate?

MR. RAMIREZ: Uh-huh. Well, let me ask the -- could you restate it?

MR. MADAIO: Sure. I mean you know for instance, if someone was here representing a school, right? If you're here from a program, you know, we've heard folks today kind of say well, you know, my program is like this, or give an anecdote based on, you know, their own institution.

Which I don't have a problem with, but my point is that if we mention that it would not be appropriate to mention say an anecdote from a low performing program, you know, it seems to me we should also not be giving anecdotes from, you know, ones that people consider to be high performing or good programs.

MR. RAMIREZ: You know, that's fine. That's fair, right. So we'll just -- and you all are going to have to help me, right? If a name pops up every now and then, we'll just keep each other in check. Let's try to keep institution names out of it.

MR. MADAIO: Okay.

MR. RAMIREZ: Okay, thank you.

MR. MADAIO: So sure. I mean I agree, I think, with a lot of what's been said about our issues with acceptable versus low performing. I mean to me they're just such different words that don't even relate to each other. I mean to me, the opposite of acceptable is unacceptable, and if we're going to be telling students that a set of programs is acceptable, sorry, then why are we not telling those students that programs that are failing the metric are unacceptable or that they're failing?

I mean I think that's a big problem for me is that we put a lot of work into, you know, I'm sure and the Department is going to be putting a lot of work into coming up with some set of numbers and some programs, I'm sure, will not be successful in those numbers, i.e. they will fail the test that is constructed.

To me, right, it's a big problem for a student to see the words "low performing" and really get anything out of that, and to really accomplish what -- I think Greg said at the beginning one of the points of this is to be a check on the schools and be a protection for students. If this -- I don't think low performing comes anywhere close to accomplishing that.

I think we're almost -- maybe we'll take a temperature check on that, because I think that might be something that a lot of us would agree with.

MR. RAMIREZ: Yeah. You know what, and I'm just going to bypass that just because I think you're right, and I think that the group is looking at the possibility of finding the right verbiage that captures where you want to go.

MR. MADAIO: Great. Well, I'll throw a few out there. Unacceptable or failing. I mean those are words. Failing was in the last rule. I mean it's either -- so those are words that I put out.

And then right. I just agree with a thing, something that Johnson said earlier about, you know, this rule needing to look at and ensure that the cost is something that is also taken into account, right? I mean that's something students don't always understand, right, that high cost, are they going to be able to pay that back with the job that they're going to be able to get, especially when they're going to an institution where their primary goal is to receive an occupation in that field.

I think that's again what the Higher Education Act was contemplating when permitting proprietary institutions to participate in Title IV aid. So again, I mean I hear you, that proprietary institutions have changed a lot in years, in many years. But you know, there's the same set of rules and, you know, you kind of change at your own peril if the rules stay the same, i.e., the Higher Education Act.

So if the Higher Education Act needs to change to reflect the changes in the proprietary sector, you know, again I think that would be fine. We're just not the body to do that obviously, and because of that I think there is a purpose of that. When we see a third approximately of all student loan defaults are in the proprietary sector.

So there is a reason, I do think, for why there are -- the proprietaries are different and why the HEA is like it is. So again, I think the rule should accomplish what the HEA is trying to accomplish.

MR. RAMIREZ: Okay, thank you. Johnson.

MR. TYLER: Yeah. I was thinking if you wanted to make low performing and put it out there, why not say what it is, which is basically more than half the students are having great difficult repaying their debt when they went to this program. That's what it measures. That's what it measures, and that's what gets someone's attention.

That doesn't compare you to another school or whatever. That's a warning sign.

MR. RAMIREZ: Johnson, what's the headline of that? What's the headline version?

MR. TYLER: Difficulty repaying loan, or extreme difficulty repaying the loan. I mean that's what I would say, and I would point out I spent a lot of time with one client looking at a school he went to. The CEO got paid $2 million annually while the head of Harvard got paid $600,000 a year.

The investors were getting a 15 percent return on their investment, which you cannot get in other parts of the economy, taking on risk. That's a huge return annually. My student paid twice the average cost to go to this auto mechanics school, and no one at the school earned more than $25,000 thereafter, which is the equivalent of a high school diploma, and he now owes about $30,000.

So it does, you know, cost is all about what gainful employment is about. It's not just what is the, you know, are people able to capitalize on their education. It's also what is the debt that they're stuck with thereafter, and so, you know, I just think you need to put low performing in a word that someone would understand that maybe they should look at another place.

MR. RAMIREZ: Yeah, and it seems like we have to come back on the naming. Is there another area where there might be agreement?

Whitney?

MS. BARKLEY-DENNEY: So I was going to suggest, partially for my own benefit, that we take a temperature check to see how people would feel about agreeing to put a sanction regime back in place, and then focusing on how we define and where we place those sanctions? So I was just wondering if we could get a temperature check on that question.

MR. RAMIREZ: Okay.

PARTICIPANT: When you say sanction check, do you mean like Title IV, I mean a Title IV? You're not talking -- because they still do have a sanctions, which is you're meaning Title IV?

MS. BARKLEY-DENNEY: Right, Title IV sanctions.

MR. RAMIREZ: Yeah. So yeah, I'm hearing that that is a specific issue, one of the issue papers. So when we get to that, that would be the first question then?

MS. BARKLEY-DENNEY: That's fine.

MR. RAMIREZ: Okay. Any other -- you

know, let me jot down a note real quick.

(Pause.)

MR. RAMIREZ: Are there any other possible areas of agreement? Yeah, Daniel.

MR. ELKINS: I wonder if the group would be amenable to the idea that whatever terms we do establish, that they be correlated to each other? I.e., passing, failing, high performing, low performing, acceptable, unacceptable, good, bad. Like that there be a correlation between the two words.

MR. RAMIREZ: Okay. You know, if I could see a show of thumbs to have the words "correlate" in some way. Okay. Let's see a show of thumbs.

PARTICIPANT: Can you rephrase the questions one more time?

MR. RAMIREZ: I think the idea there was just that when we get to that point, let's try to make sure that the words are relational. So that way if -- you could tell the opposite. If a school is failing, the opposite would be passing. So whatever terminology that we end up coming up with, that there should be some relation to them, to each other.

Okay. So these are temperature checks. So I think it's more let's keep that in mind as we eat probably, right? We can come back and talk. Sandy, you had an idea of where we might find some?

MS. SARGE: No. I have another comment.

MR. RAMIREZ: Okay. Then let me go back to the queue here then. Jennifer.

MS. BLUM: Well, I'm with Sandy. I actually just have a question about the language.

MR. RAMIREZ: Yeah. You're next in the queue, so go ahead.

MS. BLUM: Oh okay. So I just wasn't sure, sorry. So moving on from the do we have consensus, sorry. I did want to -- I don't have a proposal or anything, but I did want to point out, and this goes again to my sort of what's one-size-fits-all on the metric, even if it's for disclosure purposes. I do still have concerns.

So very, very appreciative of the

getting rid of zone, which I said last time yeah, it was like this black hole for I think both the consumer and the institutions frankly. So very appreciative of that. But I would like to ask, and I hate to ask a data question, because I try to avoid those.

But was there analysis done by the Department relative to the 30 versus 20 and the 8 versus 12? And again, for some programs, I mean I know there's a lot of data already out there. But for some programs at some credential levels, totally agree with what the Department did. But again, you know, to the extent that you're including this for doctoral and for professional degrees, I would say that, you know, there's a different look-see there.

So I was just curious whether you broke out any analysis by degree level or anything like that.

MR. RAMIREZ: Yes, Steve.

PARTICIPANT: So the question is 30 versus 10. A very high level answer is --

MS. BLUM: 30 versus 20 on the

discretionary, and 8 versus 12 on the --

PARTICIPANT: I don't think we have any additional information or analysis to share, other than what has been done cumulatively for the development of those break points in the GE regs.

MR. RAMIREZ: Okay, Sandy.

MS. SARGE: This is Sandy Sarge. We've had a couple of times through this part of the discussion where cost has been brought up, and I just want to make the point that tuition charges are a function of many things not -- they're not arbitrarily decided upon just to make a profit or -- they are intended -- I'd like to almost say that the first level of determination when you're thinking about what to charge is to cover your costs.

For-profit can be anything above zero, right, and also state schools and private schools also try to be at least at zero or above in covering their costs. So when we say that -- I don't want anybody to have the impression that the tuition charges are arbitrarily done. An example that just came up last week when I was in California is that the state had voted on a 2-1/2 percent increase or three percent increase in its budget to the California state system.

The legislators had decided on that in the budget and then the schools themselves were adding another 2.5 percent increase above and beyond what they were already getting in addition to the state funding and students were up in arms, you know. Why are you -- why are you wanting to go up in money?

Now there's a lot of reasons, right? The tax base might be down in the state. So the state, even though it raised it 2-1/2 percent or 3 percent, that may not have been the equal dollar amount that they had had in the past. So my point is just that we have to be very careful in throwing out generalizations or impressions or perceptions that need to have a harder look sometimes, so that we really get to what we're trying to accomplish here, which I agree with everybody is we want to get bad players out of ed.

Or we at least want to give students neutral data points that are not there to give an impression of quality or not quality. That is not our decision. It's their decision how they deem something. But that gives them a good data point to make an informed decision.

And I'm -- you know where I stand on other issues pertaining to cost, and I'll respect the group's last meeting asking us not to bring it up, and I'll respectfully ask that you guys walk away from cost in lieu of the fact that I'm choosing not to bring up what I think are some of the reasons for that. Thank you.

MR. RAMIREZ: Gannon, Laura and then Jordan.

MR. GANNON: Yeah. So when students don't do what's required for a class, they don't low perform in that class. They fail the class, and I think that maybe pass and fail are appropriate terms.

MR. RAMIREZ: Okay, thank you. Laura.

MS. METUNE: I just wanted to say that I really appreciated the question Whitney raised earlier about trying to get a temperature check on this overall question regarding meaningful sanctions. I understand that we will be discussing that later. But part of the reason I had sort of the sideways leaning down thumb when we asked the earlier temperature check is because my reactions to these earlier papers are really within the context, of whether or not there will be meaningful, actionable sanctions incorporated in the overall structure.

So I'm happy to accept that we'll get to it later. But I do just want to say it's really hard to give my opinion about these concepts without knowing whether sanctions are completely real sanctions, meaningful sanctions that will result in actionable items by the Department are off the table for this group. Thank you.

MR. RAMIREZ: I could really appreciate the difficulty in knowing whether to agree to one item without knowing where other pieces fall in. The only problem is that if we don't go in some type of order, we, I guarantee, we will never get done, and that's a difficulty that we have, okay. Jordan, Mark and then Daniel.

MR. MATSUDAIRA: Yeah. I mean I'll

just, the same kind of sentiment here. It is awkward to talk about these things outside of the context of whether there will be sanctions or not. That said, in a world where we're only contemplating these kinds of disclosures and then categorizing schools into failing, passing and so on, I want to make a suggestion about, you know, at the risk of muddying the waters, adding like another category or a way of differentiating between pass-fail and that's with regards to history, how many times a program has passed or fail in the past, you know.

Just decide on some kind of lookback period. That's partly wrapped up in the conversation over the Department's kind of decision to think about measuring these indicators for programs down to an N size of 10, where I suspect --

But the Department could produce analysis on that, that when you do that the measures are going to get to be quite variable and so could become a little bit of a noisy measure for whatever underlying concept is being presented.

So kind of showing a little bit of history over the last couple of years, like say three-five years, something like that, could help with that.

MR. RAMIREZ: Thank you, Mark.

PARTICIPANT: So a couple of things. Number one, just for Johnson, just to be clear, we had a lot of comment that the rule gets to students whether they pay their loans or not. But gainful employment, the current metric, has nothing to do with whether students pay their loans. In fact, one of our objections is programs that have very, very high loan repayment rates often can fail the rule, so I just want the room to know that.

Two, with this discussion about what to label the program, I think the discussion will matter a lot when and if the Department releases the data and how the rule actually comes out. So I've always believed the rule should only apply to borrowers and not to non-borrowers, and we should see the data.

But if the data's going to show that a huge swath of higher ed would fail the eight percent, which I am absolutely confident it's going to show, then failing or low performing I think is not necessarily helpful. I think the accurate term is "high debt, low earnings." There are high debt/low earnings programs that are incredibly high performing, because everyone went into government or everyone got an internship, and that is included in the proprietary sector.

But it's certainly in the not-for-profit and public sector, and I'd just ask you to think about it, because the discussion does move. If the rule's only on proprietary, the group seems to want the most damaging label. But if the rule goes to all sectors, I think there will be a different consideration of what the label should be. For me, I would just want the label to be accurate and to be helpful.

MR. RAMIREZ: Thank you. Whitney.

PARTICIPANT: Yeah. I just want to make sure I'm not misunderstanding something. I don't think anyone is contemplating only proprietary schools be included in this. From my understanding, community colleges will also be included and they are certainly public institutions.

MR. RAMIREZ: So just one comment back. It does get back to the N factor. So the reason I think maybe the Department consider this is I had done some research that essentially showed 90 percent of actually the statutory gainful employment programs are not judged, because they do not graduate 30.

So that's just getting back to is the statute effective? Should graduation and completion rates be part of this metric, you know? Should we be scrapping debt to earnings. I mean I'm not going to go crazy with this in looking at graduation rates, default rates, whatever it may be.

But understand, under the statutory definition, and this current definition of gainful employment, a huge percentage of programs were not -- were not reached. To me, that's a shame for consumers, because they don't get the information.

MR. RAMIREZ: Whitney.

MS. BARKLEY-DENNEY: Yeah, just really

quickly, thank you for that Mark. I think that that's a different question than what we are considering when we are saying this, which is the fact that community colleges are covered by this rule. I just want to make sure that my views aren't mischaracterized, that I think this is only about proprietary institutions, because when I am envisioning how this rule works, it in fact includes community college programs.

MR. RAMIREZ: Okay. Daniel.

MR. ELKINS: We would agree that with Mark's proposed language of high debt, low debt, high earnings, low earnings, I think that that communicates the intent of what this -- what this ratio is meant to communicate.

MR. RAMIREZ: Okay. Let me -- we're close to lunch, but there was one piece in here. It talks about "We also provide that if the Secretary does not calculate or issue DE rates for an award year, an educational program would disclose the program DE rates for the previous year." Are there major concerns or issues with that piece? Okay.

PARTICIPANT: I mean I'm actually not that -- I assume that what you mean there is if -- I mean I assume that it's going to be a cohort issue, or something that somehow the data changed from like a cohort. I mean I assume the Department's not going to just with one program decide not to --

So I assume it would either be that the Secretary just decided not to do it for one -- I don't know how they decide this, but not to do it for one year, or it's because the program, you know, reduced its cohort size somehow. In that case, I have no problem with doing the prior year, as long as it's clear on the template or whatever format that that's -- that it's for that cohort, and that in the current year there was not a sufficient cohort.

So you know, so some sort of disclosure that's very transparent that you're just carrying over from the prior year, because this year there was no cohort. So I assume that that's what was meant there, yeah.

MR. RAMIREZ: Greg, that's correct?

MR. MARTIN: That is correct.

MR. RAMIREZ: Okay. So let me just --

PARTICIPANT: So then I would just be clear up that there would be that disclaimer, so that there's clarity to the student that it, you know, what the reasoning was. It wasn't the fault of the school or whatever. It's just literally the lack of cohort.

MR. RAMIREZ: Sandy.

MS. SARGE: This is Sandy. I think that was kind of somewhat my question also, is would this be the decision by the Secretary to not calculate. If it's across the board, like you just decide we're not going to do it this year, I would think there would have to be some sort of an explanation to the public as to why.

So for example, in the years during the Great Recession, for example, students have already incurred debt, the market tanks or the economy tanks. Nobody's employed. Perhaps that's a reason why they wouldn't put that information out, because it would have a skewed impact potentially because the whole economy is being impacted by earnings deficiencies.

So I'm just questioning whether that might be a reason that the Department would decide.

MR. MARTIN: The way we saw this was basically that if a program's numbers, numbers didn't slip below the N size. We never -- we didn't view this as a rule because the Department would decide one year not to calculate rates. Under this, we would be calculating. We would continue to calculate rates.

MS. SARGE: Okay.

PARTICIPANT: So just one quick suggestion then Greg. So in addition to what I already said, I would just clarify at the start of the, and I can think about language, but just that that's the -- in the event that a program doesn't have the, you know. I would put that language in and the Secretary therefore doesn't do a rate then blah. You know what, and then allowing for the program or maybe it's just standard language, whatever, but that explains that that's the situation, you know, to the public.

MR. RAMIREZ: Pamela.

MS. FOWLER: My question is at what point does whatever you're publishing become, you know, not effective? I mean you know, ineffective? It becomes, you know, if you don't do it this year and I publish the rate from the year before, how many times can I publish the rate from the year before before I publish a new rate?

PARTICIPANT: That's a great question.

MR. MARTIN: The regulations just call for the previous year, the one previous year.

PARTICIPANT: The one year.

MS. FOWLER: Okay. So it's just one year?

MR. MARTIN: One year.

MS. FOWLER: And then what do I publish in future years?

MR. MARTIN: If there's no rate, you wouldn't have. You wouldn't --

MS. FOWLER: I wouldn't publish it?

MR. MARTIN: --have it. You wouldn't have a rate. No rate would be --

MS. FOWLER: And I appreciate the fine print that Jennifer's talking about, but people don't read the fine print.

PARTICIPANT: Well so now Pamela's -- you're raising a good point. So if it's an annual disclosure and let's say for three years the program had a cohort of -- I can't believe I'm saying ten, but ten or above, and they had a rate, and then the following year it slips to nine and so it doesn't have a rate. But you're saying that the prior year has to be, continue to be listed.

I think Pamela raises a good question though still, because let's say it never gets back to ten. So I'd say that the Department should consider that if the program stays that small for that long a period, then publishing a five year -- I'm just making it up, but a five year old rate no longer makes sense for the consumer.

MR. MARTIN: Right, right.

PARTICIPANT: I think that we're talking about a very rare situation I would imagine, but I don't know that for sure.

MR. MARTIN: Well, to be honest with you, I don't think we -- we didn't parse it out that far which is the previous year. We're certainly willing to entertain any ideas anybody has. What I was just pointing out and Steve indicated too was that the way the reg is written now, it's just a previous year and that's what it says. So it had to be interpreted that way.

