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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WEDNESDAY,
FEBRUARY 7, 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 PRESENT
STEVEN FINLEY, Office of General Counsel
GREGORY MARTIN, Office of Postsecondary Education

AGENDA

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 now for the day three of session two for the gainful employment regulatory negotiations for the Department of Education.

And I want to apologize to the public who showed up early. I had no way of emailing you all, but I guess for future reference, if there is any concern with that, just OPM has it on their website if there's any delayed starts, so just take a peek at that in the morning if there's potential for any concern. They actually posted it pretty late that it was going to be a two-hour delay in the start.

So let's go ahead and start off with any comments from the negotiators or alternates. Mark?

MR. JEROME: So, good morning, everyone. So just to open, I just have a, it occurred to me last night, a fundamental question.

I've been putting proposals out as have many of us in good faith, and some of the proposals tighten the rule and make it actually stricter, including out of my institution, but I was doing this with the understanding that number one, the Department is serious in its proposal to apply at least the debt to earnings to all sectors, and two, that the Department would eventually give us informational rates which absolutely will inform what the policy is, and it's been hard for me to think about what to propose today not knowing what the data would look like, so I'm just asking the Department what their response is to that?

MR. MARTIN: You know, that question and what you just said, Marc, I will address because I had planned to address it anyway in my opening in my first remarks, so why don't we just let Javier go through what we're going to do with public comment and all that, then when we begin, I will address those issues.

MR. RAMIREZ: Excellent, great, thank you, Greg. All right, so are there any comments from the public? All right, hearing none, so yesterday we were having some robust discussion on Issue Paper 4 on sanctions, and where we started to get bogged down were what were some of the metrics that we would use to see if a school was performing at an acceptable level or a program was performing at an acceptable level. And so we did some work last night to try to figure out a way to try and focus the conversation, and we'll share that with you after Greg makes some opening remarks on where we're at with that, so, Greg?

MR. MARTIN: Thanks, Javier. For the record, this is Greg, and, yeah, so last night, we did some thinking on this, talked with our senior people, so what I wanted to do was just lay out where the Department is on this so we can continue today, and the idea, you know, so with that knowledge, you can come up with some ideas about how we move forward with this.

So on the issue of sanctions, as you know, our proposed rules contain no program sanctions or no loss of eligibility based on the D/E rates. And the question was raised yesterday, I think, in many forms, "Is the Department's position on that firm or are we willing to consider some type," and I hesitate to use the word sanction.

I don't know if that's the right word and I don't want to use that as if that would be what we'd call it, but some type of consequence, let's call it that, for having poor metrics, whatever those wind up being.

High debt to earnings. We'll use it that way, high debt to earnings. So, yes, we are willing to enter -- what we're -- I guess I should say right off what we're not willing to entertain, and what we're not willing to entertain is a, would be any type of protocol where there would, for instance, be, you know, debt to earnings calculated for all programs, but the consequences would only devolve onto a certain segment of the community. We're not going to do that. So we remain committed to doing the rates for all programs at all types of institutions.

What we are willing to entertain is something other than the current rule, which is, of course, the loss of program eligibility based on unacceptable debt to earnings. If we were going to retain that, we wouldn't be here, so obviously we're moving away from that.

The Department, as Steve talked about yesterday, there are issues with our authority to extend loss of program eligibility beyond the GE programs. However, we do have other areas we might be able to go. So what I would task all of you with today is thinking about what -- two things.

Another thing, we don't intend to drop debt to earnings, but we're not opposed to entertaining other types of metrics that might be considered along with those, with debt to earnings, or as the point's been made here, there are many that might not have a very good debt to earnings ratio, but they have high graduation rates. If you did repayment rates, it would show excellent repayment rates.

So we are going to consider anything you want to put forward regarding other types of metrics that might be used in conjunction with debt to earnings, and also what types of, I'll just use the word ramifications might result from having poor metrics for a given period of time. Let's just put it that way just to keep it open.

So hopefully I've, you know, clarified where we're coming from and what we would be willing to consider, and it's certainly maybe broader than what the original proposed rules contained.

MR. RAMIREZ: Okay, I am going to put a hard ten-minute on this Q&A here or for Greg on this just so that way we could get into the actual content because we are dealing on, working on a compressed time schedule here. So let me start off with Daniel, then Chris, Whitney, Jordan, and then Laura, so Daniel?

MR. ELKINS: This is Daniel. Yeah, so I wanted to just kind of ask the group as a whole one or two questions, and this might not be the appropriate venue to have this discussion, but the lead up to the question is during the last negotiation, I believe that we all in good faith sat around the table with the intent to protect students, and I think that we all can agree on that.

Now, how protecting students looks, we all have a very different understanding, and it seemed that during the last negotiation, we realized that there were some issues with how GE was calculated. It excluded some programs that it shouldn't and it wasn't inclusive of other programs that it should.

We also realized that there needs to be a different appeal process so when a metrics that is not going to be a one-size-fits-all model misses the mark, those schools have a way of dealing with that.

So if we don't have the current metrics, I was wondering, and I don't know Javier, if it's appropriate or not to discuss what those other metrics look like. It seems like Greg may be alluding to that.

But maybe if we moved away just at some point during the day from one of the point papers and just had a high-level discussion, maybe put a time frame on it of what could be some metrics that we could actually use, and then see if that gets us any closer to something that is going to protect students across the board, but also allow the institutions that possibly wouldn't meet that metric, but are good for students, to still be successful.

MR. RAMIREZ: Yeah, so actually what I was hoping to do with you all today was to take you step by step through some of that, and if I understand Greg correctly, what he was saying is they are open to other metrics, but D/E has to be one of them, right? So they are open to it.

I don't think he put any type of restriction on what that is. It was more of let's just see what else is out there and see if we come to agreement, but D/E has to be one of them, okay? Let me get Chris next.

MR. MADAIO: Thank you, Chris Madaio. So to the Department, you know, I'll just speak about, to the Department globally. I mean, that's kind of a shocking statement because I don't think any of the negotiators would come here and say that, you know, "We're not willing to entertain X," and the fact that the Department is saying that it's not willing to entertain, you know, anything really in the negotiation of this rule, I mean, that's a pretty shocking statement.

MR. MARTIN: I disagree with you. I

don't think it's a shocking statement. I think that the reason why we're here is that it's obvious from the way the current rules are that we're back here to renegotiate those rules, that putting into place -- that if we come up --

As I said, we want to entertain program, other types of program sanctions, but if that's going to be that any type of a sanction based on these rates, that these rates are going to be calculated for all programs, all institutions, but the consequences, any consequence that results in, shall I say, a pejorative consequence or a negative consequence is only going to be affecting one type of school. We're not going to do that. I don't think that's -- I don't in any way think that's negotiating in bad faith. That's simply saying that our position is that we're not going to have a bifurcated rule where the consequences of it devolve onto one type of school.

So, and I think from our perspective, that's just being honest and not having people sit around and think about something that we wouldn't find acceptable, and I don't think that -- I know

I can't speak for any of the negotiators, but I don't think --

There's certainly a lot of negotiators from a certain segment that probably would find that a non-starter as well, so I don't think -- I think we're just setting the stage for something that would produce a rule that, where we can reach consensus.

I disagree with the assertion or characterization of it as being shocking or taking anything off the table. I think it's just an acknowledgment of why we're here to begin with.

MR. MADAIO: Okay, so I guess my follow-up question then is obviously the Higher Education Act has language regarding what a gainful employment program needs to do, right? The program needs to -- those applicable programs as defined under that section of the HEA, and I know you know which section I'm talking about, need to prepare students for gainful employment. I mean, that language exists, obviously, and I guess my question to the Department is if a program is not preparing students for gainful employment in a recognized field, what would the Department intend to do if there is no sanction specific for that field?

I'm asking -- obviously that statute differentiates. I mean, that aspect of the statutory cite contemplates that there's a difference between sectors. I'm asking for that sector. I mean, why is it that the Department here will not differentiate when the statutory language does differentiate?

PARTICIPANT: So I think the goal here is to come up with a set of regulations that work for every institution, that looks at the debt to earnings in the program. I think we've got certification requirements to the extent that --

I think even there in the certification to the extent any institution is offering programs that have to meet certain state or accrediting requirements, we expect those to be met as well.

I guess we're left going forward thinking about what the additional requirements are for GE programs, but in these regulations, the goal is to try to come up with a system that makes sense for all programs where the debt to earnings of the students that complete that program are one factor that would be considered along with many others.

And just like you might talk about looking at something like repayment rates, or very low cohort default rates, or something as an indication of a good program, there comes a point where if you get a lot of bad information about a program, you know, high D/E rates, terrible CDRs, low completion or something, that that program is actionable because it's just a bad program, not solely because of the D/E rates, but also because it's bad for other reasons, and the Department is willing to look at the concept of sanctions in that area here as well, all right.

It's not just finding other ways to show that a program with high D/E rates is good. It's a system that would also say D/E rates are one of several factors that may show a program should not be permitted to keep enrolling students.

It should have enrollment caps. Maybe

there should be a prohibition on enrolling new students if it's failed to improve over time. I mean, those are the kind of things that we think there's room for a very profitable discussion here today.

MR. RAMIREZ: Okay, Whitney?

MS. BARKLEY-DENNEY: Yes, thank you. I just wanted to, well, Chris said what I was going to say about, you know, I don't think that there's a desire to divide things among institution types. I think the issue is program types, which of course any institution can have.