But we're not averse to any discussion on that or if anybody has any other ideas, we would certainly entertain them.

MR. MARTIN: Well you know, if after one year you feel that this should be -- if there's no rate then that's -- it's only relevant for that one year and certainly shouldn't carry over indefinitely. I can see your point there. But we'd be willing to hear anybody else's opinions as well.

MR. RAMIREZ: Sandy.

MS. SARGE: I think this might be, could be resolved with Jordan's suggestion, that perhaps if we had several years reported at the same time or a few years at least, then you could see that in one year it went to N/A or no difference from the prior year, but you would see the pattern over time.

So maybe as we get into the nitty-gritty, we can bring that back around to resolve this issue too.

MR. RAMIREZ: All right. So let's do this. Let's go ahead and break for lunch, and what I'd like to do though is when we come back, let's look and see if there are areas where either we could propose some suggested alternatives or tweaks, right, so that we could get -- do temperature checks and try to knock out some of this stuff.

But if I'm hearing the group correctly, there is some desire to try to find the correct terminology that everyone could live with. But am I to understand that we need to discuss probably down into four before we come back and try to find that correct terminology? Is that accurate?

All right. So apart from the terminology then or the label, let's see if there's any other areas where we could close out Issue No. 2 and then move on to 3 when we get back from lunch. Greg, is one hour enough?

MR. MARTIN: Yeah, one hour should be

enough. We have quite a few places around, around here. So I think that will be adequate, yeah.

MR. RAMIREZ: Okay, and I believe that there is a sheet in the back over there with some eating places. So all right, thank you.

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

MR. RAMIREZ: All right. Let's go ahead and get started. Greg, I see that Annmarie's with us. Did you want to get into the BD issue first, or did you want to close out the issue on -- skip the calculation.

MR. MARTIN: No, Annmarie's up here now. So I think I'll turn it over to Annmarie to discuss the BD issues.

MR. RAMIREZ: Okay. All right, great. Annmarie, for the record, you just want to introduce yourself and then jump right in.

MS. WEISMAN: Sure. Good afternoon. I'm Annmarie Weisman. I'm the Director of the Policy Coordination Group here at the Department of Education, in the Office of Postsecondary Education. I am also serving as the Department's negotiator for the borrower defense to repayment regulation package.

For those of you who are still in town and would like to see more negotiated rulemaking, feel free to join us next week in the same location.

So I was asked to come to address some questions, if you have any, but also just to provide some general background about how borrower defense is using gainful employment data.

I will start out by saying we are using it in a very limited capacity. We are using it, just so you're aware too. There is a press release coming around for your records dated December 20th, 2017.

Some of you I see already have it. We describe a process, and it says on here "New Process Fairly Compensates for Damage." Keep in mind we did this with a limited group of borrowers where we had data that we would not necessarily normally have from typical borrower defense claims.

This was from a closure of a large institution, where that institution provided data to another institution who then worked with us. That's not the circumstance that we typically are in with borrower defense claims or expect to be in in the future.

So what we're doing is we're looking at the current earnings, and if those current earnings are less than 50 percent of what their peer group within a GE program have earned, that individual borrower would receive full relief on their borrower defense to repayment claim.

If the earnings are 50 percent or more, then they would get tiered relief or partial relief. So again, we're using this for claims that we already have in our possession, where we already have information on file, that we would expect we would not have for the typical claim.

So it's not something where we envision using this going forward. We haven't closed the door to that possibility should a similar situation occur in the future. But it's not something that we've set up as part of our normal process, or outlining it in regulation.

So hopefully that helps to give you a

bit of a flavor of what our intent is. I'm definitely happy to take questions if I can help to answer additional items, and I see one tent is already up. But I'll let Javier address that.

MR. RAMIREZ: Yeah, go. No, go ahead. Jennifer.

MS. BLUM: So just to clarify Annmarie, just to really hone in, it's not the debt to earnings metric on which you're relying. It's the earnings data that you happen to have because of that rulemaking?

MS. WEISMAN: That's correct.

MS. BLUM: Okay. So I just think that's an important distinction, so that everybody understands. It's not a reliance on the results of the metric. It's a reliance on the earnings data that you happen to have because of that prior metric?

MS. WEISMAN: Uh-huh.

MS. BLUM: Okay, thank you.

MR. RAMIREZ: Any other questions? Johnson.

MR. TYLER: Hi. So the earnings on

gainful employment is the median of all the people in the cohort. So when you say 50 percent, the earnings of the individual filing is 50 percent. That means that it's half of what the median is for the cohort?

MS. WEISMAN: That's correct.

MR. MADAIO: And my question, Christopher Madaio. The earnings comes from Social Security Administration, from the gainful employment data, right?

MS. WEISMAN: Yes.

MR. MADAIO: And obviously I know there's been the appeals for the previous numbers are still kind of coming in. I suppose they're still being adjudicated. Was there any determination on any of the appeals, anything like that?

MS. WEISMAN: In this case, we did not have an appeal on the data that we were using, so we went ahead and used it. But again, this was specific to one institution.

MR. RAMIREZ: Annmarie, I think we'll extend you the same courtesy. If you'd like to hang around, you're more than --

(Laughter.)

MR. RAMIREZ: More than welcome to hang around. But it doesn't seem like there are any more questions. So you're truly free to hang around if you like, but thank you for coming by.

MS. WEISMAN: I do have another call that I need to take in my office. But I can certainly be available later in the day or throughout the week if additional questions come up.

MR. RAMIREZ: Okay, thank you.

PARTICIPANT: Sorry, one more quick one.

MR. RAMIREZ: Sorry, sure, sure. Go ahead.

PARTICIPANT: Do students have a right to appeal the determination or the amount of earnings if they don't think that they're correct based on the calculations being put out?

MS. WEISMAN: We did not anticipate an appeal process for that item. Certainly, if a student came back with additional information, we would review that information. But again, this is a very limited circumstance. So we are just starting to grant these now, and that experience may yield information about how we want to do this in the future.

But again, we're not committing to using this structure going forward. It's not something we expect that we would necessarily be doing.

PARTICIPANT: Limited, but of course a significant number of students, right? Did you have an estimate on how many students maybe was in here? More than 20,000, right, pending claims?

MS. WEISMAN: Yes. I don't have the exact number with me here. But yes, it was a significant number of -- it was a group of students.

The action that we took at this time was 12,900 that were pending, and then 8,600 claims that had already been denied. So yes, we considered the structure for over 20,000 borrowers. But again, that was a very large cohort of borrowers.

MR. RAMIREZ: Go ahead, Sandy.

MS. SARGE: So on that, did you go and ask the SSA to pull that particular group of students' earnings to be able to do the comparison?

MS. WEISMAN: It was data that we already had available to us as part of obtaining gainful employment rates.

MR. RAMIREZ: Okay. Better hurry up.

PARTICIPANT: So actually sorry. Yeah. You stay too long and then we'll have other questions.

(Laughter.)

PARTICIPANT: So when you mentioned peer groups, because you said I can't compare it against a peer group, which is interesting because we talked earlier when we were talking about disclosures or what is low performing against peers. So I'm just curious on the peer group that you're analyzing this against, are you saying just peer earnings from other gainful programs specifically, for which you also had earnings? Is that what you mean by "peer"?

MS. WEISMAN: We looked at the group

that that borrower would have been in. So if they were in, I don't want to use a specific program, but if they were in Program A, then we looked at other people that were in that same program.

PARTICIPANT: At that same school or just across gainful? That's what I'm asking.

MS. WEISMAN: At that institution.

PARTICIPANT: Okay, got it. That's what I was asking. Thanks.

MR. RAMIREZ: Yeah.

PARTICIPANT: I thought the data was not individualized by individual from Social Security. So it couldn't be you compared earnings by student.

PARTICIPANT: The student gave the data and you use the median.

MS. WEISMAN: It's not individual data to that borrower. We're looking at that borrower versus the group's earnings.

PARTICIPANT: Got it, compared --

MS. WEISMAN: The program, yes.

PARTICIPANT: Sorry.

MR. RAMIREZ: Go ahead, Chris.

PARTICIPANT: Sure, and of course raised -- the student finds a job completely outside the field in which they were studying, right, outside that program field because they were unable to find such a job because that program did not lead to gainful employment.

That has no bearing, right? If they're having a job, a minimum wage job, you know, at a fast food place, that income would obviously if it would offset, if it was more than 50 percent, it would offset the amount of recovery they would get even though their degree provided zero additional ability for them to make income.

MS. WEISMAN: That's correct.

MR. RAMIREZ: Johnson.

MR. TYLER: One last question. So if you didn't -- if the peer group doesn't have a passing, they're not in a passing gainful employment program, how does that impact on --

MS. WEISMAN: We were looking strictly at earnings. We really weren't looking at it from the perspective of did the earnings pass, did they not pass. We were specifically looking at a group and trying to put a value on the education. It's not a perfect system.

It's what we had available and it was a way to try to make a determination on a large number of claims that would at least be, in our estimate, a fair way to value. Again, there are going to be outliers. There are going to be people that in some cases choose not to work or take a job outside of a field. But it was -- it was a method that we used for that group.

MR. TYLER: But it assumes there's some value, earning capacity value in the program if you're comparing one student against the aggregate.

MS. WEISMAN: Yes, it is based on that assumption.

MR. TYLER: Okay.

MR. RAMIREZ: Okay. Thank you very much. All right. So to -- at least for what we think we could close out here on Issue No. 2, it seemed like there was a possibility of getting some type of agreement on the last sentence of the summary there, where what happens in the event that the Secretary skips a year of the DE rates, and that there was possibly adding a disclaimer and some other considerations.

But who would like to try and tighten that up, to see if we could thumb something on that topic? Or were the clarification questions enough and you all would be okay with that? Sandy.

MS. SARGE: I think that perhaps our lack of comment is because we would think we might have to come back to it after we dig into a few other things potentially.

MR. RAMIREZ: All right. Jennifer.

MS. BLUM: I actually -- the reason I wasn't commenting is is that I felt like the Department, I mean I'm happy to work with Pamela, because I think you raised some good points. I'm happy with on language with a small -- I mean it's not a -- it shouldn't take that long.

But I'm actually looking at Steve, because it felt like you guys had understood the issue and might craft that language. But if you want us to do it, I mean we can come up with. It's I think fairly straightforward disclaimer language. So how are --

PARTICIPANT: We're willing to take any suggestions for any language you want around that.

MR. RAMIREZ: So I'll take it then. So yeah, work with Pamela. Okay, all right, thank you.

PARTICIPANT: That would be within the context of it being one previous year, right?

MS. BLUM: So I think there's -- I mean the way I would break it out is I would start the section differently by saying "in the event that" or somehow making it clear that the only circumstance under which the Secretary is not doing an annual is if there's a low cohort, you know, below whatever, below appropriate cohort or not below appropriate, but below the necessary cohort, you know, block, and then the language.

And then, you know, in the even that that occurs, that institution would have the following, you know, would use the following disclaimer for the next year. And then there would need to be language that discusses how, and this is where the Pamela piece, which was well pointed out.

That's why for one year, I'd say after one year it becomes sort of, you know, then you don't have to report would you? It doesn't make sense for longer than that. So something along those lines is what I was, you know, what I think we discussed.

MR. RAMIREZ: Okay. Thank you, Jennifer. Anything else that we need to touch on on Issue No. 2 before we go on to 3?

(No response.)

MR. RAMIREZ: All right. So before we get on -- go on to 3, just a friendly reminder. I'm trying to call everyone's names, but there's time where the exchanges go.

Just if you could state your name for the record, just so it's clear that would be helpful. And as you get into this next issue, as Greg is going through the summary and I would also ask Greg if in addition to the summary, if you could give some context or rationale for the summary.

Be thinking about where might be some of those quick areas of agreement. When I say that, I don't mean what you would like for someone else to agree to, but where you truly think that it's not a controversial issue and we should be able to get some of the pieces out of the way, okay. So Greg, number 3.

MR. MARTIN: Thank you. This is Greg. We propose or again, we're looking at debt calculations. This is Issue Paper #3, and we propose to use an amortization period of 15 years in the DE rate calculation for all educational programs, regardless of program length.

We propose using the annual statutory interest rate on federal direct unsubsidized loans that were in effect during the last award year of the cohort period. We propose to exclude private educational debt and debt owed to the institution from the calculation of a student's debt in the DE rate.

We propose to no longer exclude from the numerator and the denominator of the DE rates calculation students who have one or more Title IV loans and a military-related deferment status. We also propose to remove the language related to the transition period, due to other proposals made related to sanctions, and that transition rates are not needed as programs are receiving actual DE rate calculations.

We also propose to require that a student be enrolled for at least 60 days for that individual to be counted as an exclusion to the DE rates calculation. As noted in the regulatory language of Issue Paper 1, we propose to use a single two-year cohort period in calculating DE rates and remove the four-year cohort rate.

As far as our rationale for doing -- for doing this, starting with the amortization period of 15 years, as you recall part of the reason for doing new regs is simplification. This is partly related to that.

We wanted to introduce a straightforward period without applying different amortization periods to different lengths of programs. So we thought about what would be an appropriate length and settled on 15 years.

We also proposed that the interest rate to use would be that one in effect during the last cohort, last year of the cohort period. Again, this lends some simplification and uniformity to the rate.

Excluding private educational debt and debt owed to the institution from the calculation of the DE rate. This, as you're aware if you read the issue papers and we get in -- we'll get into this a little bit later, but we've moved to a DE calculation that does not require schools to do any additional reporting beyond what is in NSLDS currently, and as you're also aware, NSLDS does not collect that data.

So if we're going -- and simplifying the rule so that -- and reducing burden so a school is no longer required to report. Remember, we're talking about not just GE programs now that have been reporting, but all educational programs at all institutions.

So to not have that, then we're using the data that we currently have and the data related to educational debt and debt owed the institution as not available to us. So under this proposal, we would not include that.

Title IV loans to military-related deferment status. We didn't think that was necessary. Students in the military deferment status are earning, so we didn't feel that was necessary to include.

The transition period. Due to the fact that we no longer have -- we no longer have sanctions, proposed sanctions related to DE rates, we concluded that the transition period was no longer necessary.

Okay. Why don't we move into the regulations themselves? Moving on to the first major area that's more than just cursory changes is the moving to a 15-year, or amortizing over a 15-year period, as opposed to what was previously -- what is in the current regs. What you see there, we've given you those lines. It's struck out. But you can see what it is currently. So maybe we should start with that, that topic.

MR. RAMIREZ: What are your thoughts on that 15-year?

(Off mic comment.)

MR. RAMIREZ: Oh, you go ahead. Go

ahead.

MR. MIRANDO: Tony Mirando with NACCAS. Thank you. Thank you Gregory. So in listening to you describe this debt calculation and repayment process, is it that we should assume that the earnings metrics is still going to remain the same?

MR. MARTIN: The question was will the earnings remain the same, and the answer is yes. We would collect earnings from Social Security the way -- or that matches the same way we do now, yes.

MR. MIRANDO: So all the flaws that came with that remain the same?

MR. MARTIN: Well, I don't know if I'll quite bite on that, but yeah. The protocol remains the same, yes.

MR. MIRANDO: Is that something that you all would consider looking at, again because -- and again, I'm just kind of trying to look at this from a very middle of the road kind of process. If, you know again if people belong to a -- or people work in an area where a good portion of their income could be income that they choose not to claim, then are you using again a metrics that is going to be, you know, one that one could be assured that you're getting the right information.

MR. MARTIN: Some of this gets into other issue papers that we're going to go -- going to look at, and you'll see how we -- to be honest with you, we've struggled with that concept and where do you get the earnings from? If not Social Security, I mean some people have posited BLS data.

But again, this is a program-specific calculation. We could probably argue ad nauseam about how useful BLS is or whether it should be used. But we did consider that and we put that aside in doing, proposing these regs.

So then looking at what you have, that leaves you with a Social Security, with the Social Security earnings that admittedly don't reflect sometimes income people have had from gratuities, and especially in those industries where that's quite common.

We, as you'll see later on, we did

remove the appeals. We do have some disclaimer language in the notices that will replace warnings that we'll get to when we get to that portion. But in large part to answer your question yes we, in considering all of the alternatives, decided to retain Social Security earnings as the best, as the best measure of earnings.

MR. RAMIREZ: Jennifer.

MS. DIAMOND: This is Jennifer Diamond. I think with the issue of the 15 year, bringing everything to a 15-year amortization period, I mean considering that so many of the programs currently covered by the rule are, you know, one year programs for certificates, for associate's degrees, the idea that a student signing up for a one year program, it's reasonable to think that 15 years would be reasonable for them to have loans throughout that period feels really excessive to me.

I understand the need for simplification, but you know we're talking about a lot of students who are again like vulnerable, low income borrowers, and keeping them under the pressure of a loan for 15 years and calling that a success feels irresponsible.

So I think being more nuanced about it and considering that there are very different kinds of programs, the vast majority of which are short-term right now is important to consider in the rule.

MR. RAMIREZ: Chris.

MR. MADAIO: Thank you. Chris Madaio. I agree with what Jennifer just said. I mean I think -- I mean the Department, right, calls the ten years a standard repayment plan. I mean that's what students are kind of defaulted into, and obviously there's a lot of -- many students obviously are on much longer repayment plans than that.

But it kind of seems weird that if ten years is kind of the default standard for students, that it's not the default standard amortization here, especially for associate's degrees or certificates, that I don't think those students are contemplating paying those off in 15 years. So and then definitely there is something different about doctoral and professional degrees.

I'm sure Jennifer is ready to say this, that those students know they're going to be paying those off for longer than ten years, right. I mean especially lawyers clearly, you know, generally think about that.

So I mean as Jen just said, the need for distinguishment is important. I don't think 15 years is an appropriate catch-all for everyone. I think the 10 and the 20 from the prior rule was the appropriate metric.

MR. RAMIREZ: Okay, Todd.

MR. JONES: Just wanted to cover a couple of issues here. In talking about where to get earnings, and I think we have to -- we have to address that, because it's really not addressed elsewhere, the answer of what other data can we use really simply begs the question as to whether this is an effective metric.