And I also just wanted to reiterate my request backing up what Daniel said that we talk or think about doing this in a full caucus, not breaking off into smaller caucuses because nothing seems to get done there. We all come back to the table with our own ideas and then we don't even get to discuss them, so that might be a way of, you know, being able to move this forward.

MR. RAMIREZ: Jordan? And we have two minutes on this thing, so we've got to move it along.

MR. MATSUDAIRA: Yeah, again, I'm kind

of surprised by the Department's kind of statement about just dismissing the idea of having sanctions in the GE sector out of hand, and I think it brings it back to, you know, we're going to have a conversation about what metrics are appropriate.

But if we're not in the business of, you know, kind of thinking through having sanctions as a potential option, it really, for me, makes me question what the goal of this regulation really is, and I just want to ask the Department again to express how they see the goal of changing the regulation here.

So I remember hearing something about reducing administrative burden. I get how everything we've talked about accomplishes that goal, but I want to ask you to specifically address whether the goal of this regulation is still to prevent students from borrowing beyond what students can repay, and if it is, how you see this action's effect on that?

Do you really believe that this action is going to advance that goal? Everything I know about the evidence base from the literature suggests that that's not true.

There's a lot of evidence that suggests that disclosures have a limited impact. They tend to have their impact most when consumers are relatively sophisticated and well supported in a way that's unlikely to be true for the low-income population that populates this sector predominantly.

So I think it's heroic to believe that this is going to advance that particular goal, and so I wonder whether the Department has either decided that's not an important goal or the kind of gains in terms of administrative simplicity really outweigh that.

This kind of asymmetry that's been brought up about the consequences of the rule falling on one sector relative to the entirety of higher ed is something that was addressed in the previous rule, and so I just want to understand better what the Department believes has changed about the analysis in that rule for why we shouldn't be concerned about the GE sector in particular given, again, the weight of the evidence that shows that the kind of struggles that students experience in repayment and low earnings are really disproportionately concentrated in that sector, and that kind of brings me to date. Greg, you said you were going to address that, and I just want to ask you to do so.

MR. MARTIN: Like I said, the data, we are in the final process of clearing it. I believe, I think I can say without going too far out on the ledge that we should have that available this afternoon. Sarah Hay will be back this afternoon to discuss the data with you.

Regarding your other issue, no, I don't think the Department is backed away from a belief that students should be protected from non-performing programs or programs for which there is no value derived from borrowing.

I want to say up front that, you know, in no way did my comments take sanctions off the table. In fact, my comments put sanctions back on the table. The original proposal that we had didn't contain any sanctions at all.

And I also want to reiterate that we're back here negotiating. If the intent of the Department -- if one of the options before us was to keep the current rule in its current format with no changes, we wouldn't be here.

I don't mean to sound flip about that, but it just represents that the views of the administration are somewhat different than perhaps previous ones. That's just the fact. That happens all the time.

These rules are not meant -- they're meant to address some concerns we have, so I don't think that we're obligated to come back to the table and say, "Well, you know, we're not going to change anything from the previous rule," and saying that we would entertain program sanctions.

I think we're throwing it out to the group to come up with other types of things that we could possibly do, and maybe I could have Steve talk about a few of those, what some of those things might be that we feel we could do.

We are committed to keeping -- you know, and I think it's a legitimate thing to say that there are programs offered at various different types of institutions and we're looking at, you know, I think students should be able to compare programs and look at what they are, both in the proprietary sector, other types of sectors, and I don't -- I'm not --

You know, just from a policy standpoint and a fairness standpoint that, to be here to say that we're going to start with the premise that we have started with, that we're going to calculate these rates for all institutions, all programs, but that we're willing to introduce, or to consider talking about anyway, program sanctions, but that those sanctions are only going to be related to one group of institutions.

I don't -- we don't accept that all of the problems in higher education are related to that type of institution, or that other types of institutions don't have similar problems, and I think that's what this regulation represents.

And I think if anything, my comments this morning have rather broadened what the position of the Department was as opposed to narrowing them, so I guess it's a matter of how all of us interpret what I said was, and I'm not trying to get into your head and convince you that I'm right.

I'm just saying that that's our position and I don't think my comments took anything off the table. I think they put a lot more on the table.

MR. RAMIREZ: All right, so let me do this because we've gone well beyond the 10 minutes, and I want to show you all something and ask you if you think this conversation is productive or if you want to go with what I was at least initially thinking.

So can we get the -- to the project -- all right, so yesterday when we were talking, it looked like you were breaking down the sanctions discussions into four different categories. And whenever we throw up what we call a map here, it's a mind map, it goes clockwise.

So metrics would be the first one, then it would go down to applications, corrective options, notifications, right? So anytime you see a map pop up there, at least the way that we have them laid out here, they go clockwise, okay?

So we were talking about identifying what were the metrics that we would use in order to determine whether a school is performing at a level that it should be, or a program. Then we'd go down, after we determine that, how would we apply those metrics? What type of corrective options would there be, and then how would we notify students, right?

So we were hoping to chunk it like that and walk you through those steps. So if we were to look at the metrics, and that was some of the homework that we gave you yesterday was, and we grabbed some of them off the board. Some of you emailed me and we captured them and tried to pull out these pieces here.

And so if I understand correctly -- well, let me ask the group here. Which one of these metrics is the one that determines whether a school is performing well or not? Which is the one?

MR. MATSUDAIRA: None of them, you know, or all of them.

MR. RAMIREZ: Right, it's not one, right?

MR. MATSUDAIRA: It's hard to say. This goes back to the question about what the goal is here, right? What are we trying -- what information is important to communicate to students?

MR. RAMIREZ: All right, let me finish.

MR. MATSUDAIRA: What I was --

MR. RAMIREZ: Jordan, let me finish this point though.

MR. MATSUDAIRA: But we can't answer --

MR. RAMIREZ: And I'm coming back, Jordan.

MR. MATSUDAIRA: -- the question without a Department --

MR. RAMIREZ: Jordan?

MR. MATSUDAIRA: -- answer to that.

MR. RAMIREZ: But I'm coming back to that. Just let me finish this and then I'll come back. I just wanted to show you where I wanted to go, okay?

So I think it's understood that no one of these metrics is going to be the silver bullet, right? And what Greg was talking about was that whatever metrics you all decide, D/E needs to be one of them, right? So if you look at the top left there, composite components, let's put D/E underneath that one, so debt to earnings needs to be one of them.

So we would start identifying the ones that you feel would be the ones that would go underneath there, right, after we generate more of these, so that's where I wanted -- I was hoping that we could work and step you towards.

So the question that I have for you, and it's going back to what Jordan was trying to say right there, was do you want to continue, put a few more minutes on the clock to continue the conversation or do you want to jump into this right here?

PARTICIPANT: Can we put five more minutes on the clock?

MR. RAMIREZ: Let's put five minutes up on the clock, and if you see, we'll keep this up here. We'll add five minutes up on the clock over there. You know what? We'll even do five minutes and -- seven minutes and 20 seconds. How is that? All right? So we'll just continue down the list here. So we have Laura, Johnson, Jen, Daniel, Sandy, and one more. Laura?

MS. METUNE: My question was along the lines of Jordan's question which is what is the problem we're trying to solve? My understanding of the history of gainful employment was based in widespread fraud and abuse that was occurring in a very specific sector.

In California, we experienced the closures of Corinthian, and ITT, and countless other small schools. And so to have an oversight and accountability structure focused on the area where there's widespread fraud and abuse occurring seems to make sense to me.

I am not opposed to giving students better information to help them make more informed decisions about where they go to college. I do think it's a questionable use of government resources to try and use that kind of a disclosure practice to get at the problems that we've faced in one specific sector.

And I guess my question is what have we learned since the closures of Corinthian and ITT? What have we learned about this sector, and the problems in this sector, and how are we using the other tools that have been mentioned to address those problems?

And unless we can answer that question, I'm just, I'm really at a loss for why going into a conversation about what good information students should have to make decisions is useful to what I thought was the original goal of this work.

MR. RAMIREZ: Greg?

MR. MARTIN: Just keep going in line.

MR. RAMIREZ: Next, Johnson?

MR. TYLER: I guess I just need a clarification here. If we did create a composite component here and someone failed -- everyone agrees. We agreed on the composite and everyone fails that test, and we give them, you know, what everyone agrees is a reasonable time to fix the problem and they don't, is no more funding part of what's going to spur them on?

And I guess my second question is does that apply to both sectors, those institutions that are under gainful employment, or is that only -- or as well as the nonprofits, or is it simply to the ones who are under the gainful employment? Because I'm a little unclear about that.

MR. RAMIREZ: I'll let Steve and Greg jump in here for a second, but that's what I was trying to do. I was trying to step you there, right? So once we determine what those metrics are, how do we apply them, and then what would be corrective options?

Now, I've heard that one of the corrective options that the Department is not interested in is the elimination of the Title IV funding for that institution, but are there other corrective options that can be explored? Can we tap into this brain trust to see what else can be done short of that? And that's where I'm trying to get you all to.

MR. TYLER: Okay, I may be a little obtuse here, but I just want to be clear. You're saying you're going to take all this data and then DOE is going to do whatever enforcement it does normally? I mean, I just feel like we were creating a metric that would create some incentive here.

MR. FINLEY: So I think we're looking at ways to identify good programs and bad programs, and not just make that determination based on a D/E rate, right? Now, it's -- and then there's -- the concept I've heard at the table is whether there's a program that's had an opportunity to try to improve over time.

So there is a concept there that says at some point you have a discussion with an institution that's offering a bad, what looks like a bad program, and say, "What's been done to improve it? What's your chart for improving it?"

And there may be a future conversation with the institution that says, "We don't understand why you're still offering this program. Maybe you should stop enrolling students in that program if it's not improving." And there could even be a point where the institution is being recertified and there would be another discussion about what programs aren't included in that recertification if it's consistently demonstrated very bad performance. It's a concept. If it's not just the D/E rates, but it's going to be that plus other things, and I'm not sure that's suited to thresholds, but that's what we'd love to hear discussed at the table, but it's not just for GE schools.

It would be a good program or a bad program, whoever is offering it, right? High D/E rates would be one factor, but certainly not the only factor, and that's what we're looking at for this discussion and obviously we want feedback around the table, and that's why we're here.

PARTICIPANT: If I may, there are about over 5,000 institutions in the United States that are getting Title IV funding, just a lot of work if you're going to have to do that sort of hands-on investigation every time you identify one of the poorer performing schools with this metric.

MR. RAMIREZ: Jennifer?

MS. BLUM: I have a process question. Whitney has now asked twice for a caucus, so what is the process for a caucus?

MR. RAMIREZ: I didn't hear the caucus request.

MS. BLUM: Well, last night and this morning, that was the first thing she said this morning and it just went right back into the queue, so I was just curious about --

MR. RAMIREZ: I'm sorry. It was my understanding that you didn't prefer to have a caucus.

MS. BARKLEY-DENNEY: What I didn't prefer were small group caucuses like we did yesterday. I think it was helpful and that we fleshed out our ideas, but now it's time to bring these ideas to the table as a group instead of being segmented, and I think that, you know, in having done --

I've done these a couple of times, but sometimes, you know, you can keep certain people in, but it's mostly closed to the public, but I think that that would help move the conversation along in a way that could be more productive for everyone.

MR. RAMIREZ: All right, so if I understand what you're saying, it's a full group caucus where it is closed off?

MS. BARKLEY-DENNEY: I mean, I'll leave that to the group, but I've heard around the table that that would make people comfortable and we definitely want the Department to stay in this, so we don't want segmented caucuses, you know, where one group goes off and decides they're going to do something, the other group decides they're going to do something, and never the twain shall meet.

PARTICIPANT: So we stay in this room? Where would the group meet? Stay in this room? The livestream goes --

MR. RAMIREZ: Yeah, so let me do this. We have some people in the queue. Is everyone okay with suspending the queue for a minute, take a one function break, and let me see what our options are?

I just don't know what the logistics are here as far as, you know, being able to accommodate that request, so let me explore that with facilities and see what is doable.

MS. BARKLEY-DENNEY: Okay, and let me just say I don't -- you know, we can keep the queue, and then just once we start talking about the nitty-gritty, I just think that we might get more done and people might feel more comfortable putting things on the table if, you know, there's not so many eyes on them.

MR. RAMIREZ: I see, okay. Yeah, sorry, I misunderstood that, so I apologize. Then Daniel is next then.

MR. ELKINS: It's Daniel. This is more of a Braveheart style speech to everyone.

MR. RAMIREZ: The short version?

MR. ELKINS: Yeah, for sure. We have a unique opportunity right now around the table, all of us as experts in higher education to identify things that are going to protect students and to reach agreement. I want everyone just to realize that.

If we come to consensus, it goes on the books forever. I mean, right, but if we don't reach consensus, we might not get anything, no sanctions, sanctions for everyone. We really have an opportunity right now to reach consensus, and I encourage everyone.

Give a little, just a little in order that we can protect students from the worst actors, maybe not get everything that we need, but we have a unique opportunity right now, and I think that Whitney's suggestion to have an open conversation will get us there.

MR. RAMIREZ: Thank you, Daniel. And just a quick reminder on that, right, consensus is not getting what you, absolutely is your best desire, right? The lowest level of consensus, if you remember when we went through the five levels of consensus, is that you don't necessarily agree, but you will support, right, for whatever reason.

You just understand that, "Look, this is the best deal that we're going to get. I get it. I'm not happy with it, but I'm going to support it." That's the lowest level of consensus and there's rungs.

You know, there's five total levels of, well, four because the fifth level of consensus is no agreement, right? So just keep that in mind as we're having these discussions. It's not always your best position, okay? So with that, I'll pass it to Sandy.

MS. SARGE: This is Sandy. I agree with the comment yesterday where somebody said it's hard when it's 45 minutes later and you got so many thoughts, but I want to make sure that I understand something.

So Chris Madaio, on occasions you've gone back to the definition of gainful employment in the HEA, and my understanding when all of this started back, it was because gainful employment had an interpretation by the Department for years, and years, and years.

Basically it must have been 65 plus 10, so 45 years there had been an acceptable or at least theoretically non-contended gainful employment interpretation that was basically as long as it's leading to a career and not a hobby of some sort, or a non-career oriented, that it would be then seen by the Department as gainfully employed.

And that then, as all of this stuff came out -- so with all due respect, to keep going back to the HEA, the HEA doesn't define it in anything other than to prepare for gainful employment in a recognized profession, i.e., not a hobby.

Then we all came through this around seven, eight, nine years ago, and we began to try to define how do we measure that? And if we, if I think about this financially or even just mathematically, I think that at the end of the day, it basically says, "Does a program provide the student with work that enables them to repay the debt?"

So to me, why wouldn't that be every program because you're loaning money to somebody and there isn't -- based on just that financial relationship of loaning as opposed to giving, or granting, or scholarship-ing somebody, you're loaning it. There is an implicit expectation that repayment will occur.

So if we are -- wouldn't that by default make every single program in which debt is incurred to partake in it or to pursue it a gainful employment definition? So to me, you know, we're talking about debt, not grants. There should be financially for everybody --

And while I really am an advocate for protecting the extreme cases of students who are deceived, and I, as many of us have said, we are for sanctions that find these bad actors that are certainly extremes that we've all talked about, but at the end of the day, this is a debt relationship.

I think where we're failing students is that we are not educating them on what that really means the day they enter into school. Promissory note is arbitrary. They don't know what it means.

But in essence, any program in which you are lending to anybody, there needs to be an expectation that repayment will happen, and it is our job as the educators to ensure that that student understands that and can do it.

If they can't do it because they have a history degree that I think Todd mentioned yesterday or a forestry degree, then we need to question whether debt is the right vehicle to allow them to take that program.

MR. RAMIREZ: Okay, thank you. So I have Tony, Jordan, and then Tim. Whitney, is it your tent up? Okay, so, Tony?

MR. MIRANDO: Thank you, and I'll try to keep mine very short and sweet. Like many of my colleagues around the table, I came here to the first meeting prepared as I was eight, nine years ago when I joined the group to initiate gainful employment regs, to again come back to the table to do the same.

Just like the rest of you, I received an email with these new issue papers that implicitly show that it's a new mandate. We have a new job and it isn't gainful employment. It is now D/E and it means for everyone.

And I want to give thanks to the individuals around the table that are getting past that this is not GE and that we want to come to the table and fix what is being presented to us in a more meaningful way to ensure that students are protected, and I, like a few others, already say I'm ready to work. Let's get it done and move forward.

MR. RAMIREZ: Jordan?

MR. MATSUDAIRA: Sorry, I'm going to keep asking the question of what the goal is here until we come up with a better answer. The goal can't be to identify good and bad programs. That's just too broad a goal.

If we're going to start with something like that, then I'm going to, you know, we're going to argue about whether we're really, you know, we can quantify the amount of time you spend in a forest clearing getting sunshine on your face and things like that to try to figure out what a good program is, you know what I mean? The intent of the original rule was not to identify good and bad programs. It was to identify programs that burden students with debt beyond what they were likely to repay given their earnings, and I'd suggest that we come up with a working goal that really reflects that, and I think doing that really guides metrics, okay?

There are all these things like completion rates, you know, graduation rates, license or exam pass rates and so on which might be proxies for kind of struggles with debt and so on, but they're very noisy proxies for those things.

There are very direct measures of how people perform on their loans and so on, repayment rates, default rates, debt to earnings and so on that make a lot more sense in that space, but I think we have to start with a goal that actually makes sense here for any of the conversation that follows to be meaningful.

We went through a two-year process across the White House, the Department of Education, and other parts of government trying to decide what was a good program in the college score card and come up with a whole system of accountability.

You know, I imagine there are some people in the back row over there that might break out in hives just having me talk about it. That was a process that didn't reach consensus over a really wide range of people with really deep exposure to the data and a lot of background across all different sectors working, you know, a lot of hours every week out of the year for nearly two years.

So I don't think it's a reasonable goal for us to even consider over the next six days that we're going to be meeting, so I'd urge us to kind of refocus on a goal that makes more sense.

PARTICIPANT: Do you have a suggestion, Jordan, of a goal that makes sense?

MR. MATSUDAIRA: Establish a set of metrics that identify programs where students are likely to borrow more than they can afford to repay and establish a set of sanctions that in a meaningful way kind of prevents students from entering those kinds of programs.

So, you know, for me, I think having a sanction structure, a sanction structure meaning notifications which is in the Department's capacity to be able to warn students about the outcomes of students and their likely ability to repay across the full span of higher ed, but where the Department is able, I think it also makes sense to take further action and have sanctions that lead to loss of Title

IV.

MR. JEROME: Jordan, just one question, are you comfortable focusing primarily on student borrowers? Because the focus on non-borrowers got to looking at programs rather than borrowers and it's a fundamental difference the way you approach the regulation.