It was a flawed metric when it was done eight years ago, but it's a more flawed metric when you expand it to include a larger pool of programs, particularly programs that are not designed to one specific discipline, because of the differences, the wonderful differences in the lives that people choose to have after obtaining an education.

So let's use a few examples. If you want to be a forester, you want to be a forest ranger and live in the middle of nowhere and earn very little but you get free housing and you get to commune with nature, see the seasons pass, there's a quality of work that is a trade-off for the pay you get, because you don't earn much.

You want to watch for fires out in Alaska or Washington. It's a wonderful life for those who want it. But this would create a bias against those who are choosing that, because only cash remuneration is what counts, or that which we can translate into forms of cash compensation. You want to join the military, you know? Part of the trade-off of military pay, just as a pay issue, is you do get free housing.

You get free education for your spouse and your children if you serve a significant length of time. You get a wonderful pension system with a set retirement date, and you get to go to the

PX. Those things offset the fact that you might be able to get higher compensation elsewhere.

If you're from an institution that serves a significant chunk of those who in the market are choosing lower levels of compensation, you may see a skewing. What about acting? I talked about this last time.

Are we telling people you're no longer -- because implicitly, to an institution, it is wrong for you to train people in the fine arts knowing that some of your folks are going to wait tables for five years waiting to make it?

You know, how many of the people who stand up and get trophies on stage and are shown in glamor magazines talk about yeah, I was a carpenter, a carpenter's assistant to make ends meet. I waited tables. I was a nanny. I mean these are not highly compensated forms of work, but it's also a trade-off for the career that you choose.

So the if not, why not reminds me of the old story about the drunk looking for his keys under the lamp. You say well why are you looking for your keys there? Didn't you lose them in the alley? The answer is well yeah, but the light's better here. Well, the data's better here, but it's not where compensation actually is.

The other is about like the programs, and we talked about, you know, the 15 year standard. Should it be 20, should it be 10? My only concern about that has to do with the ability to accurately reflect what it's going to look like for a particular person and attempt to apply that is absolutely unfair.

If you were a specialized surgeon and remember, because of the decision the Department made, we're now scooping up a whole range of people we didn't use to take into this accounting.

If you're a specialized surgeon, you could be well into your late 30's before you start paying off your loans because you're still in school. Now you may be making a million dollars a year after that; you may be making $300,000 a year to pay out some very large sum of loans. But you're choosing that, and yet we're supposed to look at debt to income.

So the first thing you want to do is go work for the Public Health Service and make less. We're creating a bias against that. Simultaneously, when we have programs set up to forgive loans for people who go into public service. The problem isn't that there aren't answers to these, the Department isn't doing the best that it can.

The Department is doing the best that it can. But it's attempting to achieve a goal with tools that it lacks the ability to draw fair and reasonable conclusions. I think the reason for that is that the Department chose, instead of casting as it did in the past, a small flawed net over a small group of institutions to instead try and capture all institutions.

So when you say it's only equitable that we try and get everyone in and we have to apply a standard to one because we have to apply it to the other, that's nonsense. Because if you're applying it to all with standards that don't have any connection to the reality of life and choices people should be encouraged to make, then we have, you know, a system that will only breed frustration and frankly cynicism about, you know, the meaning of this entire process.

MR. RAMIREZ: So we're bouncing back and forth between two things, right, the earnings and amortization. At least right now that's what we're doing. What do you all think of focusing on the amortization, to see if there's a way that we could find some common ground? Everyone comfortable with that.

So yes. Let me see a show of thumbs for everyone who is okay with focusing on that piece right now?

(Show of thumbs.)

MR. RAMIREZ: So what I'm -- and Todd if I could, if I could maybe keep it on you for just a second. What would you -- what would you suggest in that, because I heard that -- actually I'm not sure what I heard, because I heard that it's unfair to just put one scale on everybody, but then how do you --

On the other hand I heard just scooping in a bunch of people and to think that you're going to find the one or the one that applies to each individual could be overly burdensome for the institutions as well. So where's that common ground?

MR. JONES: I think the problem is that there is no effective way to do this with debt to earnings, and I think it's because how different programs are. I'll just use a few that are broadly under the scope of institutions I work with.

An RN to BSN program that goes full time for 15 months is fundamentally different than a BSN, Bachelor of Science in Nursing, those who are not getting that, for a traditional aid student who is going to go six years part-time while they're working at Target to help pay for the cost of supporting their family and pay for the cost of tuition.

Which is fundamentally different than somebody who is going to school full time to be a stage actor, which is also different than somebody who is entering, attempting to go full-time with the full intention that they immediately go to law school or dental school.

These are all very different ways of seeking a bachelor's degree. They're going to have very different debt ratios and that's without getting into what is the financial situation of those who are coming into that. My child will have a, because I have a professional job, has a very different likely debt to earnings ratio than a student who is supporting a child and a younger sibling, and so as a single parent with a sibling who is attempting to work their way through at the same time.

It's just a radically different construct, and I don't think or at least I'll put it -- I have to reverse the other way. The Department has to think and come up with a system that addresses these variables. I don't think it can be done, but I'm also modest enough to know that I'm not smart enough to come up with something better.

But I know this doesn't capture it, and I can't offer a suggestion to something I actually think is too flawed to fix. That's another issue. If they can come up with something, then maybe they're all our alternatives.

MR. RAMIREZ: So it sounds like that regardless of what the group decides on, it's going to be somewhat -- it won't be very tasteful, I guess, to everyone in the room. Does somebody have -- does somebody want to try to serve something up that is at least palatable?

MR. JONES: And again, I don't mean that it can't be done.

MR. RAMIREZ: Right.

MR. JONES: And maybe it's five different or ten different metrics. Boy, wouldn't that be nice and confusing. But nonetheless, maybe that is the answer, because what happened before is we had a flawed program structure that applied to a finite, small finite number of institutions.

As a percentage of total institutions, small. Maybe the answer here is to come up with different segments with different kinds of analyses. Maybe there's a -- if the Department really thinks there's a horrible issue of medical schools, defrauding students, then what we need to is have a medical school ratio.

I don't think that will be a good policy, and I don't think that's probably likely, but at least you could come up with that as a separate metric.

MR. RAMIREZ: Johnson.

MR. TYLER: Thank you, Johnson Tyler. I was just going to say I don't -- given that we're not sure even whether these regulations are going to apply, or it sounds like they can apply to everyone, I think you have to have a better targeting of amortization period. It's -- one size does not fit all.

So while it adds complexity, I think you know, the devil's in the details. It's not fair to use a 15 percent, 15 year period for everyone.

MR. RAMIREZ: Jen, Jennifer.

MS. BLUM: So I put my tent up a while ago, but so I do want to appreciate Jen Diamond and Chris and now Johnson on the amortization, and I agree with a lot of what Todd said too. I'm hearing what Johnson just said, I do think that there may be some form of consensus around the amortization piece.

So I will just say more broadly that appreciate that the Department, you know, is trying to sort of make it straightforward or something. But by making it straightforward, you're actually making it less real for the consumer who's going to be looking at the data. So I think -- and you're hearing that around the room right now on amortization.

But I could say the same actually about the interest rate. The fact of the matter is we don't have a fixed interest rate. We have a sort of hybrid fixed variable rate. So relying on just one interest rate for the cohort period is also inaccurate.

And then tuition and fees, which I mean maybe we'll reserve tuition and fees, because I imagine I'm not the only person who has that comment. But my overall point is in the effort to over-simplify the metric and now with it, as Todd is so eloquently pointing out, now with its applicability to every single type of program, now is not the time to over-simplify the metric. Now is the time that actually you, I hate -- I mean I hate to say it on the one hand, which is sort of what Todd's saying too.

I hate to say it because actually the complexity becomes very real, and so all of the sudden -- not all of the sudden, but I think we're all realizing this is extremely complex. And so just to go back on amortization, of course I agree with what Chris and Jen Diamond said about doctoral, but not just doctoral but, you know, at the first professional degree, you know, just to make sure we're clear about it.

That needs to be back at 20 where it was and so, you know, I think they're -- I don't know if there's consensus around the specific numbers of amortization, but at a very broad level it sounds at this table like, I don't know about the Department, but everybody else seems to have some consensus around recognizing that one amortization rate doesn't make sense.

MR. RAMIREZ: Temperature check. Let me see a show of thumbs as far as if the group thinks that there would have to be multiple, more than one amortization rate. Jeffrey, what are you thinking?

MR. ARTHUR: Well, this goes to the comment I wanted to make. If we approach gainful or we approach debt to earnings as a disclosure item, and then we present the data in a -- we talked about the Scorecard format, we present it as it relates to the same program at other institutions, I don't think the amortization period would matter that much, because we're going to --

In fact, I would even go to the point where I would suggest to be more helpful that the better discussion would be at what point the earnings should be used. But I think we could look at a 3 through 10 year, even like a line graph, where here's this institution's line graph, debt to earnings for their program and here's the standard for this program, for all the programs in the country, and then I think you're getting into some meaningful data.

I don't think the amortization period would matter that much. Whatever would make it simpler, 10, 15, whatever. But if you introduce sanctions, then I'm very interested in the amortization period.

MR. RAMIREZ: Bob. Sandy.

MS. SARGE: This is Sandy Sarge. So correct me if I'm wrong. My understanding is that the amortization periods and the interest rates of every loan that is taken out by a student is captured, and the reason why I'm making that assumption is because they actually make their payments and that's how they calculate the payments. So why can't we use actuals?

MR. MARTIN: I could have, and I may just because of a bigger issue maybe have Cynthia come up, one of our experts from FSA. But the reason why we didn't go with that initially, I mean you can see the way the regs work, are now is not using every student's loan.

The level of -- for calculating the rates, the level of complication involved in looking at capturing what the actual interest rates students are paying or amortization would be fairly daunting, which I believe is one of the reasons we didn't go there before.

So I don't think that's going to be a -- we can certainly take that suggestion back. Whether or not that's viable, I think based on what I've been told thus far no. But I will certainly take that back.

MS. SARGE: You know, I think that if I were to think about this ten years ago or 15 years ago when computer programming wasn't where it is today, the robustness that we have with systems, I would say that potentially when you are hand calculating that, that would be difficult. But it is calculated today and that is how students know what.

So I would -- I would say that the data's probably there and once the calculation is done, then it can be applied and then it would be just the system doing it. But I -- so I don't want to -- I mean I would think we have the technology to do it. The question was more do we have the data, and I think we do, so I would throw that out as an option.

MR. RAMIREZ: Chad, Jen and then

Jordan.

MR. MUNTZ: I guess we haven't used it enough. Chad Muntz. I think this plays into the amortization period, that it's going to be the size of debt. It's on page five. It's Section 3.

This impacts public universities specifically. I'm in a system. But it says that "The Secretary may include loan debt incurred by enrollment in all programs, any institutions if the institution's under the same control." So some systems have community colleges and public, four years; some just have public four years like mine.

But with the swirling, is that really going to be part of the loan calculation as you switch between programs or earn your associate's, go to the bachelors and how would that play into the overall metric? And then of course then that will impact the amortization time, because you're going to have a larger loan debt balance here as well. So we might want a longer period of time.

MR. MARTIN: Longer meaning than 15?

MR. MADAIO: More than 15. Well it depends on just how much swirling or how do you know which program has been completed? So if you're under the same control and you've done the two year, then the four year, then the master's, then the doctorate, what are we going to combine in, because my institutions have all programs in all different levels there?

MR. RAMIREZ: Jen and then Jordan.

MS. DIAMOND: Actually I might --

(Off mic comment.)

PARTICIPANT: I actually think Greg, if you don't mind, I think this was -- this was intended to address systems where students at the same degree level moved within a control, and they were concerned about certain institutions that were not ethical, moving students from one associate to another.

But I believe the rule still reads that the exclusion from associate to bachelor or undergrad to grad remains. Associate to bachelor may be more of a problem, but it's the Secretary's discretion I guess. Am I reading it right Greg?

MR. MARTIN: Yeah. That's an accurate assessment. This was not -- this has been there before and remains basically as the tool. Remember, it says here the Secretary, "However, the Secretary may include loan debt." It's basically an anti-gaming.

PARTICIPANT: It's an anti-gaming, anti-fraud issue. It's not going to address --

MR. MARTIN: We reserve the right to do that where we -- where we find that this is happening in institutions. I don't think we've done -- I don't think we've invoked it thus far, but it is there as a stop gap to that.

PARTICIPANT: Great, thanks.

MR. MARTIN: Not intended to be any more than that.

MR. RAMIREZ: Yeah.

PARTICIPANT: So I wanted to address -- I forgot for a second what I wanted to address, but Jeff's reference again to the Scorecard. So I do want to point out the Scorecard perhaps purposefully by the Department only applies to undergrad. So I just want to -- so it would be a whole new universe for the Scorecard.

So just when we talk about the

Scorecard, it doesn't cover the extent of programs that would be -- that were covered under gainful. So I just want to make sure that we all know that. I do think that's relevant.

And then on the sort of -- I have to respectfully disagree with Jeff about the use of one amortization. I mean if the whole point is to educate the consumer about what their own situation might look like, and of course it's always going to be a "might," because each student is different and each situation is different.

But if we're trying to create the median or the -- what something might look like, that 15 doesn't make sense for all programs. It just -- I mean it just doesn't. So the sort of -- and the over-simplification for consumer purposes in my view just whether it's in the Scorecard or wherever it is, just really doesn't make sense, and it again, just to Todd's point, it just does not take into account the richness of what we offer in the country in terms of educational programs.

MS. MILLER: Mark, did you have a response?

PARTICIPANT: Just Greg, I guess I have a question, because we're kind of not getting to the point. Does the Department -- well, I'm going to say it to you differently. I believe the date is going to show that graduate programs overall are going to have very, very high debt to earnings.

So in order to address amortization, as Todd's point we'd have to address what year we're looking at the earnings, because the earnings 18 months after most graduate degrees is sometimes lower.

And so I'm trying to figure out how we can address the complexity of the whole thing. I've been talking to some of my fellow members, but because all the points are interrelated, it's hard to have the discussion.

MR. MARTIN: Yeah. I can see there's not -- and we didn't come up with an easy way of doing it either. I mean I think any way you do it, you give something on one side or give something on another. We're certainly willing to take any suggestions anybody has. This is our proposal.

We're not 100 percent wedded to it.

So if you have a better way of doing it or can find another way of doing this that we can accommodate or accomplish, then we're willing to entertain it.

PARTICIPANT: So can I ask a broader question then. Do you think that -- does the Department have a sense that broad swaths of higher ed will be defined as a low performing under this proposal?

MR. MARTIN: No, we didn't consider what -- in crafting these proposed rules, we didn't consider that a specific group of programs would be considered low performing.

PARTICIPANT: So you crafted it theoretically without really looking at the underlying impact first?

MR. MARTIN: We looked -- we crafted it with the underlying premise being that we would provide this information to all students in all programs.

PARTICIPANT: Okay, thank you.

MR. MARTIN: And didn't really go

beyond. That was our -- that was the premise we started from.

MR. RAMIREZ: Jennifer, you wanted to comment on that?

MS. BLUM: Actually, I just want to correct something that Mark said about the doctoral level and above in terms of the debt to earnings ratio. Actually the fact of the matter is is that under the current metric with 20-year amortization, only five doctoral and first professional programs in this country failed.

So I actually -- the whole reason I'm sitting here talking about doctoral is actually not because I'm concerned about the results as a nation. The reason I'm bringing it up is that I think that the focus of where we should be from a student and consumer standpoint is not at those who have already gotten their bachelor's and master's degrees first, because their level of education and knowledge about the loan system is quite different.

I'm not saying, by the way, that there shouldn't be transparency around debt. I'm not saying that there shouldn't be some form of disclosure requirement in general. I'm just talking about the debt to earnings metric is a different -- it's a different consideration for the consumer, when they're applying for a doctoral or first professional degree.

So I just want to be really clear. The results and I'm looking at them now, there are five failing programs at the doctoral, and only eight at the master's level. So at the -- and I haven't done the math admittedly on the 15, you know. If you move it downward, I know what it is currently.

So I just want to clarify just in case there was confusion about why I'm suggesting it. Now I understand that there are high debt programs for medical. You know, I understand that it does get to be. But I will say the consumer of those loans is a different consumer by the time they get to that point.

MR. RAMIREZ: Let me get Jordan, Sandy and then Tony.

MR. MATSUDAIRA: So I wanted to offer a couple of different thoughts. One was just about the consequence of this particular aspect of the rule, which feels pretty technical. So you know, perhaps for people that haven't waded through the data site of this as much as others. So the amortization rate, you know, one way to think about it now is take certificate programs now, which currently have a ten year rate and you're going to make it a 15 year rate instead.

So essentially what that does is it gives you 50 percent more time to pay off a loan, a given amount of debt that you've accumulated over time. So your monthly payments roughly speaking is not quite right, but roughly speaking are going to be about 50 percent less. So the debt to earnings ratio is going to decline by 50 percent.

So if you have a 12 percent rate before now, it's going to look like you have a six percent rate or something like that. And the opposite will be true for graduate programs, where essentially instead of 15 years you have 20 percent longer. So you know, it increases your debt to earnings ratio by like a third basically.

So that's kind of the implication here, is that this makes the rule tougher for certificate programs, or sorry, easier for certificate programs and tougher for graduate level programs overall, and you could have accomplished the same thing by jut having different acceptability thresholds for the different things.

I think rather than having a different threshold, I want to ally myself with others who have said having a different amortization rate makes sense and one reason, there are others. But one reason that that's true is that the longer the length of a program, you know, people who study the labor market recognize that, you know, people's wages usually go up, you know, both if you are exposed to high quality training programs, but also just with experience on the job.

Generally speaking this isn't always true, but when you're in a longer program, you usually accumulate less labor market experience over time.

So it takes a little bit longer for the investment to pay off for that reason, because your earnings kind of take a hit for not having exposure to just, you know, be working and having your wages go up just from having more experience.

And having different amortization rates is one kind of way to handicap for that, you know, a very sensible way to handicap for that kind of phenomenon in general. I wanted to speak to Sandy's point about why don't we just use the actuals of what people are paying, so that it's absolutely feasible to do that in the context of the Department of Education data that we have.