MR. MATSUDAIRA: I think conceptually, I agree with the point that you've been making, Marc, that that's a sensible kind of thing to do. Given the broader constraint about the Department isn't able to just have a sanction be the loss of loan eligibility and participating in the loan program versus all of Title IV, then I think we have to work within that constraint.

MR. JEROME: That's true.

MR. MATSUDAIRA: And because of that, I think it's something that's worth discussing. I think that's the kind of thing that I think is a very reasonable criticism of the structure of the current rule, but I think there are trade-offs about that that I think we should --

MR. JEROME: So I think we will be able

to propose some alternative sanctions.

MR. RAMIREZ: All right, Tim, and then we'll see where we go from there. Tim?

MR. POWERS: So I'll be as brief as possible, but, you know, I just, I want to reiterate that there is a difference between baccalaureate, master's, and doctoral programs versus certificate programs. They have fundamentally different purposes, fundamentally different outcomes.

And while I agree that we should be providing students with as much transparency and information as possible, I just, I have to reiterate that there is just a fundamental difference between comparing a GE regulatory structure that was created for short-term certificate programs, which has extended to baccalaureate and master's programs at some of the schools based on how they're defined in the HEA, but which was primarily designed for certificate programs, and just willy-nilly applying it to bachelor's, master's, and doctoral programs in the public and nonprofit sector. We're just going to have a really hard time getting past that.

PARTICIPANT: They're open to that?

MR. POWERS: Open to what?

PARTICIPANT: Open to the two --

MR. RAMIREZ: Wait a second. Put on your mics and state your names if you're going to make a comment.

PARTICIPANT: Just I'm asking is the Department open to shrinking the scope of the rule to certain degree levels? You know, there's been a lot of discussion on graduate and Tim's bringing this up, and I think it's a fair discussion.

PARTICIPANT: Yeah, the answer to your question is yes, we would certainly be willing to consider. I'm not stating that our position would be firm or we're adopting that if your question is, "Would we be willing to consider looking at these as they're applicable to types of programs at all institutions?" so we wouldn't be saying, "graduate only programs at not-for-profit public and privates."

But if, for example, somebody were to say, "Well, we don't feel this should be applicable to graduate programs," if, and this is just a hypothetical, if that were to be an exception, then it would have to be applicable to those graduate programs at all types of institutions. But to answer your question, yes, we would consider proposals like that.

MR. RAMIREZ: All right.

MR. POWERS: I just had one last --

MR. RAMIREZ: Very quick.

MR. POWERS: -- very quick thing which is, you know, I just want to again remind folks that publics and private nonprofits that run certificate programs still have to report and face sanctions as it currently stands.

And again I just want to reiterate that, you know, while we do certainly have issues and we could probably have a really interesting, and I'm looking forward to having an in-depth discussion on what the metrics should be, that I don't --

I just want to remind folks that this is not only targeting one sector while just sort of letting the other two sectors slide by, that the publics and the nonprofits still have to report this stuff and face sanctions currently, and will likely in any regulatory scheme, at least for certificate programs offered under this sort of certificate definition, will continue to face the same sanctions and outcomes-based -- I don't know what the word, we're not using penalties or sanctions -- consequences that the other sectors would face.

So again, I just wanted to remind that because I think that has just sort of gotten lost a little bit in the conversation, but really looking forward to having this metrics conversation because I think we can really move it forward.

MR. RAMIREZ: All right, look, I'm going to go ahead and stop the conversation here just because we're going to have opportunities to discuss, right? But I want to start getting into the problem solving, right? So what I would suggest is this, reconvening, and I say reconvening at 3:00. Let me finish.

So what I'm saying is that we're going to excuse the public. I'm going to ask the negotiators and the alternates to stay here and we'll figure out our path, okay? But as far as -- that incorporates lunch, caucus, work time, but reconvene so the members of the public can come back at 3:00 and see where we're at, okay?

PARTICIPANT: And I propose we meet during lunch.

MR. RAMIREZ: We're going to discuss that right now, but, so if I could ask the members of the public, you're welcome to come back at 3:00 and we're breaking right now. Negotiators, alternates, maybe take a one function break and come right back.

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

MS. BUCK: So while you're still coming to your seats, I hope you can be thinking about somebody making a proposal about what time we would end today.

(Off mic comments.)

MS. MILLER: So do we have a proposal for the end time for today?

(Off mic comments.)

MS. MILLER: So 5 o'clock has been put

-- 5 o'clock is what's on the table. Do we have all the negotiators to take a vote on that?

MS. BUCK: So temperature check on the end time.

MS. MILLER: Five p.m.

MS. BUCK: Five o'clock is the proposal.

MS. MILLER: So I do not see --

MS. BUCK: No down.

MS. MILLER: No thumbs down. So we'll be ending at 5 p.m. today. Okay.

MS. BUCK: All right. Well welcome back, everyone. And just for the general public, we want to let you know, generally, there were a few areas of consensus reached, and Crystal's going to report on that.

MS. SMITH: Hi there. This is Crystal. So first, when it comes to the application of any sanctions, the group has determined that they will eliminate all graduate degrees from consideration of any of these sanctions.

The second item is when it comes to

triggering metrics, they have determined that, tentatively, that a debt-to-earnings ratio plus the repayment rates are the metrics that they will be considering.

When it comes to corrective actions, or corrective options, after failing both the D/E and the repayment rates, the Department must take some corrective action. And that has been defined as a number of things, including program reviews, LS&T, letters of credit, heightened cash monitoring, provisional credit, all of these up to and including the loss of Title IV funds. And that's where they are now.

MS. BUCK: And again, those are recommendations to the Department of Ed. The Department of Ed isn't saying what it will do. But these are the recommendations of the group. Is there any correction to what you thought we had agreed to?

MS. SARGE: To what she just said.

MS. MILLER: Okay.

MS. SARGE: Not anything --

MS. MILLER: Okay, Sandy, really

quickly. Then we're going to go round robin, around the table. Go ahead.

MS. SARGE: So when you said the application part not applied to graduate, these sanction, you said sanctions, I think everybody was saying disclosures as in total, right? We're taking everything off, not just sanctions. So I just wanted to make sure I heard that right and everybody agrees. Okay.

MS. SMITH: My apologies. That's correct.

MS. MILLER: Okay. So Tony, did you have a correction?

MR. MIRANDO: Yeah. Well, it isn't a correction but it's an addition. So we talked about D/E plus repayment as a first-year, but then we came up with a whole list of secondary tiers for, as an alternative, as well.

(Off mic comments.)

MR. MIRANDO: Right. Correct.

MS. SMITH: Okay. And that's also correct. Yes.

MR. MIRANDO: Okay.

MS. MILLER: Thank you.

MS. SMITH: That was the first line of triggering, and then the second tier.

MS. MILLER: Jeff, do you have a correction, or something else?

MR. ARTHUR: I have a clarification or a point on repayment rate.

MS. MILLER: Okay. Make it real -- okay. Go ahead.

MR. ARTHUR: All right. So the -- we don't want to take for granted the definition of repayment rate. There's a proposal in the reauthorization bill already that has a formulated calculate repayment rate. You've got one you probably -- that we've used in the past. And there, it sounds like there's going to be one soon in a Senate bill.

I would suggest that if the House and Senate bills happen to match, for simplicity purposes, why not follow their lead on the repayment rate formula?

MS. MILLER: Okay. Thank you. So next we'll go to Laura. Then we have Ahmad, and then Todd and then Jen.

Laura.

MS. METUNE: I'm a little bit uncomfortable with the characterization that agreement or consensus has been reached. My understanding is that we were taking temperature checks. I was out of the room when the decision was made to close this conversation off to the public. I probably wouldn't have supported that.

I just think that, you know, a lot of the areas where I agreed to provide, sort of, that level was because I wanted to move the conversation forward and not because I'm not fundamentally uncomfortable with some of the responses we heard about what next steps might be or how we might protect students. I just wanted to go on the record and say that.

MS. BUCK: So the term should be changed to temperature check as opposed to consensus. Okay.

MR. SHAWWAL: Ahmad here. Just for everyone's benefit and edification, I just want to walk through the structure that was just discussed. And please correct me if I'm wrong, just for my edification, too.

So we have D/E and loan repayment rate as a first step. If an institution passes both, they're good. If they fail one --- either. Either, okay. And so if they fail these metrics, they go into a second step, through which we have discussed, that the Department ought to implement one of these tools that they have in the toolbox. Is that correct?

Tier 2, or is Tier 2 a second --

MS. BUCK: Tier 2.

MR. SHAWWAL: -- set of metrics?

MS. BUCK: Yes.

MR. SHAWWAL: A way to adjust this course?

MS. BUCK: Exactly.

MR. SHAWWAL: Okay. Is that essentially an appeals process, then?

MS. BUCK: Oh, actually, that's an interesting way of putting it.

MR. SHAWWAL: Okay.

MS. BUCK: Sort of.

MR. SHAWWAL: Okay.

PARTICIPANT: Administrative capability does provide an appeals process.

MR. SHAWWAL: Okay. Makes sense. Okay. And if they do not pass this process, then hand it over to the Department. It's their responsibility to enact one of these things that we have -- that they have said that they will do, which we will see if they will do.

Is there anything I'm missing there, some big points? No? Okay. With that, I think that's an improvement from where we began these discussions.

My concern, still, is on the time line of this entire process, because while all this is going on, and if we have identified a truly bad actor, students will still be enrolling and being harmed by these institutions while this entire process is going on. Do we have any sense of how long this could take, at all?