One reason why you might not want to do that is suppose you have two programs that people have exactly the same amount of debt, but one program was less high quality and so people struggle to repay their loans going forward. So they might switch into longer repayment periods precisely because, you know, they aren't earning as much and they're having more difficulty paying.

So it's going to look like they have lower kind of monthly or yearly debt service ratios, but that's going to be an artifact of the fact that they're struggling. So that doing the actual thing could actually help low performing programs in that sense, which is why we don't do that in the current rule.

Let me just say one other thing about Todd's point about debt earnings, kind of the whole structure of the rule not being useful overall. So here, I agree that earnings is a limited view of the value of higher education. But that's not what this rule is about. The rule is about consumer protection. If you borrow to go to school, you need to repay it with dollars, like not kind of sunshine and good feelings.

And the rule is just identifying programs where you might not earn enough to repay the debt that you acquired, and I think that's very relevant and it's relevant across the full sector.

MR. RAMIREZ: Thank you. Sandy.

MS. SARGE: So from a -- there's -- I understand what the Department is saying about ease and I hear everybody's point. I mean to some degree we have a lot of moving elements of these calculations, and mathematically if you start to like stop the movement on some of the elements, potentially it allows you to then highlight the parts of the calculation that really are detrimental.

So for example if we left it -- if we say okay, we're all going to use the same rate and we're all going to use the -- in that cohort, we're all going to use the same rate. We're all going to use the same amortization period. Now you eliminate fluctuations that give people the opportunity to say yeah, but I really took ten years but, you know, whatever it is.

Jordan, I appreciate your point. You make a good one, but I think that applies no matter what way we try to get this right. There's always going to be somebody who's going to figure out a way to get around it. It's just the way it is. So then the question comes back to his I thought very relevant point, is what are we trying to --

Maybe it's just me. There's so many good ideas and thoughts going on that I'm almost losing track of what's the real point here. Are we supposed to be providing students with information that allows them to make good decisions about where to go to school? Are we supposed to be giving students information about whether or not they'll make enough money to repay their debt? Are we trying to say that these programs that fail or not acceptable or below performing or bad? Are we -- I'm sorry. I'm just -- I just would like to hone it back and maybe somebody could help me, remind me what are we really trying to do here? Maybe I'll throw it to Greg.

MR. MARTIN: Well, I mean the way we see this is we're providing, under this -- under this disclosure regime here, is to provide information to students at all that would be attending any program at any institution, giving them meaningful information on which they can base decisions to attend or not to attend that program. That's really what we -- what we're -- how we're approaching this.

And then I mean everything -- basically, you know, how we term the rates, whether it's passing, failing, whatever. How to -- we did determine we need to contextualize whatever the information we give students to some way, as to make it as meaningful as possible. That's really where we're -- where we're going with it.

I mean what will be -- we start with the premise that we'll produce the rates. They will be published, they will be disclosed. At that point, what do they mean? What do they mean to students, and how can we make that as meaningful a measure as possible.

MS. SARGE: So just to follow up on that, thank you. That does kind of bring it back. I think I'd like that on a white board somewhere, so we can point to it throughout the week and then the next week that we're here. But with that being said, we are trying to -- and maybe this goes back to Issue 1 about the language that we're choosing to use.

By using -- in my opinion by -- what you're doing is you're establishing an arbitrary or I'll say from my perspective potentially an arbitrary percentage, upon which this calculation will be compared.

Eight percent on annual income; 20 percent on discretionary income. So that's your benchmark we're going to compare to, and then these calculations however they're done, are going to be either below or above that benchmark.

That would need to be explained to some degree. We're saying, you know, clearly stating to a student we don't think you should spend more than eight percent of your annual income paying back your debt to get an education. Now some would argue, especially these days where one year of education equates to one car in some cases. Paying $25,000 for a car was never imaginable 50 years ago either.

You weren't even paying that for a home. So it's like who's to say that that eight percent or whatever that judgment is, and I'm not trying to get into the nitty --

VOICES: Gritty.

MS. SARGE: Thank you about this. But what I'm just trying to say is we're really trying to provide a statement of context to potential students. So all of this, what's the ah-ha moment?

What is it that a student's going to

read or see in these calculations that go ooh, I need to think about that? Is it hey, I know you're really passionate about educating or being part of early childhood education, but it's going to take you longer to pay back this debt.

Are we saying that if you work really hard and become a doctor and you're going to spend 15 years in school, you're 15 years out of the market. You're going to get in there. It's going to take you a while to pay back all of the educational debt. You should be prepared for that.

A lot of this that we're trying to regulate here, and I'm sorry I swear I'll get off my soapbox. But a lot of this is forgetting the fact that none of us in this room, with the exception of those representing the workforce, can influence things about earnings that are really relevant, you know.

There was -- we just got out of a Great Recession. While unemployment is at some of the lowest rates it's been certainly in the last eight to ten years, the average wage has not gone up significantly, barely covering cost of living increases. So those are things we can't control. So what are we really saying to a student?

Oh, and by the way, the information is looking backward, not forward. So I want us to remember that we're trying to make -- we want to make these regulations where they are meaningful. I agree with Todd, you know. What Todd was saying earlier is we're taking what was in his words, I'll put it on him, a flawed metric and trying to spread it across every. We need to get to a better place all the way around. I think that's it.

MR. RAMIREZ: So --

PARTICIPANT: I just want to respond to that, and I'll just say this from our perspective. First of all, with respect to any benchmark or any, you know, and I -- maybe I'm being a little too philosophical here. But we ought -- every, any benchmark you apply to anything, certainly there should be data and research involved with how you reach that.

I think that in the preamble to our 14 regs and to the proposed rules for that, final rules, we did give a lot of -- provide a lot of data and reasoning for using those amounts. Ultimately, whenever you're going to come up with any rate you're going to apply to anything, why is the speed limit 65 and not 90? Why is the drinking age 21 and not 20 and 245 days?

I mean people could come up with a lot of data maybe to support why we've done what we've done. But and I think in any society, any governmental structure, benchmarks are applied. We're trying to, and again, I don't think there's any way once we have those benchmarks, publish this data. I would agree there's no way to 100 percent contextualize it for students.

We'll try to put some context around it. But in order to take into account all these intangibles you bring up or what the meaning of the program is to somebody or we had the example of the forestry student who -- to whom being out in the open and having that type of a job is more important than material things.

I get all that. But at the end of the day, students still have to repay debt, and they have a certain amount of earnings to repay that debt. I think that's -- and we need to inform them of what that is, and to a certain extent they're going to draw their own conclusions around that, and I think that's where we are. I'll leave it at that.

MS. SARGE: And just -- I just want to just say one little thing, I promise.

MR. RAMIREZ: Quickly.

MS. SARGE: I agree with you completely on benchmarks, and that's the whole point why I feel pretty strongly about not opining, as we will be, based on language we choose, that that benchmark is anything more than just a line in the sand, and you're either above it or below it. Putting on any kind of quality language or quality descriptor would potentially be not fair to anybody, the student or too, because it's not a quality measure.

It's simply a comparative to a benchmark established for good reason potentially, and that should be explained why, and then that student can decide if that works or doesn't work for them without it being a quality indicator.

MR. RAMIREZ: So we have Tony, Todd, Javier, Neal and Kelly.

MR. MIRANDO: Thank you, Tony Mirando. So again as usual, I'm sitting back here and I'm listening to everybody go round and round in circles, and you know, everybody's got a good point of view.

I'm sitting here and I keep coming back to the student. I was a student for so many years and I remember what that was like, and this gets very confusing.

But what you're proposing to do is to provide students, potentially provide students with potentially flawed, inaccurate information for them to make a determination as to where and what they want to do with their lives, and lives which at the time they're making this decision may not be -- they may not be in a good place to begin with, and they're hoping that the education will take them from where they are to where they need to be.

And that just really doesn't feel good to me, that we would be potentially giving students information that may or may not really help them. And so you're looking at words like pass and fail based on information again which may or may not be accurately reflecting a good program, because the information you're using to determine that is based on information that's -- we're not really quite sure how you got to that.

Repayment process, payment years that somebody's just coming up with. How do you get the earnings?

They may or may not be accurate based on whether or not they're full time students, part time students, earning a W-2 or self-employed, whether or not it's a single mom working in an inner city or some other individual working out in the burbs, working part-time but has a spouse that's making lots of money and this is just something to keep them busy while the kids are in school or maybe for some other reason.

But for me it looks like you're potentially going to penalize good schools that would help good students get from where they are to where they need to be, and if we don't do this right, we're not really fixing the problem. That's what I'm afraid is happening here.

We're not really fixing the problem and it's just -- it really hurts, it really bothers me. I just can't see how we take this information, which is what we're seeming to wanting to do and make a good system out of it, when it's supposed to be doing one thing: helping students. I don't see how that happens here.

MR. RAMIREZ: So Tony, the way I'm understanding is we're trying to balance, right? We're trying to balance to get the students that information that they need without creating a burden on institutions as well, right? So how do we find that sweet spot where we get that relevant information to them?

So I'm going to leapfrog over Todd for a second to ask this question. For this, for this issue here, because I am hearing the complexity of it, does it make sense to see if there's a subcommittee that wants to work on this, and try to bring back a recommendation to the full group? We could try to incorporate some time into --

whether it be that we break an hour early or something along those lines.

But then give -- if there's any other subcommittees that form, give them a little bit of time to talk and bring back a recommendation?

MR. MIRANDO: And I appreciate us wanting to do that. But like I said the first week we were here, and I'm the guy that likes to use analogies, only because I'm a very simple person.

It's like trying to say to me I want to buy a car that's never been in accident. So you're saying let's go take that car there that's got a bad -- had been in a bad car accident, and let's just give it to the best auto body people in the country, to see if we can make it look like that.

The problem is you can't take what appears to me, and I'm not hearing anybody here say so far that the old GE that we're trying to get rid of was a good system -- I've not heard one person here say this is a good system -- and try to make it a good system. And again, I know that you're saying all right. Well then what do you think we should do? I don't know. I don't have an answer.

But I can tell you this. So far, I've not heard one person come up with a good system. If it's to protect students, I don't see it happening.

MR. RAMIREZ: So what do you all think though, because I don't think one of the choices was do nothing. So with that understanding, what do you all think of the idea of a subcommittee for this?

PARTICIPANT: Subcommittee for what, the amortization piece?

MR. RAMIREZ: Yes, yes, amortization.

PARTICIPANT: But I mean --

MR. RAMIREZ: If you have another suggestion.

PARTICIPANT: Well, I mean I just think that we're all saying -- I mean we aren't all in agreement, and I'm not sure you're going to reach consensus. But I think most of us, not all us, but most of us have said you shouldn't have a one-size-fits-all, and we have a prior reg.

So I'm not sure -- I mean with all due respect, I'm not sure we need a subcommittee, because I think we know roughly what the numbers were from the data last time. I mean I'm not -- unless you want us to come up with a whole different set of amortization rates. So I'm not sure -- I mean just my own opinion, and I mean we haven't even -- not to amortization rates. We haven't even gotten to tuition and fees, interest rates.

I mean I have a list under this issue. So I mean we can do a subcommittee on each one, but I'm not sure how fruitful that is.

MR. RAMIREZ: So I -- all right, Greg.

MR. MARTIN: I would like, if we could, irrespective of the interest in the subcommittee, if there is interest in that or if people want to put something forward, I kind of view the amortization and the interest rates as linked, you know. So I mean if you have -- obviously I think objections to one would probably flow over into the other as well.

So if we could view those -- they're separate, but I -- I know that. But if we could look at them as sort of one issue. What I'm hearing is, and maybe I got this wrong, is that most folks would prefer -- most, not everybody -- would prefer that we individualize it per student amortization and interest. Barring that, people would be more inclined to keep what we've got rather than move to what is proposed. Is that -- that's not what -- okay.

PARTICIPANT: I mean I'll speak for myself. The per student, although I understand that it would be perhaps most accurate, I actually think that's complex for different reasons. I mean I'd have to do the analysis, because we've never done that analysis. But that's complex --

MR. MARTIN: And the current rule?

PARTICIPANT: Under the current -- oh, and now you're asking about the current rule? I'm sorry.

MR. MARTIN: Yeah, about the current rule.

PARTICIPANT: I mean, I'll only speak

to the 20 percent for the doctoral and first professional. I mean I think that there's consensus around that 20 percent so --

MR. RAMIREZ: So I understand that solely amortization may not work. So linking amortization and interest as a subcommittee, to try to bring something forward. And even if the recommendation is to keep it more aligned, more along the lines of what is currently in place, so be it, right, if that's what the group ultimately decides on.

But at least to help hone this down, because I don't know if we get there doing what we're doing right now.

MR. ARTHUR: This is Jeff. But doesn't also the time period that we're looking at after somebody graduates coming to the -- I mean it's the same equation. So I think we're talking about at what point incomes is measured, interest rate and amortization. They're all tied.

MR. RAMIREZ: A point that the calculation starts? Is that what you're saying? Sandy.

MS. SARGE: So I was just -- this is Sandy. Tony to your point, I put myself back in my student shoes and said what would have been interesting for me to hear going to school? And I don't -- it dawned on me that maybe what I would have liked to have heard would have been how long is it going to take me to really pay back this debt.

Not what the debt to earnings ratio is, but we're looking -- I'm looking at 15 years. But if I do this degree, if I do an RN degree versus an accounting degree, same school let's just say, different costs, whatever, I'm going to -- it's going to take me eight years to pay back this debt under one program, and it's going to take me 15 years under another.

Maybe at that point I'm not really married to accounting. I could be a nurse. You know, I might change my decisions. That's an easy-peasy type of thing to think about. Maybe we do away with this complicated calculation and go to something that's more straightforward.

The calculation is behind the scenes. You'd still have to get there, to figure out how long is it. But we would have that data. We have that data that says how long has it taken people in the past to pay back this loan. We have actuals on that and potentially we could come up with a calculation.

But then at least that would -- might be something that a student would look at and go maybe I'll make a different decision based on that. Just a thought, throwing it out there.

MR. RAMIREZ: Yeah, Tony, go ahead.

MR. MIRANDO: So thank you for saying that. I mean, you know, and this was a long time ago when I was going to school for my doctorate. But I remember when I was in the admissions office, and you know I was the type of kid that would definitely go and check things out, as I want to believe most students today are, you know. They're smart and they're going to look, is that you know you say, you know, here's the average career person.

This is what they make in the field, and this is the average debt across the whole industry, and do your math and let you know.

Because again, it depends on where you come in, how you come into the program, where you're at, whether you plan to work your butt off when you get out or whether or not you're going to work part-time, whether or not this is something you want to do now because you have the time, but you have no plans on working and maybe until five years from now. But you know, I'm not getting any younger so I want to get it out of the way now, and these are real-life decisions people are making.

So you know, instead of coming up with things which are negative, potentially untrue, creating havoc in people's lives, come up with just generic, true statements that the average individual is going to understand and be able to make an informed decision. I mean, what's wrong with that? It's how I think most people do things today.

MR. RAMIREZ: All right, thank you. Todd.

MR. JONES: Well, I guess in a sense we're moving back and forth around the issue whether we're having a subgroup or not. So I'm going to go back to some of my original comments about what I want to get to, because I think they go to this. But I also want to end with a question for the Department.

You know, going back to Jordan's comment, I think that ties into this. The issue is not debt per se; is it? I mean I think we're all very comfortable with the idea that people can take on huge amounts of debt if they end up having huge amounts of income to overcome that, and even for certain professions it is more than appropriate to stretch that out for a period of time.

I would say what makes -- so really the issue here is more debt default -- is it not -- and percentage of income. Because if you're making a half-million dollars a year as an orthopedic surgeon, and your debt payoff is still a very long one, that's okay because at that percentage, at that level of income, you're more comfortable paying a higher percentage of your income of debt than you are if you make 20,000 a year, presumably.

So it's really about default, and I guess that then takes us to: the calculation of these rates keys on percentage of program completers. Because if you have a program where those who complete and are successful earn money and do well, and you have another chunk though of that, of students who don't complete the program, who then skew the data down, what you end up having is a higher default rate and you have a higher debt to income rate because average income is depressed because you have a number of people who dropped out of the program -- presumably they're being calculated as a part of that -- that may or may not be a true portrait of the program.

Now that's true in the existing system, but it's also true when you expand it to the myriad of other programs that we're talking about here. And that's why this is -- I reject the premise that just because the Department has thrown this out there as that we must have this kind of structure and this kind of analysis.

I think one of the things we're talking here, it's not that there's consensus that we shouldn't have this. I know that's not the case, but I also know there's -- I do believe there's a consensus that this is incredibly complex and what the Department has offered is nowhere near the level of analysis and sophistication we're going to need to do this, and I'll come to that with my question.

I want to respond to Greg's comment about, well, we have to have a standard and we have many standards and it's what are they based on, and that is absolutely true. We have drinking ages, we have draft age, we have age you can drive. Some of those vary by state. Some of them are imposed by the will of the federal government, conditioned on federal receipt of funds.

But all of those that we're talking came through a democratic process where that's the great thing about legislators. They and the executive have the ability to be arbitrary to a certain extent, making judgments based on whatever data satisfies them. An administrative agency has to use, in a sense, a higher standard and there needs to be some definitional relationship between the standard and what one's seeking to be achieved.

Let's use housing for example. There

is a maximum percentage of debt that one can have compared to income as part of the calculation as to whether your home loan is federally secured. You can't cross that threshold. Now where do these numbers come from? The numbers for these come from what is the likelihood of default as calculated by agencies based on historical practice of who is most likely to default. The agencies came up with numbers that were based on historic practice.

I would love to see the analysis the Department has done to justify the numbers that were picked out of the air for this. I would love to see it from the previous administration that picked the previous numbers out of the air.

I think as a practical matter, just putting a judgment on -- even if they can explain why this line, it tipped below this percent, or we saw this is an inflection point. I would be more than satisfied with that, which then leads me to -- and that, I know, is a difficult calculation.

Which leads me to a question that I don't think has been asked yet, and so I'm going to ask the Department. If we're taking every program -- educational program in this country -- and cohorts of ten, we are probably talking hundreds of thousands of program calculations per year, maybe a million. But at minimum, hundreds of thousands.

Has the Department done a run to see it could actually accomplish this and do so in an effective, timely manner and dealing with data quality issues, and dealing with posting it? And how many FTE is that going to take, and how long does the Department think it will take to move to do it? Because it's not like we're going -- it's like we're going from building five cars a week to 5,000 cars a week.

This is a very serious undertaking, and I think it's incumbent upon the Department to tell us how is it prepared to accomplish this if it's -- the Department is proposing this?

MR. MARTIN: Oh, I can say no. Today we haven't done a run to see, to -- I assume what you're asking is have we tried to look at every program at every institution in the country and see how that would play out in advance. No, we've not done that. We would be taking the data from a system that we already have up. It would be from NSLDS.

The data, there is data in there. Yeah, it is admittedly a more -- a complex task. We at this point don't -- we do understand rather that there are some things we have to consider surrounding, you know, majors and things like that. If students are in it, it becomes more complex as you go -- as you go to taking into consideration more traditional programs.

But we do believe we can do it. We don't -- nothing so far to suggest that we can't. But no, if the answer -- if your question is simply have we done it. Thus far, it's only on a test basis, no.

MR. JONES: Well, to follow up that question, one of the things if you look at schools: schools change the nature of majors and majors every year. So every cohort, we're going to have subdivisions of existing cohorts. We're going to have the creation of new programs. That's going to happen every year, and School X will say we're doing this and the Department's going to say no, you really didn't change the program there. I'm keeping you at Cohort Y.

That's -- I understand using the student loan data system to make calculations. That's the easier part. The harder part is making the qualitative calculus about the nature of programs and the quality control the Department will have to run.

MR. MARTIN: We are aware there are challenges involved with that, and I -- you know, I can probably speak to that in greater detail. I'd need some time to talk to our staff, but I can speak to that in greater detail if you want. But yes, we -- to again, you know, admittedly we haven't done it for -- no, we haven't looked at every program and done those numbers yet for the entire universe. But I will -- I will talk to some of our people and get you more information.

MR. RAMIREZ: So I'm looking at basically one of three avenues that we could go down right now. One of them is just keep continuing and go through the queue, do a subcommittee or finish out the folks that we have here right now and then do a series of temperature checks. In this way, the Department could get a feel for where's the greatest area of agreement and then use that information as they go forward.

So those are the three avenues that I see right now. Is there a preference for one or the other? Just to continue going through the queue.

Yeah. So we could do a subcommittee or we could take a series of temperature votes and give that -- so that way, the Department has that information.

(Off-mic comment.)

MR. RAMIREZ: Oh okay, yeah. So let's see who's in favor of doing a series of temperature checks. That we'll be doing a series of temperature checks, right? We'll just see where you're at on certain positions within the amortization, and that way the Department has that information to move forward. So show of thumbs if you're okay with that approach.

(Show of thumbs.)

MR. RAMIREZ: All right. So I didn't see any thumbs down on that, right? Let's finish out. We have Neal, Kelly, Jen and Laura. No more -- Gannon's on there, right?

(Off-mic comment.)

MR. RAMIREZ: Okay, and Gannon, and then we'll close it out there and then we'll just take a series of temperature checks and see where we're at, okay. So Neal.

MR. HELLER: Good afternoon. Neal Heller. I guess I just wanted to speak up for us non-degree-granting institutions, those certificates and diplomas that some have alluded to, and say that I think in many cases, we're giving short shrift to those diploma and certificate programs.

I think that it's all relative, and I'm certainly happy with the 15-year amortization that the Department has proposed, because it is a much fairer assessment of how our students are going to repay their loans. I don't think, and I'm not going to say it has nothing to do with it, but, you know, the length of program is just one factor in how we determine what the amortization schedule should be, and how we judge the repayment.

I mean my students have no expectation of becoming a doctor or a lawyer or an accountant, going to school for six, seven, ten years, going into debt for hundreds of thousands of dollars and thinking that's okay because they're going to make a half a million dollars a year.

So the average debt for my student is probably right around $10,000, to use round numbers. They go to school for a year, and what is the harm if they were judged as -- or the school is judged in terms of them repaying that over a 15-year period as opposed to a 10-year period?

Jordan stated it very clearly. It's a 50 percent reduction in their monthly payment. Well that is extremely meaningful for a graduate of a cosmetology school. They don't have an expectation of making a gazillion dollars. They'll be very happy if they're making 40, 50 thousand dollars a year. That is a success story, a huge success story, depending upon where they came from before.

So I certainly don't want us to go back to the current 10- and 20-year amortizations, and I also think that 15 years is much more reasonable and realistic for certificate programs.

I'd also would like to say that there are many around this table that, really, their only experience is with degree-granting institutions, master's degrees, doctorate degrees et cetera, and let's not forget about, you know, sort of the real essence of what vocational training was supposed to be all about.

And that was specific training to get a specific career path started, and that is what these certificate programs and non-degree-granting programs do, and do very well. I think that that 15-year schedule is perfectly acceptable, and I certainly would not want to go back to 10-year and 20-year.

And I understand what the Department is trying to do. It is a very complex issue, and I frankly don't know how you come up with a 100 percent fair way to do this. But certainly I'd just like people to realize that everything is relative, and that certificate or diploma is just as important to a graduate from a cosmetology school or a beauty school or a welding school, what have you, as a degree is from many of the schools that are being represented here today. Thank you.

MR. RAMIREZ: Kelly.

MS. MORRISSEY: So I think what's happening here is we have a paradigm shift from a rule under which we used to apply sanctions, to a disclosure regime. And as we look at it through that lens, what we're doing is measuring the quality of a program using the outcomes of only the borrowers who attend that program.

So in doing that, I think that there are some data points that are really absent in these metrics, and that is informing students about how many of the attendees of each program have borrowed in order to attend that program, and there are many reasons why there could be a high number of borrowers or very few borrowers, and those relate to the cost of the program, the economic background of the students who attend a certain school.

So I think that I hear Greg continue to say that the Department would be contextualizing the data that is being supplied. But I think that's of the utmost importance here, because you could have two sets of data from the same program at different schools, but at one school you could have a very high percentage of students who have borrowed in order to complete that program, and at another school you could have the same program where you have a very small cohort of borrowers.

But at the end of the day, you're applying a quality standard to both of those programs that really includes a very different cohort in both regards.

MR. RAMIREZ: Okay, Jennifer.

MS. BLUM: So I actually -- sorry, Jennifer. So I actually will probably do -- I want to keep my tent card up or reserve the right later. But I actually wanted to move -- not move on. But I had other questions not about amortization.

So if we're going to do temperature-taking, I wanted to ask questions about the tuition and fees, you know, the Department's reliance on other areas in this issue paper. So I want to -- obviously I don't want to go off subject, so I can come back to it.

MR. RAMIREZ: Would that impact your decisions on the amortization piece?

MS. BLUM: That's a good question. I don't think so.

MR. RAMIREZ: Okay, all right.

MS. BLUM: So I'll put my card down, but there are a couple of other issues other than amortization in this section.

MR. RAMIREZ: Yeah, yeah. We're not going to be moving off of this paper yet.

MS. BLUM: Okay.

MR. RAMIREZ: Yeah, okay. Gannon.

MR. GANNON: Yeah. I agree that -- I think a one-size-fits-all program isn't right. But I also think that a 15-year repayment period for a one- to two-year program, that just doesn't -- that doesn't make sense to me. I think that disclosures are great, but disclosures without sanctions I think they're pointless, and disclosures aren't going to protect students. If we want to protect them, we need sanctions and disclosures aren't going to do it.

MR. RAMIREZ: Okay. We're going to close out with Jeff and then Tim.

MR. ARTHUR: Yeah, I'd just point out that the Department's already compiled 1700 fields of data without negotiated rulemaking to do that. That includes data on income, debt, all kinds of success metrics. A lot of entities have built, third parties have built engines around that database to present data however they wanted to present it.

And I would just suggest that when you look at debt to earnings, if you include the debt in there by the program and you include the earnings at whatever level, that in a few hours I could build a debt to earnings engine based on 10, 15, 20, 25, whatever number -- whatever amortization period the person would want to see. Dropdown. Okay, here it is for that. It's very easy to present this. When you have the data, those calculations will be done by, if not the Department, other entities.

Now what's prescribed in regulations is that that might be what we're talking about. But I'd just like to point out that those measurements are going to be easy to do when the data's there for any time frame that anybody would care to see it.

MR. RAMIREZ: And then Tim.

MR. POWERS: Just -- this is Tim Powers. Just a thought on this very real issue of calculating rates for programs that have large numbers of non-borrowers. I'm sure the folks behind us can illuminate more. But I think under the current Title IV cohort default rate calculations, there is a loan partition rate index appeal process, which basically allows an institution that has large numbers of enrolled students, very few of whom are actually taking out money, to be able to go to the Department and basically say to them, hey, can you please take a deeper look at us.

Only ten percent of our students are actually borrowing money. Yes, we realize that we have a slightly high default rate, but let's look at this within the context of the larger program.

So I would just put that on the table as something to perhaps consider, as a means to sort of get at this question of programs that are doing a good job of enrolling students, putting skin the game, educating them, but then get kind of caught up in this regulatory crossfire, having a not so great debt to earnings ratio or a not so great covert default rate in the other circumstance, just based on the small number of borrowers in the program.

MR. MARTIN: This is Greg. Just to clarify, you mean the participation rate index for cohort for CDR, right?

MR. POWERS: Yeah, yes. Okay.

MR. RAMIREZ: So I'm seeing at least the first two temperature checks, and then we'll see which other ones you want to go from there. But the first one is the 15-year amortization schedule that is in the straw man proposal here. So let me see a show of thumbs for how you feel on a 15-year for everyone amortization schedule.

(Show of thumbs.)

MR. RAMIREZ: Yeah. It's a temperature check, but I got the thumb behind you right.

PARTICIPANT: You may not be asking it right, because the thing is, is like for Jennifer, it matters whether it's undergrad versus grad.

MR. RAMIREZ: But if I understand what's on here, it's a 15-year for everyone, right? So let's ask the question.

PARTICIPANT: What was yours, Robert? I didn't see yours.

MR. RAMIREZ: So yeah. If I could see the thumbs again and hold them there for just a second. So we got -- all right, yeah. So there's 11 that were down. And it's not that -- we're just trying to do that, so that way the Department can get a feel for the acceptability of it. It wasn't a vote, right?

All right, and then the next one is the current, what's under the former proposal, which is the 10 and 20, and does anyone need to --

PARTICIPANT: It's not 10 and 20. It's 10, 15 and 20.

MR. RAMIREZ: 10, 15, 20?

PARTICIPANT: But also I would, to Mark's point, I would actually --

PARTICIPANT: Break it down undergrad, postgrad.

MR. RAMIREZ: All right. Who's most comfortable explaining what that is right now? And what I'm trying to capture is what would be considered the status quo.

PARTICIPANT: So while I think that -- I mean I'll take a whack at the 20, but so I think that there's an understanding that at the, you know, after the length of education and all of that, and the amount of debt, that the time to repay for graduate level is different. And so I think that's where the 20 comes in. But I don't -- I think we have to be careful to lump 10, 15, 20 together.

MR. RAMIREZ: Okay. So currently it's 20 years for graduate level?

(Off mic comment.)

PARTICIPANT: Doctoral. It's

doctoral and first professional.

PARTICIPANT: First professional, right. Doctoral or first professional degree. It's all in there under 10 year for a program that leads to an undergraduate certificate, a post baccalaureate certificate, associate degree or graduate certificate, and over 15 years for a program that leads to a bachelor's degree or master's degree. Twenty years for a program that leads to a doctoral or first professional degree.

PARTICIPANT: So I think there are a couple of ways to look at this. You can go back to the current regs and -- I mean I'm not saying we should. I'm just saying, like in terms of your questions. You could do what you're doing, which is by credential level. There could be a conversation about, you know, whether undergrad and grad. So whether it's 15 and 20 become the new paradigm.

MR. RAMIREZ: What I want to do is capture the status quo, and see where that's at. And then if we want to do a temperature check on a variation of that, then we could do that, okay.

So is everyone clear on what the status quo is? Let me see a show of thumbs for how you feel on maintaining the status quo numbers.

(Show of thumbs.)

MR. RAMIREZ: Ten, 15, 20. Four thumbs down? Okay. Then we'll see which alternates you all want to propose, and we'll do temperature checks just so that we can see what they are. So you want -- Jennifer, you had a variation of that? What would that look like?

MS. BLUM: I mean I'm -- first of all, I just want to be really clear that I'm not necessarily advocating for it. I'm just saying that instead of looking at one or the other, there are -- we can do something different than what the Department proposed and what is in the prior rule.

MR. RAMIREZ: I see.

MS. BLUM: So one concept is undergrads at 15 and all grads -- and I would say all graduates. So I know that that's a change for master's, and again I'm not advocating for it. But just for clarity and I'll use the Department's term simplification, could do 15 and 20.

(Off mic comment.)

MS. BLUM: Fifteen, and graduate, all graduate 20. And again, I just want to be really clear. I'm just putting something on the table just for putting something on the table.

PARTICIPANT: And the certificate would be 15 as well?

MS. BLUM: Anything below. Sorry, I should say undergrad and below 15, and then -- and then anything above a bachelor's at 20.

MR. RAMIREZ: All right. So let me see a show of thumbs for that option?

(Show of thumbs.)

MR. RAMIREZ: Yeah, seven thumbs is what I'm seeing is down. Okay. Diamond, you had a question on that?

MS. DIAMOND: I was just going to ask if we could get a count, like a stated count of how many thumbs up and thumbs down for each question, just so we can kind of keep track of the trends?

MR. RAMIREZ: Yeah. That was -- that one was seven down. But let's see here. We had two, four, six, eight, ten, twelve, fourteen, sixteen, seventeen. We have 18 total potential votes, okay. So for Option 1, which was the 15-year for everyone, how many thumbs down were there?

PARTICIPANT: Eleven.

MR. RAMIREZ: Eleven thumbs down for that. The status quo? Four thumbs down, and this variation of 15 for undergrad and below, 20 percent for grad and above is seven down, okay? What other temperature checks would you like to take on this? Yeah, go ahead.

MS. SARGE: Could we get --

MR. RAMIREZ: Sandy.

MS. SARGE: I'm sorry, thank you. This is Sandy. I'd love to -- I asked Pamela, as a side note. But it might be helpful for others to ask what's the hesitation. Where are off between us on the proposed one, the 15 for undergraduate and the 20 for graduate? Where are we -- are we off because of the graduate side or we are off because of the -- where are we off?

MR. RAMIREZ: So there were some thumbs -- the folks, some of the folks who put their thumbs down may want to chime in on that. Laura.

MS. METUNE: Sure. Actually, I was going to ask a similar question from the other perspective, like what is the problem we're trying to solve and what's wrong with the current structure. I'll just say the reason I put my thumb down was because there's a huge variation in all of our undergraduate level programs.

Even, you know, certificate programs at our own community colleges versus baccalaureate level programs at our institutions in our state can vary widely. So it seemed inappropriate to me to have one amortization period for all of those programs.

MR. RAMIREZ: Okay, Johnson.

MR. TYLER: Hi, Johnson. I was just thinking that the sophistication between a graduate student, whether you're going to a for-profit graduate school or a non-for-profit graduate school is very different than someone entering a certificate program or an associate's program or a program that may lead to a B.A.

They're much younger, and hence having

a shorter amortization period that then reflects what the payment would be if you were to complete your degree is much more important for that younger person. The older person's sort of already in the game. They already know this stuff.

MR. RAMIREZ: Okay, Christina.

MS. WHITFIELD: I have a question about -- sure, thank you. The question of why did I put my thumb down. I think that the 15 years is too long for short-term certificate programs.

MR. RAMIREZ: Okay, Christopher.

PARTICIPANT: The same. I think it destroys the whole metric if essentially no one is going to fail. I think Jordan explained it really well, about how it essentially increases 50 percent the debt, the way that it shows and exhibits the debt.

So you know, this is kind of the essence of the whole calculation. We talked a lot about how the calculation isn't going to be accurate. But this will really make it inaccurate for a student to look at this and think the debt to earnings that will happen to them are very low, when in essence they're not because a 15-year repayment period for a certificate or an associate's degree I don't think is accurate.

MR. RAMIREZ: Okay. So we'll get these three. We have Diamond, Kelly and Mark, and then we'll see if there's another temperature check idea that's out there. Diamond.

MS. DIAMOND: Yeah. Just to add, the type of borrower that's looking for a certificate program is looking for something quite different, usually to be employed and making a family-sustaining wage a lot more quickly. But also just the amount of interest that's accumulated if we're looking at a longer amortization period as being the typical expectation.

MR. RAMIREZ: Okay, thank you. Kelly.

MS. MORRISSEY: Just quickly and simply stating the matter. If you look at the data, I think that overwhelmingly undergraduate students are opting into a standard repayment plan with a ten-year repayment period. So I think that just to give students realistic metrics, we should be using what the majority of the students are opting into.

MR. RAMIREZ: Mark.

MR. McKENZIE: So I think to some extent we -- and I'm going to ask the group about this -- we're missing one major point. While I'm absolutely in the belief that the community college programs that have low percentage of borrowers, that should be noticed to the public. The current rule seems to me to be totally anti-consumer and totally missing the point of the regulation by perfectly exempting any program that has less than 50 percent of borrowers.

So I'm just asking the group, and this is something that is essentially against my own institution's interest, but I think it's the right policy. The Scorecard gives the debt only of borrowers, and because borrowers are the one who are worried about the effect of student debt.

I would suggest the Department consider, when making the student debt number, it considers only borrowers and it gives a disclosure for the community colleges and other low percentage borrowing institutions so they know that.

But in reality, huge numbers of programs and thousands of students are not being served, and the public interest isn't being served because the programs, as long as less than 50 percent borrow, get a zero DTE, a zero debt to earnings rate.

That's why the amortization and these other things matter, because the metric as Jordan noted, just moves with each movement of all these parts. At some point, we're going to have to have a holistic discussion of what gets to whether the program is right or wrong.

MR. RAMIREZ: Is there another option that anyone would like to put forward based on the discussion that we heard?

(No response.)

MR. RAMIREZ: All right. Ramona's bringing up a good question as far as the status quo one seemed to have the least what I'd say dissent, or had four thumbs down. For those of you that had a thumbs down, the status quo one.

(Off mic comments.)

MR. RAMIREZ: Yeah, the 10, 15, 20.