MS. BUCK: So we didn't get to the time line, and what I would like to propose is that we get back to that tomorrow. I've added it to a list here, but that has not been covered yet.

MR. SHAWWAL: So one thing I really want to emphasize is, maybe we should discuss, how do we make sure that this entire process takes place in a reasonable time frame so that we can still protect students, and so that these bad actors are not continuing to sort of act in an unreasonable way that would harm students?

MS. BUCK: Okay. Good. Thank you.

Todd?

MR. JONES: I'm just going to offer a side comment. I've been through more than a few of these on the Department side, the sitting-at-the-table side, and I want to offer my compliments to Whitney, for suggesting we actually have a closed session.

I think a number of what I would call foolish ideas were dropped, and others which, well say my ideas, that were not probably supported by others, were at least vetted and quickly disposed of in a matter of time --

(Laughter.)

MR. JONES: -- that would have dragged

on if we were out here all having to offer our public position on, in a rather expeditious manner. And that is a different than the norm of how these processes work, but I appreciate -- I want to thank her for doing that. And I know I'm not the only one at the table who believes that. Others can chime in but, you know, our thanks to you for doing so.

MS. BUCK: Jen.

MS. DIAMOND: So I just wanted to -- well a couple of things. I just wanted to echo Laura, actually, on the, on where we are, in terms of, you know, we can either say temperature checks or sort of a tentative, you know, pathway for a conversation.

And the reason why I share, you know, Laura's feelings, but also I wanted to add that, just so the public understands, because I know you're coming into like, a three-hour conversation, or a three or four hour conversation, we haven't reached consensus on the actual, what the debt-to-earning metric and loan repayment rates should be.

So I just want to be clear. I'm saying this for the benefit of the public. So we still have a lot of work to do. We set up a framework and a pathway that I think we should all be, you know, really proud of, or at least that we've had this, you know, really good dialogue about it, so.

And then, Ahmad, to your point, I do want to point out something, and we could put this, I would propose even putting it in. If there's a school that has multiple programs, and that is shown -- and again, we'll have to talk about the end size, but if it's shown two years in a row, the Department always has the ability, and we should not preclude through our enforcement, what we're going to be writing on enforcements, we should never preclude the ability of the Department to act fast.

So if they have, you know, more than 50 percent -- I'm making up the number, and we won't say a number, because that would be not be appropriate, but if they -- if there's a -- because we'll have the benefit of these two metrics, if there's something that's obviously a theme, you know, two years in a row or whatever, the Department can always take swift action.

And I think, providing some sort of language that says, of course the Department can always use its other, you know, fast action tools, because I -- I said this during the caucus, too. We want to be careful not to preclude the ability of the Department to do something else if it feels the need to more quickly.

But what we are dealing with, and again, I'm saying this for the benefit of the public, what we are dealing with in real sort of aspects is, you know, a situation where a university has one program, that's thematically wrong, over three years, you know, and needs to be, you know, vetted out and whatever in a more methodical way, that's one thing. But if we have a persistent problem as an institution, that's a different thing.

So I do think that that's something that we could mete out more, you know, over the next few days and next session.

MS. MILLER: Thank you. Steve, did you want to comment?

MR. CHEMA: Yes. There was a concept

that Marc Jerome had mentioned earlier, and probably early in the caucus, or maybe even late in the time before the caucus, that talked about looking at the debt-to-earnings ratio at the institutional level as well. And that seemed to have gotten some favorable reception around the table.

I just wondered if people had, were also open to the notion that that would have been part of the tier 2 things that would be looked at, if there was this heightened review by the Department. I don't think anybody had abandoned it. I just think we didn't come back and talk about it because it was almost 3 o'clock.

MS. MILLER: Daniel.

MR. ELKINS: We would be supportive of adding that into the second tier. And I do think that it merits a discussion.

MS. MILLER: Is that something we want to discuss this afternoon?

MS. BUCK: I do want to say that we do have a data report coming up. And we might want to make sure we get that in. What we could do is add that to the list of things we don't want to forget. Would that be okay?

(Off mic comments.)

(Laughter.)

MS. MILLER: Thank you, Marc Jerome. So are there any other comments that negotiators want to make about the caucus before we get into the much-anticipated data requests? Okay. So I think -- I don't -- can we break?

MS. BUCK: We're ready, I think, for the data report.

MS. MILLER: Let's give Sarah just one minute.

MR. MARTIN: We're going to take a two-minute, what's it called, single purpose break, to sit --

MS. MILLER: One-function break?

MR. MARTIN: One-function break, where you don't leave your -- you know, here's the thing. If you leave a desk and get up, then I'll do the data report as opposed to Sarah. So that might give you some incentive to stay put.

MS. MILLER: Are you ready? Or do you

need two more minutes?

MR. MARTIN: Two more minutes exactly.

MS. MILLER: Okay. Two more minutes.

MR. MARTIN: We're starting distribution of the first of two papers right now.

MS. MILLER: Thank you.

MR. MARTIN: We had to do just some, a reprint on the second one, so that's just, takes some time to get that.

MS. BUCK: Okay. Go ahead.

MS. HAY: Ready to go?

MS. MILLER: Go ahead, Sarah.

MS. HAY: Okay. This is Sarah Hay. Thanks --

MS. BUCK: A little bit closer to the speaker, I think.

MS. HAY: Oh sure. Okay. Okay. So this is Sarah Hay. Thank you very much for your patience. I really appreciate it. I'm currently balancing a sick toddler at home and making time to come in here and answer your questions, so thank you for your patience with me.

The version that we're reprinting had

a couple of typos in it, and we want to make sure we get you the right one. So they're printing it. They'll bring it back down once they're finished reprinting it, so I apologize for that little miscommunication.

So before I start jumping in to walking you through this, I do want to say that these data are the work of many minds and many hands. And I really want to thank all of the people at Ed who helped us get it for you guys. So it's my staff, it's Federal Student Aid, it's Policy Program Study Service, it's the Budget Service, and a whole bunch of other people who looked at it too.

So just keep that in mind. It's a lot of people's work going into getting you these numbers. Okay.

So the first one is Computing Debt-to-Earnings Using College Scorecard Data. And before we get too far into it, and there is sort of a high-level method section in there, but if you would turn to the second page for me, there's a couple of important things about the differences between NSLDS data, or the National Student Loan

Data System, and how we compute debt-to-earnings for GE programs, versus the scorecard data.

And so Exhibit 1 sort of walks you through the differences. So GE programs debt-to-earnings is at the program level. Scorecard data is at the institutional level. So this paper itself does not have anything by Zip Code. Okay.

The GE programs use an exit cohort for both debt and earnings. The scorecard data uses an entry cohort, so it's just capturing people at a slightly different point, okay, and grouping them based off of when they enter rather than when they exit. Okay.

So it uses an entry cohort for earnings, but an exit cohort for the debt calculations. Okay. And sort of how we match up the years is explained further, if you are really truly interested in getting into the nitty-gritties on it. Okay.

GE debt-to-earnings excludes non-completers, but the scorecard includes them. The GE data includes non-borrowers in both the debt and the earnings, but non-borrowers are excluded in the debt, but included in the earnings. And this just has to do with the data we have that's available to us. Okay.

So the GE programs, debt is capped at tuition and fees, but not in the scorecard data. Debt includes non-federal debt in the GE programs, but it's excluded in the scorecard data. And earnings values in the GE programs are based on a cohort that includes zero-dollar earnings, but those are excluded in the scorecard data.

And then program-level debt and earnings are calculated for both undergrad and graduate programs in the GE programs, but only institutional-level are calculated for undergraduate students in the scorecard level. Okay.

So there are some important data differences there. So what I'd like you to remember is these data are accurate. They're just grouped a little differently, so don't try and go and compare the exact number.

(Off mic comments.)

MS. MILLER: Jordan.

MR. MATSUDAIRA: Sorry. To compare the data in this way, you guys know that these data aren't comparable across the GE space in the College Scorecard. I just feel like, if the Department hasn't produced data, that you have the data that you could actually do this in a comparable way across the sectors.

So why don't we do that? Why don't we actually have the information that you would actually use in a rule like this, that would really inform the situation? I feel like this is not just a waste of time, it's very misleading. It's going to give us a misleading impression of the details across the sectors.

MS. HAY: So Jordan, let me finish my sentence, if you wouldn't mind.

These are the data we have. We do not have program-level data out of NSLDS for every institution and every program. We don't have it.

(Off mic comments.)

MS. HAY: So we -- Marc Jerome asked if we have any. We do have program-level data for the GE programs. And that's the paper that we're reprinting for you. Okay.

So let's talk about the scorecard paper. That's what we have, across the United States for all institutions. Okay. It is the data we have available. We don't have what I think Jordan thinks we have. So --

MS. BUCK: Jordan, Jordan, wait, wait Jordan.

(Off mic comments.)

MR. MATSUDAIRA: So --

MS. HAY: Why don't you let me walk through this.

MS. MILLER: Okay. Hang on a second. Let me just, as a facilitator, let's remind of protocols. One, we are coming from a caucus, so at this time, if you're speaking, you need to be in a microphone.

Secondly, we've waited a long time for this information, so let's let Sarah walk through it, and then we will do questions and other comments. Thank you.

MS. HAY: Okay. So I think, because

we have a mix of technical and non-technical people at the table, I think it will be easier for me to talk you through it from the pictures rather than from the tables.