Someone who had their thumbs down on there, what was -- what was your thinking there? Yeah, Jessica.

MS. BARRY: Jessica Barry. I'm taking into consideration what the Department said from the very beginning, that they would like to simplify the regulation, and that's why I put my thumb down.

MR. RAMIREZ: Okay, anyone? David, David. Yeah.

MR. SILVERMAN: David Silverman. You're also taking away the zone. So there's a portion between 8 and 12 now that are sort of in the middle. So by increasing the -- increasing the amortization period, you're going to and only have -- right now, you only have a pass/fail. So the zone had a third -- it wouldn't be fair to have the lower amortization and take away the zone.

MR. RAMIREZ: Yeah, please.

MR. SILVERMAN: You're going to have more of -- you'll have more fail. You'll have more of a fair shake at who passes and who fails, as opposed to there was people in the zone. So raising it to 15 makes it fair to take away the zone and have only a pass/fail.

PARTICIPANT: So David raises a good point, and that's actually why I asked earlier in I think the prior issue paper, why 20 and 8 and not 12 and 30? They are -- the two do correlate. I'm not sure how they correlate. I'm just, you know, I'm not exactly -- I'm not good at math and all of that.

But they do -- there is a correlation between the two. So that -- I don't know what the solution is, but I actually think David raises a good point in terms of thinking about the two contextually together.

You know, if you're going to keep 8 and 12, which is the sort of -- that low, you know, that pass that's pretty solid and you don't have zone anymore, then I think that is the argument for the 15, to sort of compensate for the 8 and 12.

MR. RAMIREZ: Yeah, Jeff.

MR. ARTHUR: Just to clarify on the discretionary in the regular debt to earnings. It's not both that are applied; it's once you hit

-- once you hit 30,000 in income, it flips to discretionary. That's frankly the way it is if your income is with a 6.8 percent interest rate.

Now that will vary with the interest rate, but just so we know, that if your median debt is 30,000 or below, it's the -- it's the regular debt to earnings. If it's above that, discretionary plus. That's where the graph turns.

MR. RAMIREZ: All right. So any other options you want to throw out, and the way that we stand right now then is that the Department will just have that knowledge going forward, or is there also a desire to have a subcommittee explore this a little bit more? Sandy.

MS. SARGE: It feels very black and white, and I know what you guys are trying to accomplish. I think we would probably -- I would probably say that, one, I'd be glad to try and be on a subcommittee. So I would put myself out there. I'm not doing anything else, because I'm not at home, so I'm sitting in a hotel. So I'll be glad to do it.

But the other thing is -- this is so

complex that I would say we would all reserve the right that this would be a negotiating point later if we come up with something, other things. So right now we may say, you know, yeah, we're good to move on. But we reserve the right to come back and use it a point of --

MR. RAMIREZ: Yeah, and understand, there was no consensus vote to say that you were locked into it.

MS. SARGE: Sure.

MR. RAMIREZ: We were doing temperature checks.

PARTICIPANT: Can I say it differently? The need for a subcommittee would be on how the pieces go together. So the subcommittee would be, okay, twelve percent, the current amortization and borrowers only, and each of those things moves the metric in different ways, and you know, you have to hear from each group how it affects them.

So that would be the subcommittee that would probably be the most useful, and it may be too early. It may be too early.

PARTICIPANT: Can I offer maybe we do it -- let's throw it out there. How many would be in favor of getting rid of the D/E ratio completely and coming up with something else?

(Show of thumbs.)

MR. RAMIREZ: Elimination of the D/E ratio.

PARTICIPANT: And coming up something else. Don't --

MR. RAMIREZ: And coming up with something else.

PARTICIPANT: We would have to come up with something else. But there seems to be so much contention around these fine points. Is that really the right metric?

MR. RAMIREZ: Let me see a show of thumbs on that.

PARTICIPANT: Come on.

(Show of thumbs.)

MR. RAMIREZ: Okay.

PARTICIPANT: All right. No downs, so I'm happy with that.

MR. RAMIREZ: Yeah, yeah. I was

reading some body language. As the facilitator I would say --

(Off mic comments.)

MR. RAMIREZ: All right. I'm striking the question. How's that? Okay. So let's go ahead and move forward then, because there's other items within this issue paper. But what I also want to do is take a break, right? So let's take a 15-minute break and then we'll come back and we'll see where want to move forward.

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

MR. RAMIREZ: Okay. Which other items on Issue Paper Number 3 do we need to discuss before moving on to Issue Number 4?

MR. MARTIN: This is Greg. We need to discuss -- so I think we have -- we have a feel for where people stand on amortization and interest rate, and we'll certainly take all that back. Thank you for your input on that.

We need to look at -- see where I am here. We're going to move on to annual earnings, which there's not much of a change there, and then we need to look at loan debt and assessed charges on page four. So I would like to do that, and there's a correction I'd like to give you before we go there, because it's kind of necessary to -- for context as we move there.

On page two, page two, I find it interesting that I admonished all of you to number your papers, and then guess what? I didn't number mine, but do as I say, not as I do, right? So at the top where we talk about -- it's under (b)(1), right, Annual Loan Repayment.

So you'll note at the top there it currently says, determining median loan debt of students who completed the program during the cohort period, based on the lesser of loan debt incurred by each student as determined in paragraph (d)(1) of this section and the total amount for tuition and fees, books, equipment and supplies for each student as determined under paragraph (d)(2)(iii).

So what you want to do is strike to be based on the loan debt. So strike the lesser. So it should be based on the loan debt incurred by each student, as determined in paragraph (d)(1) of this section, period, strike the rest. And that will be -- that will be made a little more clear hopefully as we go through.

Sure. I'll repeat it one more time. Determining the median loan debt of students who completed the program during the cohort period, comma, based on -- strike the lesser of. So it should be just based on the loan debt incurred by each student as determined under paragraph (d)(1) of this section, period. And strike the rest.

(Off mic comments.)

MR. MARTIN: No, I'm sorry. They're not stricken. My mistake. So go to the end of -- the period's still at the end of romanette 3. Just strike what I -- just strike -- the part that should be stricken is, and the total amount of tuition and fees, books, equipment -- through the word section. We'll take a look at that in more detail and try to get a better handle on that.

I just thought that as we go on, someone's going to notice that and come back and say what about that section? So that will be a little more clear in a moment as we talk about -- well, I'll just start with annual earnings. It's not much different there as we had this discussion earlier, and we are retaining the annual earnings calculation in its current form. We did change GE to educational programs.

Now we can move on to D, Loan Debt and Assessed Charges.

PARTICIPANT: Page four.

MR. MARTIN: On page four, on page four, where it says Loan Debt and Assessed Charges. So looking at determining loan debt, the first part there under 1, nothing is changed there. We simply took out GE program. So the amount of Title IV loans the student borrowed less cancellations or adjustments. We retain the current language for enrollment in the program, just striking GE.

And then let's go down to the parts that we have struck in romanette 2. So we propose to remove from the calculation any private education loans, including private education loans made by the institution if the student borrowed for enrollment in the program and were required to report under 668.411. Remember that reporting has been removed and reserved.

And the amount as the date the student completes the program of any other credit extended by or on behalf of the institution. Basically that's debt, non-loan debt to the institution. You'll note as well that, and what we talked about earlier, the part I told you to strike, and where it talks about in 3 on page five, the Secretary attributes all the loan debt incurred by the students for any enrollment period, for any enrollment rather.

That we're also eliminating from the calculation the concept of capping debt at tuition, fees and books and supplies that we had previously. And I can give you, as we -- before we go into a discussion of this, remember that --that underlying a lot of this is the desire on the part of the Department to simplify these rules to reduce burden.

So one of the primary burden points here would be reporting, which was -- which was and is a fairly complex process for schools. So what we've done with these proposed regulations is remove the requirement for institutions to report anything more than what you currently do with NSLDS.

So if you think about what's reported via NSLDS, there's no way that we have currently to capture institutional debt or private loan debt. That's not captured through NSLDS.

Likewise, we cannot capture on a program-level tuition, fees, books and supplies. So because of that, those would be eliminated from the calculation, so that we can use information that is currently being reported to NSLDS.

You will note at the bottom of page four in (d)(2), the Secretary may elect to include in the calculation institutional loan debt, private loan debt, tuition, fees, books and supplies by publishing a notice of such election and in the manner in which institutions must report in the Federal Register.

So in these proposed rules, we retain the option of using that data. But in order to do that, NSLDS would have to be altered to capture that. That process, even if begun today, we'd probably be looking at 18 months to two years.

That would be if it were approved and we had the funds to do it. So not knowing that we would be able to do that, we wrote these regs, these proposed rules excluding again the institutional debt, private debt and the tuition and fees, books and supplies.

So maybe we should -- I thought we'd maybe discuss that topic.

MR. RAMIREZ: Yeah, because I saw quite a few tents pop up. So I have Jen, Sandy, Whitney, Daniel and Kelly. So Jen.

MS. BLUM: So this is Jennifer. So I definitely had all of this on my list of questions. So just to go back to the edit on page two, so you no longer mean the lesser of. You just mean that based on loan debt?

MR. MARTIN: Correct, Title IV loan debt.

MS. BLUM: Okay. So this is another example of oversimplification resulting in inaccuracy, or my fear that it would, because when we talk about the amount of -- well, there are lots of different. Maybe I'll peel back just focus first on tuition and fees.

While again I appreciate, you know, that the reporting piece has a lot of burdens, and God knows we spend hours, you know, we all do on reporting. Having said that, on the reporting of tuition and fees, there is real value in -- on a per-student basis reporting what the student actually faces in terms of tuition.

Of course as we discussed at the last session, there was a lot of conversation by a lot of us about the need to continue to do that, but actually to allow for net tuition and fees rather than just gross tuition and fees. So that it was truly documented for the cohort period that the student may have received, for example, some form of scholarship or tuition reduction for a number of different reasons, and lots and lots of schools do this. In fact, all schools I think to some degree do it at this point.

So the very accurate reporting of that debt in the form of the actual tuition, you know, is exactly -- that is how you would measure the cohort. Doing what I think the Department is suggesting, which is just to rely on the loan debt that's reported in NSLDS, I'm concerned about because one thing that's not clear here, and I guess I want to ask about it, is are you including all loan debt including the piece that goes to the students for living expenses?

MR. MARTIN: Correct. We'd be including all loan debt, and before we go on with the conversation, what I'd like to ask is when you criticize that decision, number one, I understand that to include the other items that we're talking about; we need to hear how you propose to obtain that information.

Of course there's the current reporting process that GE schools are required to do. We would be then and understand that we have no way of collecting that by simply getting those few elements from schools. If we were to require it, then that means every program, every school would have to do the current reporting, be under the current reporting structure that GE programs are in order for us to capture that information.

So if any of you have any alternate ways of obtaining that information short of what I just said, we would be interested in hearing it.

MS. BLUM: I was just going to suggest that we go back to the current rule and have the reporting requirements, except for I would actually adjust it to allow for the actual tuition rather than the sticker price tuition for each student. I know that's a ton of work, and I know -- and I guess I'm, you know, obviously I'm very sympathetic that we're applying this to all programs at all institutions.

But if we're going to do an accurate reporting system of what the debt looks like at for a program, then we ought to do that because the debt for the program -- or, I guess if you're not going to do tuition and fees, then the debt amount somehow has to be broken out between the actual debt that --

You've still going to have a tuition and fees issues, because the debt ought to align with the institutional charges, the tuition, the educational services provided and not the debt as a whole from a student, you know, that's given in a form of a lump to a student.

MR. RAMIREZ: Sandy.

MS. SARGE: Oh yay, I'm so happy you asked that question, Greg. So what I would -- I would offer up is the fact -- as we all know, if we use the total debt, then we are including a part of it that is part of student choice. It's not about the school; it's about whether the student wants to borrow money.

You're asking how could we figure that out? My suggestion and thought process is I think that our systems are sophisticated enough now with Ed Connect and other things to be able to house more than one bank account set of information on a student's record.

So that you could bifurcate, and you guys could send the money directly to the student's bank account and send our money to us that's used to educate the student and send the living expenses directly to the student, and get us out of the mix altogether, and then your information would already be separated.

PARTICIPANT: No, it's not. They send 100 percent --

MR. RAMIREZ: I'm sorry.

MR. MARTIN: Okay. I think the thing is, what you're talking about here is that under the -- currently the way Title IV works with --

MS. BLUM: Well, that's part of the problem. That's part of the biggest issue, right? The biggest issue right now is that we, schools cannot advise a student not to take out that debt.

MR. MARTIN: Well, just to clarify. You can always counsel a student not to take it, but you can't arbitrarily cap what students can borrow.

MS. BLUM: Right.

MR. MARTIN: But that's another issue.

MS. BLUM: Right.

MR. MARTIN: I'm like everybody else, when everybody gets into an area you know really well, that's what you want to talk about. So I have to fight that urge. So but going back to the question at hand, I mean what you propose is probably a possibility. I think it's been -- it's out there and I think FSA has data, a card kind of powered program they're doing it, whatever.

But understand that what we're tasked with here is calculating rates with what we currently have. So if we're projecting, you know, well maybe even if we went a certain way, that we would have that -- we would have that in place, and understand that that requires system changes.

We're talking about the hiatus that would occur in calculating rates, until such time as we had that system in place. So when we wrote these proposed rules here we're putting in front of you, we're looking at what we have now, currently go ahead and continue to calculate risk.

So bear that in mind, that whatever you suggest has to be within the context of what's currently, what's currently available.

MS. BLUM: So this would be a perfect example as to where because that would automatically -- in many cases that we would not be able to lower the debt on the numerator, then extending the amortization rate to 15 years may be an offset that we would think about, to do that. It wouldn't be perfect science, but it would potentially negate that impact.

MR. RAMIREZ: Okay, Whitney.

MS. BARKLEY-DENNEY: Yeah. I just wanted to add my voice in support for going back to the previous way that this was calculated. I think private and institutional loan debt is an incredibly important part of this calculation, particularly because, you know, if a borrower or if a program is getting, looks like people are taking out too much debt and they are whatever we want to call it, failing or not thriving or whatever we decide to name this metric, you know, that could be a way that those who want to manipulate the rule are able to manipulate it, by making sure that borrowers are taking out more private and institutional loan debt and less federal loan debt.

I think that all of us around here know that some of the institutional programs have been the biggest problem for borrowers, to the point that, you know, they were shut down by the federal government. So I just want to make sure that we don't get into a scheme where that's happening, and where we're truly getting a picture of what a borrower's loan debt looks like in order for them to attend the program.

MR. RAMIREZ: Whitney, what would be your thinking on Jennifer's current -- using the current system as well but instead of gross, using net tuition and fees?

MS. BARKLEY-DENNEY: I think that there's definitely room to discuss that by going back. I think we have to include the institutional and private lender when we're talking about what borrowers are taking out.

MR. RAMIREZ: Okay, thank you. Daniel.

MR. ELKINS: Could we just have a little bit more guidance from the Department as to the reason why we're all of a sudden going to exclude the private loan debt? Is it just your belief that that is overburdensome to institutions, and that's why it's now being excluded?

MR. MARTIN: Our reasoning for it. So a couple of things here. Number one, in the interest of maintaining of a debt calculation each year, and what elements we have to do that. Using the current, the current regulations you see here would then -- and remember what a program is, about six digits separate, right?

So consider, for example, a large university and how many of those there are going to be. So then using the current reporting, the current reporting for every program, that school would be required to report to us all of those elements. That we -- given that part of this effort is to reduce burdens on institutions, that would be increasing by many-fold the burden collectively on institutions.

So then we move from that to what can we do if we calculate the rate administratively, meaning with what we have at hand? And we entertained using NSLDS, but making modifications to NSLDS to collect private debt, institutional debt, tuition fees, room and board. Which is certainly doable; it certainly can be done, but there are some problems there with number one getting the funding to do that, moving forward with those changes.

And even if we did start right away with those changes, the amount of time it would take to get that into place such that we could do the calculations. That's really what drove --- what drove this decision here.

MR. RAMIREZ: Kelly.

MS. MORRISSEY: I'm in agreement with reducing the administrative burden of reporting this data, and I also mentioned during our last session that I think NSLDS makes perfect sense, because we are already reporting data and I think collecting it in that way. It just streamlines the entire process.

However, I'm just wondering about the wording of the last paragraph on page four, in terms of stating that the Secretary may elect to return to collecting the items that we would no longer be reporting. There is no reference to the fact that that would occur by adding that information to NSLDS reporting. And my concern lies in the fact that this implies that at any time we could be required to go back to reporting again, which is okay.

But there's no time frame notice included in this, and I'm just thinking back to the first time we had to report multiple years' worth of data that we were not collecting in the format in which we needed to report it in. So it's more just the wording rather than the intention of this paragraph.

It would be more reassuring to have a time frame built into this, so that institutions would have some notice in terms of getting their data in order before we're required to report it.

MR. MARTIN: Okay, thank you for that. We're more than willing to take suggestions about how this would be done. This was just to give us -- I mean I think that it's acknowledgment of the fact that obviously having that data would lead to a more complete calculation.

But as with many things, there's a give and take, you know how -- and one of the reasons. You pointed out the necessity to go back. Nobody enjoyed having to do, report for previous years. We don't want to be in that position again, to say well we don't do it, you know, until we have all this data. Then by the way, you've got to go back and report for previous years. So trying to not do that.

So I understand your concerns, and we'll definitely make a note of that.

MR. RAMIREZ: Okay, thank you. Jeff.

MR. ARTHUR: Yeah, Jeff. I believe the issue over capping tuition or capping debt, that the tuition is a bit of a red herring. The analysis I've done of all of our programs -- and I suspect it would be extremely rare for this to be a different result for anybody else's.

But doing that doesn't move the median debt a nickel. I mean frankly it doesn't move it a nickel, the way it was calculated previously. So that tradeoff for not changing our median debt and not reporting, I'm all for that. I also appreciate that the burdens of reporting are tremendous. I can't even see that you could possibly get there, bringing all these institutions into the fold.

You've got to start somewhere, and I

think you've taken a practical approach to set that aside as something if we could accommodate it. But we've got to start somewhere. We've got to be able to collect the data. The best way to start this is having little to no reporting burden on all institutions.

And then over time, I mean that was one of the big problems. We were trying to collect data that we had never designed to collect, seven years retro and retro. It just wasn't possible, and I think I've heard some opinions from certain individuals that I don't think the data that was reported was very accurate, that was used to create these current rates.

And we've got to start. We've got to plan to do something ahead. You can't just do it retroactively and have good results. So I do think this is a practical approach, and again it does not move the median debt by capping at tuition, the way it was done previously.

MR. RAMIREZ: Johnson.

MR. TYLER: I have more of a question. I don't really understand this concept of net debt versus the actual debt on the National Student Loan Database.

(Off mic comment.)

MR. TYLER: Wouldn't you just -- wouldn't you just take out less of a loan then?

PARTICIPANT: Actually, I'll explain it to you this way. In New York where there's -- I'm sorry -- where there's a grant program that's pretty generous, many, many students attend the institution and the grant programs pay for their entire tuition, and they have no need for a loan.

But because of the current regulatory framework, they can take -- they can borrow for other things, living expenses and the like. And so this was -- this rule gave some relief to that. Very little, but some.

MR. TYLER: So the proposed rule would count the Stafford and the loans that they take out?

PARTICIPANT: Yes.

MR. TYLER: Okay. I mean I'm in favor of that. We're not here just to protect consumers, but there's also taxpayers who are paying for the

University of Phoenix stadium and excuse me, I said it, and other things. So that is an issue. It's not simply a disclosure for purposes of consumers.

MR. RAMIREZ: All right. We have Daniel, Whitney, Laura, Jen and Jordan. Daniel.

MR. ELKINS: I think from a veteran perspective, we're very sympathetic to the fact that some of these reporting requirements are very burden under the current metrics. But I do think that I have to at least good faith talk about how institutional, you know, or private loans really impacted veterans in a negative way.

I understand that it's -- it would be burdensome to track those things. But I think that that -- I would hate to see those programs pop back up again.

MR. RAMIREZ: Okay, Whitney.

MS. BARKLEY-DENNEY: Thank you for that, Daniel. That's a lot of what I was going to say. I just want to make sure as we're talking about this, and I think this is true of everyone around the table, that we do a little bit of a values check. I mean we're not only talking about, you know, wanting to lessen institutional burden. That's not our only purpose here.

We also want to protect students, and make sure that they aren't getting into loan debt that they can't repay. So I just kind of want to recenter. I feel like I'm always using that word. But you know, pull back a little bit from the value being well, we don't want institutions to be burdened, to making sure that our value is we need to strike a balance between what institutions are reporting and the way students are being protected.

MR. RAMIREZ: Okay, thank you. Laura.

MS. METUNE: I was going to make a similar comment, and I think I said this last time, that we have to be careful about the incentives that we're putting in place as we enact these types of provisions. I'm totally sympathetic to the concern about how we track private student loan debt, and whether or not there's ways we can put in place processes that would make it easier for us to do that.

But one thing that's happened in California, as colleges saw rising student loan debts on the federal loan side, is that they just pulled out of the loan program. So what that meant is that many of our students weren't able to have the great options that come along with getting a federal loan, right?

They would take out credit card debt and they would take out private loans. So I think it's really important that we don't set up a structure that encourages colleges not to participate in the federal loan program. I do think, as was mentioned earlier, that this could have a real impact on the students' livelihoods and their ability to be successful after they graduate.

So I would really be open to a conversation about how maybe we could make that a better process for institutions that are seeking to comply. But I just want to add my voice to those that believe that private loan debt should be included in the calculation. Thank you.

MR. RAMIREZ: Okay, Jen.

MS. BLUM: So moving away from that for a second and not -- I mean I agree, actually. But moving a way back to the sort of the debt for educational for the tuition and fees, relative to the debt for living expenses. If the purpose, and again I keep going back to: what is the purpose of this metric?

If the purpose of the metric is to inform the students about how much it will cost to attend that institution in terms of the education that they will be receiving, and for the -- in theory the student to be able to compare that against another institution, then the level of debt that should be disclosed is the amount of debt that's for tuition and fees.

Because living expenses, and you know this is an area where because it's not really -- you know Greg to your point. Because there's sort of flexibility there, you know, schools can advise, and I do agree with you. Schools can certainly advise. But the fact of the matter is living expenses are sort of all over the map in this country, and both geographically and for other reasons at different degree levels, I mean all over the map.

So the piece that's not all over the map is the tuition and fees piece, you know. Obviously institutions offer different levels of tuition. But that's the piece that's most -- for the purposes of this metric and talking about the, you know, to the extent that we're in some form even through disclosure assessing a program, that's the amount of the debt that's relevant.

The decision of a student to then decide that they need X amount, which I totally respect the student's decision that they decide that they need X amount for living in addition to that, that money is not related to their -- specifically to their education that they're receiving. So I just would urge that we figure out a way to be talking about it, and I hear Jeff, too.

Of course, I don't really want to go back to -- you know, I mean I get the -- so we need to be able. I think the Department has the, should have the ability to break out the loan. Certainly the institutions, at least I mean I think the institutions have some knowledge over what -- because they're, obviously they're taking some of it for tuition, and they're giving the rest of it to the student.

So the knowledge exists on that breakout of data. I mean it's there; it just needs to be used.

MR. RAMIREZ: Okay.

MR. MARTIN: I would put out it needs to be -- in order for us to incorporate it into the calculation, it needs to be obtained by us too. I mean you know, we need to -- it needs to be reported in some way. I think that's an issue.

I mean regarding, and I would just point out, too, regarding the idea of tuition and fees versus other expenses, I'm not taking one position or another here because I quite frankly can see both sides of it.

I think the Department in doing this sees both sides of it. Yes, those living expenses are not something the school can directly control. However, I would -- I just would point out and put on the table that the cost of attendance, the budget if you want to call it that, is fixed by you at your school.

You determine what a reasonable amount is for those -- for those areas, such as living expenses, which are part and parcel of a student's attending school. They have to live. So you know, and they do have to repay the loan debt that's attendant to those living expenses. So that's not to shoot down what you're saying or to refute it. I just want to throw that out there too as another -- as another consideration.

MS. BLUM: The total image -- just to respond to that. So totally agree. I mean this is the quandary, right. But again, going to the purpose of what this metric is, which is to inform the student about the cost of that institution, if they attend a different institution they still might take the same amount out for living expenses.

So the differentiator as it relates to the educational program of that school is the tuition -- is the amount that they're paying for the educational services. The living expense piece, they might take the same amount out at a different institution for themselves. So the variable for the student from a consumer protection standpoint to me -- and I hear you on the cost of attendance piece.

But the reality of it is I really do think that the debt piece that we're talking about here is what it costs to attend that institution.

MR. RAMIREZ: Jordan.

MR. MATSUDAIRA: I had two simple questions. One was just a point of information about whether Grant Plus loans are part of loans that are included in the debt measure overall, and so it says in the document that Plus loans made by parents are not, which makes sense. But I was just wondering about Grant Plus made by students.

And then the other question is just, you know, a lot of kind of technical tweaks that we're talking about here I think would be -- we'd be better able to have a conversation about it if we kind of knew the consequence. Like Jeff's saying, if capping these things doesn't really matter, then why put institutions through the burden of doing that?

So for a lot of these things, it seems like Ed has the ability to produce informational rates, particularly on the debt side. But also presumably under some different variations for DE overall. And I was just wondering, you know, not to be impatient, I know you said tomorrow we'd have more information about data requests.

But some of these ideas overlapped with the data request that I'd made. I just wonder whether this was an area where we might be getting some information sometime soon, in which case we'd be able to talk with a little bit more information about some of the implications.

MR. MARTIN: I'm sorry. You're going to have to clarify that question for me.

MR. MATSUDAIRA: Are we going to have data about this particular issue? Like if you cap loan debt at a particular level or not, or if you include different types of debt overall, has the Department run different sorts of what would the median debt side of the DE metric look like? So that we might be getting that information sometime this week, for example, so we could be able to talk about this issue with the data in hand.

MR. MARTIN: I know we have looked into

that. I'm not going to make -- I need to talk with my data people first before I commit to that, what we've done in that regard.

To your other point, the loan debt assessed charges at the top of page four under (d), that we've not changed any of that for Title IV. So as you can see there, it's Federal Plus loans -- where am I talking? Where am I? These are -- yeah, I'm sorry, the exclusions rather. The amount of --

The Department will determine the loan debt for students using GE programs, loans. Yeah. It doesn't -- it includes -- it includes Plus loans but not graduate Plus loans, right?

(Off mic comments.)

MR. MARTIN: Oh, I'm sorry. Yes, I'm sorry. Right. So it's Federal Plus loans made to the parents, parents and students, Direct Plus loans made to parents and dependent students, I'm sorry, and direct unsubsidized loans covered, converted from the TEACH program.

MR. RAMIREZ: Okay, Sandy.

(Off mic comments.)

PARTICIPANT: I'm sorry, yes. It does mean -- it does mean Grad Plus loans are in.

PARTICIPANT: Sandy.

MS. SARGE: Yes, I know. Thank you. I'm sorry. This is Sandy. So it seems like, and again I'm just trying to throw out some other ideas to generate -- given you wanted some suggestions. So does it make sense at this point? There seems to be a lot of debate about debt, like how much debt a student takes out.

Now some side would say well, students are going to take out the amount of debt that's available to take out. So the question is if 15 years is too long for an undergraduate degree in, you know, a certificate program, let's say a short-term program, maybe 57-5 is too much money if someone's just -- you know, to have available for students just getting certain degrees.

The question is should we be limiting the amount of debt that a student would have available to borrow based on the level of education they're looking to get? So I think Neal earlier had said, you know, his students are on average getting a one year certificate in cosmetology borrow about $10,000 to do that. So maybe we maximize that at 20, you know, something like that.

You have different debt levels for different degree programs. Again, I'm throwing it out as just let's throw something else on the wall and see if maybe that might stick.

MR. MARTIN: Again, I think anything -- anything related to those types of things, limiting debt according to any other -- any other way in which is done under then is currently the case under statute now would require -- would require statutory change.

And so it's, you know, when you look at what a student's eligible to borrow, it's cost of attendance, minus CFC and in the case of subsidized loans, and then minus CFA and then that's the amount the student's eligible to borrow.

There's nothing in there which allows anybody to cap that or limit it. I'm not saying there are no legitimate reasons why that might not happen and who knows? In future legislation, we may well have that. But right now, I don't think we could entertain any of that around this table.

I kind of misspoke before. I just want to clarify again in (d)(1) that the most confusing to me is that the regulation is actually written fairly well, better than my brain was working.

So it's the amount of Title IV loans to the student borrower is included, and you'll note that Federal Plus loans make -- parents of dependent students, Direct Plus loans and direct unsubsidized loans converted from TEACH are not included. So those are out, and that was what was confusing me.

I was thinking, and I said those are included and I was totally flummoxed by that. But if I had just taken time to read the regulation was written quite correctly, I would have seen that. So just to clarify that.

But yeah, again I think could argue or discuss rather ad infinitum how, you know, the pluses or minuses to being able to have some control over what students borrow. But right now, as I've said in many, many state conferences in the past, that just doesn't exist.

MR. RAMIREZ: Okay, Johnson.

MR. TYLER: I just wanted to echo the issue of the private loans. Private loans, unlike federal loans, do not have the same protections. You can't get into an income base for payment plan with a private loan. If you get sued in New York and they get a judgment against you, which is generally the case because people don't defend themselves, that judgment carries a 9 percent interest for 20 years.

That means your wages will be garnished for the rest of your life really generally, unless you can vacate that judgment, which is a hard thing to do. So it's a very different beast, and I don't think the market supports the sort of predatory lending that we saw in the mid-2000's in terms of private loans, where everyone was getting them.

People who are -- many of my clients who were quite low income were getting private loans from banks you've heard of. But I wouldn't want to see that happen again, because it's really a very different sort of debt that really does ruin people's lives, because it's not dischargeable in bankruptcy.

MR. RAMIREZ: Gannon.

MR. GANNON: You know, the cost of attendance is more than just tuition and fees. I know students, I know a student at the University of Michigan at Flint that was homeless during their four years there and lived in their car because they couldn't afford housing.

For students that have to pay for housing, this is all part of their debt. They have to take out debt for it. It's all part of the cost of going to school. So if that's all debt to students, why isn't this calculated as far as school accountability?

MR. RAMIREZ: Okay, Chris.

MR. MADAIO: Yes. Totally agree with that sentiment. I think living expenses is a crucial point that needs to be included in the debt. I mean this is a debt to earnings metric. It's not a cost of tuition to earnings metric. I mean if we only included the cost of tuition and compared that to earnings, it would not be an accurate number for students to look at when they're trying to determine how much going to that program is going to cost them, because it's going to cost them a lot more than that in order so they can live or eat or support their family or do whatever they need to do for their personal situation.

I mean every student is different, and the amounts they're going to have to take out may vary greatly from a student that has parental support, to help them cover living expenses, to a student that has -- a single mother with two kids. I mean I think it's going to vary a lot, and that's something that needs to be taken into account in these metrics.

I'm sure Jordan or the economists could tell us ways that it's, you know, that the data is smoothed out with the numbers of people, or the fact that it's an important metric in order to be there for prospective students to be able to see. I understand I'm sure it's frustrating for school that the number is not something in their control, the amounts students take out.

I understand that, but I think that it's

-- that's what running a school is, is taking people who have a career and want to better themselves. I mean more than likely those people aren't going to be able to maintain their current income while they're furthering or attempting to obtain this higher career. So it makes sense that those people are -- need some sort of additional loans or debts to be able to cover their living expenses while they're in school.

And my last point is I mean I think a lot of schools put at least on their website the amount of estimated living expenses, you know, estimated room and board. I mean schools tell that to students on their website.

So I think that if that's something that they're telling students, I think it's important as well for it to be included in the debt to earnings metrics, that we're telling students this is a number that you should, you know, reasonably take into account when you're deciding where to go to school.

MR. RAMIREZ: Okay, Pamela.

MS. FOWLER: My question is in regard

to (d)(2). If at any time that you want private loans included, is that -- does that include private loans to international students?

(Off mic comments.)

MR. MARTIN: Remember the definition of students is Title IV recipients, and we haven't changed that. So international students would not be Title IV recipients unless they were eligible non-citizens.

MR. RAMIREZ: Jennifer.

MS. BLUM: So I just -- this is Jennifer. So I, you know, obviously as it relates to living expenses, I agree. From a disclosure standpoint, it's really, really relevant. So but I'm taking it back to the metric and the ROI of the institution, like the debt that you pay for your education relative to the earnings that you're receiving.

The living expense, if you're going to have room and board at one school, you're going to have room and board at another school, or housing or whatever your living expenses are. Again, I just go back to if the purpose, and it's a question really.

If the purpose of this is to discuss if you get a degree in X occupation code, whether your return on that investment through the debt level is X, then a more accurate way of talking about it is how much did the program cost, and not as much on the living.

I'm not saying the living expense shouldn't be disclosed. By the way, by putting it all together, you're not telling the student how much it costs to go to that school. You're telling them how much every student took out in debt, which is two different things.

And so what I was, you know, what I liked about the prior rule -- if I can say I liked something. But what I liked about it is is that it was really getting to the actual cost of the educational services provided.

And so to the extent -- and I hate to bring it up -- to the extent there was a conversation around tuition and cost and how it would impact those, that's impacted by looking at least from a disclosure standpoint a breakout between what the tuition and fees is relative to the rest of the debt.

So that's my point. I mean I don't know, I don't have it. But in terms of transparency and full disclosure, they're two different things, and the ROI piece to me is much more tied to the tuition and fees piece.

MR. RAMIREZ: Okay. Kelly, and then Sandy.

MS. MORRISSEY: I think it's important also for us to talk a little bit about what institutional debt really is, because if we would be required to report that information in the future, I think that what has been problematic in GE reporting to date has been the fact that when students graduate with a receivable to the institution, that's considered institutional debt, which I think is a lot different than a loan taken out at the institution.

I think it's an important distinction, and I think that we should maybe have the opportunity to discuss how that affects the outcome here.

MR. RAMIREZ: Sandy.

MS. SARGE: This is Sandy. I actually would second that with Kelly. At least right now, the way that institutional debt is captured is on the last day that the student's in school. If they're on a payment plan that maybe goes six months beyond that and they're current on their payments and they're banking that, we have to include that debt in the calculation.

But I would definitely -- I'd be interested in -- I'm not opposed to including all the other debts as people have said. I just think I would take debit balances that are under a regular payment plan that the students were making. I would differentiate them, as Kelly just said.

And I know, I seem to be the one who wants to keep bringing up things that you can't change and that are statutory and things like that. But I do want to go on the record and not gloss over the whole concept of earnings that's in this. First of all, the first thing I would do is I would change the title of this particular issue page to "Debt and Earnings Calculations", not just the numerator.

That's what it implied. I actually flipped through all the issue pages, looking for the one that would then talk about earnings calculations, only to find out that it was in here. So my concern about the fact, what we're using for our earnings number, and I know it's extremely difficult.

But the key thing that bothers me is that numerator in this equation is an annualized dollar amount, and the denominator is not. So or it cannot be proven to be an annualized dollar amount, because as we've talked about for -- there's a whole other issue with tips reporting and non-wage reporting type stuff that we deal with in tipped professions.

But for those students that do not work a full year or work part-time, or for some reason two or three years, four years out of college, go in a different direction and don't earn money in that thing, there's lots of things about that earnings that doesn't even keep it consistent with the numerator.

And that's my problem with the earnings as much as anything, is how do we -- how can we get -- is there other information that is gathered by either SSA, or do they have something that could help us determine whether or not this is actually an annualized earnings?

Because then you eliminate all of those personal choices people have about what they want to do in their life, like have a baby or go be a forest ranger part-time and live off the land, you know, things that they -- and they only work part-time, and that gives them enough money to live.

It takes out a lot of personal choice, and I don't know what options there are available between the Department of Ed, the IRS and SSA. So I'm just throwing that out there. That's my problem with the denominator.

MR. RAMIREZ: Okay, Johnson. So Chris.

MR. MADAIO: Chris Madaio. Just very quick, just one other thought on the living expenses is that, you know, students also aren't always just deciding one school to one school. They're deciding one school or no school; stay in my current job or stay in my current amount I'm making. Or take out loans, including loans to live, and attempt to, you know, increase it.