But before I do that, I want to show you that Exhibit 2 does have the numbers. So there's the number, the mean, the standard deviation, the minimum, the median and the maximum, okay, so that you can go and look at the exact, you know, sort of the numbers themselves. Okay.

If you turn to Page 4, this graphs the distribution of debt-to-earnings. And I want to point out, it's not both rates that we computed. It's the annual earnings rate that's shown here, okay, not the discretionary earnings rate. So the debt-to-earnings actually has two rates in it.

But this picture, on Page 4 in Exhibit 3, shows the annual debt-to-earnings rate, okay, for the annual earnings. So -- and because this is being given out to the public, the colors picked are chosen so that people with different types of limited color vision can still see these pictures. And that's why we printed them in color for you.

Okay. And I tested them all.

So the fact that public is orange is really just because I needed the contrast. Okay. So there's no intended meaning behind the colors other than we're trying to make it visible to everybody. Okay.

So what you can see is that we show, at the bachelor, associate and certificate level, the three, sort of, groups of institutions, public, which is orange, private, which is blue, and proprietary, which is green.

So what you'll see -- and these are box-and-whisker plots. And so just to talk a little bit about box-and-whisker plots, in case you don't remember from your sixth grade math lessons, okay, so box-and-whisker plots are essentially, the box contains the middle 50 percent of the data, where the vertical line inside the box is the median.

So that's the exact middle of the data, if you put it in order, from zero to a hundred, okay. The whiskers, or the lines that go outside of the boxes, are -- and this was done sort of in standard method, so it's 1-1/2 times the amount here, but it's generally considered that's where the bulk of the data sit.

And if they're not covered by the whiskers, then statistically they're considered outliers. Okay. And we -- for those of you who know stats, we used 1.5 times the inner quartile range, okay, which is sort of the standard for box-and-whiskers. Okay.

So you can -- notice along the bottom that this goes from 0 to 15 percent. Okay. That's the rate. And so you can see where, if one were to draw in 8 percent, you could see where that would be. You can tell that since it goes to 15 percent, 20 percent's kind of not on the page. Okay.

And some of -- the most interesting thing that I see when I look at this, is that in the most part, these data overlap each other. Okay. There's a lot of overlap. There's a lot of overlap of the boxes themselves, which is the middle 50 percent of the data. There's a lot of overlap of the whiskers.

And the one difference that I see when

I look at it is that the public, in the associate and certificate level, are lower. That is, the box is farther to the left. Okay.

Bless you.

And that's really the one noticeable difference that I see there that I would consider making a decision based on, from sort of a high-level look at the data. Okay.

(Off mic comments.)

MS. HAY: Yes. So the pieces in the picture that are noticeably different from all the other box-and-whiskers, are the orange ones, which are the public institutions at the associate and the certificate level.

So you notice, they're shifted farther left, and the boxes do not overlap. So that means the middle 50 percent of those data distributions are different than the private and proprietary sectors, at those levels. Okay.

So those are where -- that's the only differences that I see that I would feel comfortable saying, oh yes, maybe we should consider making a different decision for that group, from a data-driven perspective. Okay. I'm not trying to tell you what you should or shouldn't do, but that's what the data show me. Okay.

When you turn the page, to Page Number 5, and you look, this is the repayment rates. Okay. Same data, different calculation. Okay. And so when you compare them, side by side, they look different. Yes. So I think that is the interesting finding here, is that the debt-to-earnings doesn't look the same as the repayment rate. And they're not really highly correlated with each other. Okay.

So to me, what that says is that they probably both have meaningful information there, but one isn't really replaceable by the other. Okay. Okay.

So again, there are some differences, but there's a lot more overlap here than in the debt-to-earnings. And the one where I see the most difference is at the bachelor's degree, where the proprietary is the lowest. But in the others, I would say there's a fair amount of overlap. Okay.

So this is a high level of what's in

the scorecard data when we compute debt-to-earnings and repayment rate, using the data that we have available to us across the United States. Okay. Are there questions?

MS. BUCK: And let's first make sure that people ask questions, and then we'll get into comment. So first, let's take questions.

MS. MILLER: Okay. So Marc Jerome, Daniel, and then Jeff.

MR. JEROME: So first thing, thank you for doing it, and I have an appreciation of Jordan's concerns. Are you able to address this group to identify either the number or the percentage of institutions that would be at the lowest end, by sector, so this group could get a sense of it?

MS. HAY: I'm not sure I understand. Help me understand what you're saying.

MR. JEROME: In other words, the -- one of the purposes of a negotiation is to identify the worst performing. And because the data shows higher Ed as a whole, which is a whole lot of institutions, you see the bulk of institutions. But the purpose of this negotiation is to get at the lowest performing institutions.

And so, you have a sense of it, but you don't have a sense of, is it a hundred institutions above eight? Is it, you know --

MS. HAY: Okay.

MR. JEROME: -- a hundred below 20 in repayment. And that would be, I think, helpful. I'll defer to the rest of my negotiators.

MS. HAY: Okay. So there are some math that you can do, based off of the number of institutions and where the percentiles fall. And I haven't done it yet, so I'm not going to try and do it right in front of you, for fear that, you know, I might make a math error.

But I would say that when you look at -- and we're sort of specifically not calling out individual institutions, right. But -- and I'd have to do the math of where this whisker falls, at 1-1/2 times the inner quartile range, but this is where 50 percent of your data is.

The right-hand side of the box is where 75 percent of your data is. And the stuff farther to the right, that's in that whisker, is the top

25 percent of the data. Okay. So if you multiply 25 percent by the number value in Exhibit 2, you get a sense for how many institutions are there. Okay.

So let's see. So for example, just, we'll walk it through one time, and I'll ask the math people to help me. Okay. So comparing Exhibit 3, let's look at the bachelor, public, okay. So there's 531 of them.

Ah ha, look at that, technology. And 25 percent of that is 133-ish, establishments, okay, in sort of the top 25 percent that have the highest debt-to-earnings.

Did I say that right? Yes.

(Off mic comments.)

MS. HAY: Did I do it wrong?

MS. MILLER: So there's a question of if you're reading from the page or if you --

(Off mic comments.)

MS. MILLER: You're just doing the calculations --

MS. HAY: Yes.

MS. MILLER: -- right here right now?

Okay.

MS. HAY: So let's see here. Actually, let me double check.

(Off mic discussion.)

MS. HAY: I actually don't have all the percentiles in front of me, and I don't want to make a mistake. So let me come back to you with that. Okay. So let me think about it. I just don't like trying to do it right on the fly. But usually, it's, what's outside of those whiskers is really the outliers. Okay.

But you wanted to get a sense for how many institutions were sort of with the really, really high debt-to-earnings, so where would you like me to put the cut?

PARTICIPANT: Two standard deviations.

MS. HAY: Okay.

MS. MILLER: So that was a request for two standard deviations.

MS. HAY: Okay. All right.

MS. MILLER: Thank you, Daniel.

MS. HAY: Yes.

MR. ELKINS: This is Daniel. On Page 3, Exhibit 2 --

MS. HAY: Yes.

MR. ELKINS: In the associate box, specifically germane to the number within public, private and proprietary, is that representative of the aggregate total of all, or were there some that were left out? If so, if you could explain how or why some were left out.

MS. HAY: Okay. So my understanding is that, for example, at the associate level, the number is that there are 622 institutions that are public, 89 institutions that are private, and 151 that are proprietary. And that is, it gets to an interesting point in the way we treated the data.

So in the scorecard data, institutions are grouped by what they primarily award. So if an institution does multiple levels, if they award 25 percent associate degrees and 75 percent bachelor's degrees, then for the purposes of this analysis they're considered a bachelor institution.

Does that help you understand? Okay.

You picked up a good point for clarification, so thank you.

MR. ELKINS: Absolutely. That completely answers the question. Thank you.

MS. HAY: Okay. Yes. So these -- under the associate box, these are the institutions that award primarily associate degrees. Okay. Thanks.

MS. MILLER: Jeff.

MR. ARTHUR: You probably did not remove any closed institutions, some of the notable ones from this data. You probably just used what was there, right?

MS. HAY: That's a good question. I'll double-check. I would suspect that -- oh, you mean closed now?

MR. ARTHUR: Yes. Closed now.

MS. HAY: Okay. I don't know the answer to that, but I will ask. I suspect we used the data that was available in the years we were analyzing.

MR. ARTHUR: Yes. And then, just an observation that, so it does appear that there truly are some outliers at the extremes, so, that would potentially get caught up in whatever the next level is, level 2 review or --

MS. HAY: There are some outliers. I would agree.

MS. MILLER: Chad.

MR. MUNTZ: I got the back row seating here. Exhibit 4, repayment, just so I understand, since we're dealing with certificates and associates and bachelors, is it the case that students did not repay because they're also continuously enrolled in another level, higher level certificate?

MS. HAY: So our analysis didn't look at that.

MR. MUNTZ: Okay. So it could be possible that the associate's degree folks are enrolled at the bachelor's degree level three years after earning it, and that's why they haven't entered repayment?

MS. HAY: I don't know the answer to your question.

MR. MUNTZ: Great. Thanks.

MS. HAY: Sorry.

MS. MILLER: Jordan.

MR. MATSUDAIRA: Thanks.

MS. HAY: I'm just taking a few notes so I can try and get the answers for you. Okay.

MR. MATSUDAIRA: Thank you. It's hard to know where to start with this, but I think the starting point is that, you know, I consider this an extremely unresponsible response to the request for data that would inform the creation of this rule.