I think that if we don't include the loans that the student is going to need to live while they're maybe not in their current job, because they're attempting to increase themselves to make more money, but instead they find out later wow, I'm in way more debt than I expected, I think having -- if we're going to this disclosure only rule, that's not even accomplishing the disclosure that we were hoping to accomplish.

MR. RAMIREZ: Kirsten.

MS. KEEFE: Kirsten, yes. Also in favor of including living expenses and debt incurred for living expenses. I just think about if somebody goes to school in New York City, there are a lot of benefits to going to a school in New York City because of access to whatever, but it's also a lot more expensive.

And that's part of the whole school. The experience might be to be in New York City and be close to those internships, etcetera, but it's part of the cost of going to the school. And then I just have a question about not including things like institutional debt and loans that you may get from the school.

My fear is, and I don't -- this is more of a question. Will that incentivize schools to give -- to deter individuals from taking federal loans and incentivize them to take on institutional debt, because that will not then ultimately be included?

MR. RAMIREZ: Okay. Jessica.

MS. BARRY: Jessica Barry. I just -- this is a question for the Department. You know, I totally understand that you're not collecting a lot of this private loan data and institutional loan data at this time. Would it be possible that there's a plan put in place, that over the next few years this is added to NSLDS, and we realize that these ratios are going to improve over time? Is that possible?

MR. MARTIN: Well, anything's possible. No. We did consider all this, and obviously I think in looking at the proposed language, where we reserve the possibility of doing that, we took that into consideration. Again, we had some constraints around continuing to publish rates every year.

So you know, some of the things we considered was that okay, we have this information already for GE programs who are currently reporting that, right. So I don't think it makes any sense to have a bifurcated rate, where you have one rate that's being calculated for this group of schools using this information, but another group of schools not using that information.

So then it came down to well, when would we have this information available to do it? So we looked at a horizon of maybe minimally 18 months to 24 months. That's if we could get -- and that if everything goes perfectly and we can get NSLDS changed to accommodate that, and schools start reporting it and reporting directly. But we don't know. We can't, we couldn't write these proposals based on sort of a fait accompli, that it was a done deal that we'd be able to do this.

And that's why we didn't do it. We wrote them based upon what's at our fingertips today. What can we do now? That's really where we are.

MR. RAMIREZ: Okay, all right. So is there any other information that you all would like for the Department to consider, or any other areas within this Issue No. 3 that we need to discuss? Jeff.

MR. ARTHUR: I'm sorry. You're thinking of moving off the paper completely?

MR. RAMIREZ: No. I'm seeing what other issues we need to discuss so --

MR. ARTHUR: For the paper itself?

MR. RAMIREZ: Yes.

MR. ARTHUR: Okay, I have -- well, go ahead. But I think we have one more we need to discuss briefly.

MR. RAMIREZ: Okay, okay.

PARTICIPANT: Who's determining, and I don't know if it's this issue. Again because there's so much removed, I don't know what, where, in some cases I don't know which issue paper referenced what question.

But I had mentioned in the last session that zip codes are actually a little bit complex in terms of, you know, the institution was choosing its own zip codes, which on one hand we like, and on the other hand it's from -- again, from a disclosure and comparability standpoint can be inconsistent. Who's picking the zip codes now?

MR. MARTIN: Institutions choose the zip codes for their programs, and report those zip codes. If we're moving to NSLDS data, you report the program level zip code we would be using. That's what we would be using.

PARTICIPANT: Okay. So there would still be an issue of a disclosure? It's not a huge issue, but there would still be a little bit of an issue from a comparative, and again I'm thinking about the student, what the purpose of the metric is, just from an apples to apples. There are -- there's a roll up.

So it's not really by program. In some cases there are multiple programs in one set, and actually I suspect that by including the traditional -- I don't want to speak for Todd, but I suspect actually this could become an issue for other programs. We talked before about majors and changing majors and things like that.

So the complication of the zip code and again, if the purpose for the students is to inform them about a program, but there are multiple zip codes in a program or one institution chose, not because they were doing anything wrong, but there is flexibility in the zip code process to choose one zip where a different school, where a different school picks a different zip for the same program.

You forego the ability, the comparative ability for the students. So I just -- I'm putting it on the table as an issue. It's been an issue for however many years now. I just wanted to flag it.

MR. MARTIN: I think we will -- we will definitely -- we will definitely discuss that. I think there are, there certainly are considerations around that when you move into looking at more traditional programs, where the zip relates to majors and we all know students could, you know, maybe they're not even in a major for the first two years. They're basically in a general studies environment and they could switch majors four or five times throughout the matriculation.

So yeah, we will -- I don't want to get into that today, but I will just acknowledge that is an issue.

MR. RAMIREZ: Chris.

MR. MADAIO: Chris Madaio. I just wanted to make sure I didn't misunderstand something. Greg, you said before that there are constraints that keep the Department from publishing the rates on an annual basis. Is that --

MR. MARTIN: No, I didn't say that. What I meant was that in looking at how we could go to administratively calculating these rates, meaning no more reporting. That means what we have. There are constraints involving to continue to publish these every year with no hiatus.

If we're thinking about how we're going to obtain this information in a different way from every school about every program, that we did not want there to be a break, a two year break in rates or a three year break in rates while we figured out how to do that.

We also didn't want to have a bifurcated rate, where we were doing a rate that included elements, different elements for GE programs or I'm sorry, it wouldn't be that anymore. But what were formerly GE programs and now everybody else.

MR. MADAIO: I just wanted to follow up on that. Is the Department still contemplating a release of debt to earnings rate in this -- this year for previous award years?

MR. MARTIN: Yes. We are, we have committed to calculating another round of rates. But I cannot give you any time frame right now as to when that will be accomplished.

MR. MADAIO: Okay, and the same for the debt to earnings list, excuse me, the draft completers list?

MR. MARTIN: Yes, exactly.

MR. MADAIO: Okay.

MR. RAMIREZ: Jessica, do you have

anything? Okay. Greg, where did you want to go from here?

MR. MARTIN: Where do I want to go from here? I just wanted to -- this should be very brief. Just at the bottom of page five under (e), Exclusions. I just want to bring to your attention the fact that we did eliminate from the exclusions one or more of the students Title IV loans were in a military-related deferment status any time during the calendar year.

If anybody has any opinions about that, I mean you can voice them. Our considerations were that the military deferment status really wasn't like the other ones. Students are still in an earnings status. They may or may not be making more money during that time than they did in their other job.

We're willing to hear anybody's support of removing that or objections. We made a couple of different tweaks to exclusions. One or more of the student's Title IV loans were under consideration by the Secretary and have been approved for discharge. Just adding one or more loans clarifying that, or disability.

And we also added in (2) there, "The student was enrolled for at least 60 days in any other eligible program." So I just wanted to clarify those areas. And then one more thing before we leave. You might want to go to the bottom of page six as well, DE Rates Not Issued. Note that we went from the N size of 30 to 10. Those two things. Now I'll just take any comments people have about that before we close out the day.

MR. RAMIREZ: Okay, Jennifer.

MS. BLUM: So I had -- I'm sure I'm not the only one on the third -- well, I don't know. So I know that there are mixed reasons for why you might reduce it down to ten. But it does seem like that, and I haven't given it -- we haven't obviously had a chance to analyze or really think about.

But it does seem like the impact from year to year, especially on the earnings piece, could swing wildly in terms of results. I mean I just -- or maybe not wildly, but it will swing if you only are looking at ten people's salaries.

So -- and I just from a statistic, I'm not a statistician. But from a statistically valid standpoint, you know, and not -- 30 is small, too.

But ten seems like very low cohort on which to -- and this gets to Issue 4 when we talk about the language. But if we're judging by with the term "low-performing" and we're only talking about literally ten completer's salaries, I would -- I mean I just -- I'd give a -- I'm concerned about ten. It's so low. So I guess I will raise the sort of statistical validity of having such a low number.

I know why, or at least I think I know why the Department considered that. But I guess I would be interested in hearing what the Department's thoughts are around ten.

MR. MARTIN: Yeah, I could certainly do that, all right. Tomorrow I can bring one of our statistics people.

MS. BLUM: That would be helpful actually. Can we have the statistician, because I would be -- I mean I definitely think that would be helpful.

MR. MARTIN: Miss Hay will be back up to discuss data again, and so if I can pose -- she's not here right now, so I can make all these promises on her behalf. I'm sure she's very skilled in that area, and would be a lot better person to address those issues to than me.

MR. RAMIREZ: Do you want to chime in on that Jordan?

MR. MATSUDAIRA: Is that okay?

MR. RAMIREZ: Yeah.

MR. MATSUDAIRA: So I share the same concern, that just with a low cohort size the average of earnings with the median or whatever is going to bounce around a fair amount over time. I mean I think this is the kind of thing where, again, the Department has the data from successive years' data collection, where you could show us just how much those rates bounce around for programs of different sizes.

And again, we could kind of see visually, you know, given that you're a program that has a DE rate in a given range, like in the next, you know, certain number of years, like how many times does your metric come in at the same level or not, just as a way of kind of getting a sense for whether that's true.

I know people over in NCS weighed in on this same issue in the context of developing the College Scorecard, and so I imagine would be able to come and talk to us about that.

PARTICIPANT: What's NCS?

MR. MATSUDAIRA: I'm sorry, National Center for Education Statistics.

MR. RAMIREZ: All right. I have Todd, Whitney, Chris, Johnson and Christina. Todd.

MR. JONES: I guess I'm going to leave part of my question for tomorrow when we talk to the statistical folks about that. I mean I am interested to the extent that we're getting to a point where cell size matters here, and protection of confidentiality.

But I also would think it would be helpful for the Department to look at how that is applied, and whether the rolling average is not the superior option, regardless of the cell size you take, because of the problems inherent with small cell sizes.

If you have significant swings in any data set because the standard deviation is too wide, I mean you know, you're year to year swinging radically in terms of loan amounts for a small number of people, or you have wildly disparate levels of loans, the stat is going to be all over the place.

And with small cell sizes, it's going to be difficult to even take seriously for anyone who looks at them that one year it turns out that 50 percent of the students are taking $29,000 in loans for a two year program, and the next year they're taking $3,000. That kind of variability -- I'll just reflect on a speech I did last week.

I did a presentation at one of our -- one of my college's boards, and we analyzed what was the institutional discount rate for entering freshmen -- the entering freshmen class. Now you can calculate that across an institution over time, and this is a traditional four year institution, and the institutional discount rate varied by 10 percent over two years.

10 percent. Now that's just in terms of level of aid being provided by the institution and the net price being charged. I can only imagine how much more extreme we're going to see the whipsawing of small programs. This is a college which has hundreds and hundreds of students coming in per year.

When we're grinding cell sizes down not to 30 but to 10, where the change in one person could swing things radically? I can't conceive of that unless you have some sort of longer term norming. Of course, that gets into the problem that maybe some colleges have enough students in the program one year and don't the next, and what do we do if it's been three years since you had anyone in the program?

I would be interested to know if the Department has done any analysis to the extent that we're going to have this kind of variability in dropping from 30 to 10, and have they crunched the numbers just as a test in any way? Because I would presume the Department did that before they put a proposal up. But maybe I'm wrong, and we can find out tomorrow.

MR. RAMIREZ: That's going to be on Hay's list.

MR. MARTIN: Yeah. We'll entertain all data, all data then tomorrow.

MR. RAMIREZ: Okay.

MR. MARTIN: And I will -- we'll address that issue as well I should say.

MR. RAMIREZ: Okay. Whitney.

MS. BARKLEY-DENNEY: Yeah. I just have an easy question, because I don't see what's changed. So number one. So where you change number two, one or more students to number one, one or more students, and then students is stricken through and reprinted. Was something else supposed to be there or --

(Off mic comments.)

MS. BARKLEY-DENNEY: Yeah, yeah, but then down -- two more lines it's struck through students --

MR. MARTIN: That's simply -- that was just a -- that's just a formatting issue. Nothing changed there.

MS. BARKLEY-DENNEY: Okay. Just making sure. Thank you.

MR. RAMIREZ: Chris Madaio. Oh, Johnson.

MR. TYLER: I guess I kind of agree with the ten seems like a small number to take a sample on. On the other hand, it doesn't sound like in terms of all the stuff we're talking about today. These are very small programs that have very few people who are entering them it seems.

So it's just -- it's not a -- it doesn't seem as important to me as other issues we're talking about today.

MR. RAMIREZ: Okay. Christina, then Mark and Jordan. Jordan already went. Christina, then Mark.

MS. WHITFIELD: This is Christina. I just wanted to speak in favor of lowering the limit from 30. I don't know that 10 is necessarily the right number. But I think one of the weaknesses of the existing system is the number of programs that are excluded because of small cohort sizes.

So I think if we're thinking about this in terms of a consumer information tool, the more programs that are included the better. I'd also like to just point out that some of the metrics, the other metrics that people have mentioned today as being valuable like completion rates for example, or graduation rates, there's no limit on the cohort size for those.

So those rates are reported out, even if there's only one or two students in those cohorts. So there's -- I appreciate sort of the fine points about protecting confidentiality and small numbers moving around. But I think we can balance those out, and more complete information is better.

MR. RAMIREZ: Okay, Mark.

MR. McKENZIE: So to Christina's point, I guess I was the one who ran the data that something like 90 percent of the public certificate programs didn't graduate the 30 and 70 percent of the proprietary programs I ran just at the 10. It's 21,000 of 68,000 undergraduate programs still don't graduate five students.

So it's still a big number, and all the -- the thing this group should know is: all the data shows that the students who drop out have the hardest time with their student debt. So I would ask the group and the Department to think about how we could do something with completion, so we get to the heart of, you know, what I think the rule and what the consumers are concerned about.

MR. RAMIREZ: Pamela.

MS. FOWLER: I just want to say I agree with Christina. I have reviewed a couple of schools in the fall semester where nothing was reported on anything. So who are you protecting if nothing ever gets reported?

MR. RAMIREZ: Jordan.

MR. MATSUDAIRA: Hi, sorry. I should have added this last time. But you know in the past, I can't remember whether it was this rule. But in the College Scorecard, the kind of compromise over this N size issue and wanting to still have information be reported on small cohort programs is just to have some kind of roll up kind of cohort size that gets triggered when the cohort size is low.

So if, you know, for example if a cohort is below 30, then instead of using just a single year cohort, you might take the last three years' worth of cohorts. If that's over 30 then report it; and if it's not, then you know, whatever the exact thresholds are that can be dialed up or down.

But some sort of roll up cohort to both try to maintain information and accountability for those programs, but also respect both the bounciness of data in small cell sizes and the privacy concern.

MR. RAMIREZ: Chad.

PARTICIPANT: Yeah. I just wanted to clarify. I mean I don't necessarily object to it. I just had more questions about why than anything else. But I also -- and also just an understanding that I think just by sheer fact, the results are going to vary.

So to the extent that we're trying to tell students that something is good or bad, you know, in one year they could be "low-performing" and in the next year it could look terrific, and then vice-versa the following year.

And so I just -- it's more from an information -- I don't, I mean I'm -- it doesn't really matter. I mean it's fine. It's just more from an informational standpoint, and then I'm glad Jordan just raised it, because I meant to ask earlier today and then I held it for now and then I forgot about why did you get rid of the roll up, because that resolves some of the problems anyway, so why not just roll up into the four year cohort? So I think that is a good question.

MR. RAMIREZ: Chad.

MR. MUNTZ: Chad Muntz. Again, since we're on page five, I just wanted to highlight. Now that we're opting in all public universities for every single problem, I mean every single program, and we have --

(Laughter.)

MR. MUNTZ: I don't know if that was intentional or not. It's a long day. Anyway, we have a lot of universities under the same governing control. I know it was in there last time, but we didn't have any gainful employment. We had very few gainful employment programs. So for -- if you can roll up all the debt, this could create an issue for any institution of which debt is attributed to which program for our universities.

So I just wanted to keep that in mind. Maybe strike "may include" and "not include" for the public universities -- that debt from other institutions to the one they graduate.

PARTICIPANT: Johnson.

MR. RAMIREZ: Okay. Greg, was there anything else on this one that we need to hit?

MR. MARTIN: No. The only other thing was I just wanted to point out, and maybe nobody has any comment on it, the exclusion where we struck one or more students Title IV loans were in military-related deferment status. Is there any reaction to that? That's at the bottom of page five, Exclusions (e)(1).

I would ask that you look at it within the context of the other exclusions.

PARTICIPANT: Greg, just so I understand, you're protecting the student by including their debt, and it's in there is the way I look at it. Because without it, you're under-estimating the outcome of the program.

MR. MARTIN: Yeah. I mean we just considered -- I mean when you look at what these exclusions are, you know, loans under consideration of discharge or the student died, all of these. Student was enrolled for at least 60 days in another eligible program. I mean I -- we just didn't, don't view the military deferment in that same, in that same vein.

It's just simply the student's on a military-related deferment. But we're interested in hearing what anybody thinks about that one way or the other.

MR. KAMIN: We agree with it and appreciate it.

MR. RAMIREZ: And that was Daniel. I'm sorry, John. All right. So was that it for this issue then?

MR. MARTIN: Yes.

MR. RAMIREZ: Okay. Let me ask the -- well, tomorrow we're going to be starting off with sanctions, and yeah. So I'm going to ask you to take a look at that, and again if you could identify any areas where you're in agreement, right? Because I think that that would help clear the deck some, right, instead of just focusing on the items where there may be some heat around it.

That way in the later meetings, we could just focus on those areas of greater contention, okay. So let me ask the negotiators as well as the alternates: are there any comments that you would like to make before I open up the floor for public comment?

(No response.)

Public Comment

MR. RAMIREZ: Okay. Anyone from the public? Any public comment?

(No response.)

MR. RAMIREZ: All right. Thank you for staying locked in the whole day. Scott, do --

MR. FILTER: If everyone could just hang around while I -- I'll be passing something out. It doesn't -- you don't have to do anything active. Just sort of hang at your desk or your spot while I pass out some information related to borrower defense that we will discuss tomorrow.

MR. RAMIREZ: Okay great. Thank you. Then we will see everyone back here tomorrow at 9:00 sharp. Thanks everyone. Hold out for the handout though.

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