There is a lot of variation, as everybody knows, in the performance of different programs within an institution. When we're thinking about how many programs are going to be identified, how many programs are going to have extreme outliers, the data that are being presented here, the qualitative take-aways from this data about institution-level aggregates is not going to be informative about what's true at the program level. It's just not.

You can establish that by looking at the existing gainful employment data and looking at variation in the debt-to-earnings metrics within a particular institution. You're going to see a lot more programs outlying. You've kind of laid out the differences in the measurement in the scorecard, but I want to highlight a couple that are important here.

Earnings in a College Scorecard is measured for everyone, not just completers, as it is for GE. Okay. So first of all, the levels of earnings are much lower, okay, potentially much lower.

Now there are differences because the time horizon and so on is different. But, you know, there's a return to completing from college. Okay. That return means that earnings are higher for completers than they are for non-completers at any given time horizon. They're higher by quite a bit, 10, 25 percent.

And that's going to lower, you know, debt-to-earnings across different sectors. And it's going to do it in a differential way if you think that completing a program might have a different effect on your earnings, depending on the quality of the underlying program.

That's exactly what we're here to talk about, is that different programs might have different quality. And because of that, looking at the data in this way is going to mask that entirely.

So, you know, this is just not an informative way to look at this. The kind of description of results, the presentation of the means of different variables and so on is not relevant to what we're trying to get at, which is programs that are poor-performing, that are at the tails of this distribution.

We want to know how many programs are failing some potential standard that we might lay out. And, you know, even in this space, this data just is not informative about that issue at the institution level, let alone at the program level, which is what we're talking about here.

I just want to ask, you know, you might not have the data to do this, but when we put in data requests, I want you to explain why, if it's true, why you don't have the capacity to create the program-level debt-to-earnings measures right now.

So I suspect one reason might be that if program-level enrollment reporting started in 2014, then not enough time has elapsed for you to be able to, under the construction of the cohort period now, get a match to SSA earnings. Is that the holdup? Or is it simply that that process hasn't begun yet, you haven't done the match?

What exactly is the holdup? Even if there is a holdup on the SSA end, you ought to be able to produce the debt measures that we've been talking about at a program level.

There was a vast investment in data architecture at the Federal Student Aid Office. There's a Federal Student aid datacenter. It doesn't run on COBOL. The whole reason for constructing it was so that the data could be used in real time to inform policy questions. There are a lot of smart people over there who did this kind of work all the time over the last several years.

And so I just want to understand better

why the Department isn't producing statistics that are relevant to the decisions that we have before us.

MS. HAY: I hear your concerns and I understand them. The Department has earnings data for GE programs only. The only memorandum of understanding that we have right now with the Social Security Administration is for the production work that's done for GE programs.

And so, for every single cohort, when we send a list of Social Security numbers to the Social Security Administration for a match, we only get to do it once, and we can never do it again for that cohort.

And so we have to reserve that memorandum of understanding for the work that needs to be done that we are required to do by the existing regulations for the GE programs. We do not have an MOU with Social Security Administration right now that will allow us to match, at the program level or anything outside of GE, only for the production work. Okay.

MR. MATSUDAIRA: I just want to

emphasize that the Department of Education had a memorandum of understanding with the Office of Tax Analysis and the Treasury Department to conduct this kind of background work to inform ongoing policy analysis, that expired January 20th of last year. It could be renewed.

You know, again, there are ways around. It's not true that you can only do the match once. It's true that if you wanted to do the match at a cohort size of ten people, then that would bind you in.

But in the past, that kind of restriction around privacy has been negotiated by giving us some wiggle room, so for example, settling on producing test data at a higher N size for program cohorts, so that in subsequent runs, if tweaks were made to the sample and so on, then it would still allow for there to be a sufficient number of cases, differences, between the prior run and the next run, to handle that sort of problem.

So there are fixes. There are -- there's proven technology that's been exercised in the past to get around those problems. So I'd like to see that. I'd like to see that pursued.

MS. MILLER: Thank you. Daniel, then Sandy.

MS. HAY: So --

MS. MILLER: Oh, sorry.

MS. HAY: Just quickly. I hear your concerns. We don't have the memorandum of understanding. As you said, it expired. We gave you the data that we had available to us, that we were able to get for you, because I figured something was better than nothing. Okay.

And I know that, particularly in this situation, having information in front of you is helpful. And so we used what we had, that we could get to you. And I'm not able to get into an argument about whether we should or should not have had an MOU. This is what we have. And we got you what we had. Okay.

MR. MATSUDAIRA: Can I ask you whether the Department believes that the qualitative take-aways from this, from the data presented here would resemble the same qualitative patterns that would be manifest if the data were to be done as the way -- in the way that is described in the proposed rule?

MS. HAY: So there are differences, but this is the data we have that's available. Without having -- without seeing and doing the match, I can't quantify what the differences would or would not be, and I'm uncomfortable postulating that. We gave you what we could.

MS. MILLER: Daniel.

MR. ELKINS: Thank you so much again for this data. We're really grateful to have something. I did have one additional clarifying question for both exhibits. And I believe you possibly already explained this, so if it's redundant, I do apologize.

But outside of the ends of the whisker, any circle that is plotted, is that representative of a certain number of schools, or is it one school? And I do apologize if you've already answered that.

MS. HAY: No. It's a good question. Each dot outside of the whiskers should be one institution.

There are cases where -- and the picture is kind of tiny, so if the dot looks kind of like, oblong, there's probably two dots there. Right. But each dot is meant to be one institution.

MR. ELKINS: That's very helpful. Is it possible, and it might not be, to get a -- where they do look oblong, to potentially get a number associated with the amount of dots that are there?

MS. HAY: Sort of the number of outliers? We'll try and get that for you, but we'll probably bring it back. I know there's a lot of information here, and you guys might all appreciate, sort of, reading it tonight.

So I'm trying to capture your questions. We'll try and get you answers. But I want to make sure that the answers I give you are accurate.

MR. ELKINS: Thank you.

MS. HAY: Okay. Yes.

MS. MILLER: Sandy.

MS. SARGE: I also have a question. So Sarah, you're explaining in here -- do you want to make that note?

MS. HAY: Hang on.

MS. SARGE: Yes. Go for it.

MS. HAY: I got a note back from my analyst, so just a sec.

Okay. So the universe of institutions excludes those not operating as of, is that the 1st of December? Okay, 1st of September, as of this year. Okay. Does that help answer the universe question about whether closed institutions were included? Okay. All right.

Sorry. Yes?

MS. SARGE: Okay. So you offer, in your Exhibit 2, the -- excuse me, in Exhibit 1, the differences in how the data and the methods are there. In the graphs, did you use consistency, I guess is the way to think about it, when you presented each of these?

So for example, the scorecard is available for everybody, right? So did you use the scorecard for everybody, the data from the scorecard for everybody? Or did you use the GE for the GE schools and so on?

MS. HAY: That's a good question. We used scorecard for everybody in this paper. Yes.

MS. MILLER: Jordan.

MR. MATSUDAIRA: I was just going to ask if you could post the spreadsheet of the data behind this, since it's all public data.

MS. HAY: I will ask that question.

MR. MATSUDAIRA: Shy of the spreadsheet, posting the Stata code that was used to generate the figures.

MS. HAY: I will ask that question.

MS. MILLER: Are there any other questions for Sarah on this paper?

Yes, Thelma.

MS. ROSS: Well actually, there -- Thelma. There seems to be another document that has been passed around. I think it stopped short, just now.

MR. MARTIN: Yes. Hold it up. It should be this one that you have there. Did any -- did everybody get one?

MS. ROSS: No.

MS. MILLER: If you need one, raise your hand.

MS. HAY: Do we mind sharing until the

rest of them show up? I appreciate your patience. I apologize. I know it's not perfect. Okay.

(Pause.)

MS. MILLER: Is everyone sharing one, at least for right now? The negotiators. Okay.

Sandy, can you share with -- yes, okay.

(Pause.)

MS. MILLER: Okay. Sarah, can you walk us through this? And then I think we'll take questions.

MS. HAY: Absolutely. So let's see. I will use my old copy, and I'm not going to steal out of Greg's binder. Okay. So mine has typos in it, so I apologize if I refer to the wrong page number or something. Sometimes changing one word bumps things over, but I think we should mostly be okay. Okay. I gave my clean one away. All right.

So, this report that's in front of you, it looks different than the other one. This one has a cover page. The other one doesn't. There's no meaning behind that at all. Okay.

This paper is at the program level, but

only for GE programs. Okay. So these are data out of the National Student Loan Data System. They are matched to Social Security Administration data, and they are at the CIP level. Okay.

So they are really different, right. The data sources are different. But there are some interesting things in here. We do, in this paper, compute both the discretionary income rate, the annual income rate, and apply the logic rules to determine which programs were passing, failing, or zoned. We did not apply the transition rate, just because there's one year of data here. Okay

So we walk through all of that in the Methods section. It's longer than in the previous paper. And again, I'm going to cover this at a high level right now, and I'll answer questions, and I'll take questions.

And I know, this one in particular, it's a bit more dense. I tried very carefully to lift the statistical language to a less techie level, okay, to the best of my ability. So I hope that it's approachable, and I'll talk you through it and answer questions now.

If there are questions, even after you sort of stew on it and read it tonight, I'll try and answer those tomorrow, as well. Okay? Okay.

So, if we move into the results, that starts on Page 4, we start with Program and Enrollment Counts. Okay. And this is all of the 2015 GE programs, regardless of whether debt-to-earnings was computed. Okay. So this includes all end values.

So it's relatively stable. From 2008 through 2016, we've got 30-ish thousand programs, ish, right. In Enrollment, we've got 3-1/2 million-ish. And there's variation, right. And the number of programs, and the count in enrollment do not peak in the same years.

So the program count has a maximum in 2013-14, and enrollment has a maximum in 2010-2011. Okay. So enrollment started to decline before program count started to decline. Okay.

Turning the page to Number 5, these are the demographics that are available to us. We don't really have anything more than this. Okay. So this is off of the first FAFSA for students that applied for federal financial aid. Okay.

And the way demographics are done is, you're either female or not female. And if you're not identified as female, you could have left it blank. So it's -- I mean, it's not a hundred percent, right. You know, it's possible that there are women out there who just didn't check the box. Right.

So those are important notes. That's sort of the way we put the data together, and that's sort of generally the way we do that. But that's why we don't say, percent female and percent male. It's either percent female or something else. Okay. Just as a clarifier.

So when you look at them, there are columns for the percent Pell, the percent 0 EFC, the percent married, percent independent, and percent female.

Where percent Pell and percent 0 EFC could be used as indicators of low socioeconomic status, percent married and percent independent could be used as indicators of non-traditional students, that is, students who go back to school later in life, students who, you know, go back to school after they're retired, possibly. Right.

(Off mic comments.)

MS. MILLER: Jeff.

MS. BUCK: Could we hold off for questions until the end? I know that you probably have some really good ones, but let's just wait until she gets through and then ask questions.

MS. HAY: Okay. So this does show -- and remember, these are just GE programs, public, private, proprietary, at the different credential levels. Okay.

When you turn to Table 5, on Page 6, this is the percent of programs and the percent of enrollment by Zip Code. Okay. And so you can see where the most programs are, where the most students are. There is privacy suppression applied here, so apply common sense if there's a star or a dash, about what that probably means for enrollment values. Okay.

So when you look at it, you see that there are some that just have higher enrollment than others, higher percentages of enrollment.

Oh, sorry. This is actually the percent of enrollment in programs where debt-to-earnings was computed relative to all the programs.

So for example, if we look at the first one, CIP 01, Agriculture, Agriculture Operations and Related Sciences, it would be that when you look at the percent of programs, that 0 percent of those programs had a debt-to-earnings measure calculated for it. Okay.

And we rounded, so there probably are some programs there. Right. But it has been rounded to the nearest whole number. Okay. And you have to apply some common sense, because if there's enrollees for which we computed a debt-to-earnings measure, and that would be that 20 percent of enrollees were in programs that had a debt-to-earnings measure computed, relative to all of the students who were enrolled in all of the agriculture CIP programs.

So this really is an assessment of what proportion of programs and what proportion of students at programs were at programs that had debt-to-earnings calculated. I know that's a little bit tricky to wrap your brains around, okay, so I'll repeat, because not everyone in here is a data scientist, right? Okay.

So when we did the math, the numerator was the number of programs that got debt-to-earnings. The denominator was all of the programs in that year. Okay. All right. Same for enrollment. The numerator was the number of students enrolled at the programs that had debt-to-earnings measures calculated, and the denominator was all of the students enrolled at the programs for that particular CIP. Okay.

So then when you look at it, you'll notice that there are some interesting things. So when you go down, say for example, we'll just talk about CIP 23, 20 percent of its programs had debt-to-earnings calculated, but that covered 70 percent of the students enrolled in that CIP. Okay? Okay.

I'll let you think about that, and if you have further questions on sort of what this means, and there may be certain CIPs that are more interesting to some people than to others. Okay. But we can talk through it a little bit more tomorrow, at a more granular level.

When you turn to Page 7 -- am I doing this right? Yes. Okay. Making sure I don't skip anything for you guys. Okay. So on Page 7, these are the count of institutions, or I should say the count of programs for which we computed debt-to-earnings, by whether they passed or were in zone or were in fail.

And that does mean we computed both debt-to-earnings rates, and we applied the logic rules to decide whether they were pass, zone or fail. Okay.

So the columns are, the number of programs, the number of passing programs, the number of zone programs, the number of failing programs. And then we do the same thing for enrollment, the number of enrollees, the number enrolled in passing programs, the number enrolled in zone programs, and the number enrolled in failing programs.

The rows are by public, private and

proprietary, also by credential level. There's a lot of information in these tables. Okay.

We did apply privacy protection, particularly to the enrollment values, okay, that represent individual people. Okay.

I'll pause. Are there questions at this point?

MS. BUCK: So you mean questions of anything up until now. Is that what you're saying?

MS. HAY: Right.

MS. BUCK: So do you have questions about anything in the report up until this point?

MS. MILLER: Jennifer, Jordan and then Thelma.

MS. DIAMOND: So, I just had a quick question -- hold on. Sorry. I have to find the chart again. The one that had the Pell.

PARTICIPANT: It's on Page 5.

MS. DIAMOND: Thank you. So on Page 5, where you had the EFC and the Pell. Pell's not -- students aren't eligible for Pell at the graduate level, so I just wasn't sure why it said percent Pell. Does that mean that the student, at some point, received Pell when they were an undergrad?

MS. HAY: So the demographic information was taken from the first time they filled out the FAFSA. And so it's meant to be an indicator of low socioeconomic status from sort of a family level. Does that make some sense? But yes, that was --

MS. DIAMOND: Oh yes. It just means that when you get to the doctoral level, the data is outdated, from a -- I mean, you know, we are talking many years later for that first FAFSA.

MS. HAY: I understand that.

MS. DIAMOND: Okay. Okay.

MS. MILLER: Jordan.

MR. MATSUDAIRA: Just to clarify. These data are tabulations of the 2015 informational rates that have been -- or the final 2015 rates that were -- that are posted on the Department's website?

MS. HAY: So these are tabulations.

MR. MATSUDAIRA: Or is this -- is there any new data here that hasn't been publicly released already?

MS. HAY: They may be parsed at a more granular level. I haven't done a comparison across the two.

MR. MATSUDAIRA: But that is the source of the data that's being used here. Is that correct?

MS. HAY: The data were taken out of the National Student Loan Data System, out of the GE tables contained within the database itself, not off of the public website.

MR. MATSUDAIRA: But still, for the last official run you just did that over again. Is that correct?

MS. HAY: So we had data at different levels, and we wanted to be able to compare information from programs that were not included in the debt-to-earnings. So that's that first chunk of the paper, where we compare counts of institutions and programs and students, for which there was a debt-to-earnings rate computed versus those for which debt-to-earnings was not computed.

So there are data included in here that go beyond the debt-to-earnings calculations that are available on the public website.

MS. BUCK: Does that answer your question, Jordan?

MR. MATSUDAIRA: It might. I'm sorry. I don't understand, but --

MS. BUCK: Thelma, you had your card up.

MS. ROSS: It was asked and answered. Thank you.

MR. JEROME: Thanks. Marc Jerome. So on Page 7, 3.2, did you note anywhere the number of actual programs by sector, so that we could see the number of programs for what -- and the percentage for which GE did not apply, and debt-to-earnings was not run?

So for example, under public undergraduate certificate, my understanding is, there might have been 40,000 in existence, but data was run on 2,000. That data would be very interesting for all sectors.

MS. HAY: Okay. I see what you mean. We did not parse it that way in the first chunk. The second part of the paper is subset just to those programs for which we computed debt-to-earnings. Okay.

But it does bring up a good question. For those of you who are looking for much larger tables, the appendices do include extra data, but they are not broken down by type and control. Okay. They just got kind of large to be including in the main paper. Okay. But I don't want you to miss that they're there. Okay.

MS. MILLER: Chad.

MR. MUNTZ: Couple of questions. Table 4, is it fair to interpret this data that the current GE programs are serving low income females that are not married?

MS. HAY: So I would say that the GE programs were serving, at a high percentage, students who at one point qualified for Pell grants. And at about 20 to 30-ish percent were married. So if you do the reverse of that, for the most part they were -- 70-ish, 50 to 70-ish percent were unmarried the first time they filled out their FAFSA.

MR. MUNTZ: And they're independents,

right? Meaning that they're, been emancipated or they're no longer dependent, so they're probably older?

MS. HAY: Correct.

MR. MUNTZ: Okay.

MS. HAY: Yes. And -- yes. I would say a high proportion were female.

MR. MUNTZ: Okay. And then on Table 6, there is only one program in the public sector that failed. Is that correct?

MS. HAY: Yes.

MR. MUNTZ: Okay. And looking at Table 3 -- sorry, I went back one -- you rounded to the nearest 10 percent, correct?

MS. HAY: Sorry. Table 3?

MR. MUNTZ: Yes. The -- I'm sorry, table, Page 6. I just got off here.

PARTICIPANT: Table 5.

MR. MUNTZ: Table 5. Sorry.

MS. HAY: Okay. Yes.

MR. MUNTZ: Okay. And with that, why was the rounding to 10, the nearest 10 percent instead of 5 percent?

MS. HAY: That was the request made for privacy protection.

MR. MUNTZ: Okay. Thank you.

MS. HAY: Yes.

MR. JEROME: Just one comment back. On the earnings, it looks like you used nine- to ten-year earnings. So I'm just giving some caution, because I'll give an example. The data shows no institution in certain areas above, let's say 10 percent -- okay, let's go --

So if you go to the chart on Page 4 of the small document, you -- it essentially shows only one proprietary college with debt-to-earnings based on scorecard data above 10 percent.

MS. MILLER: Are you back on the first document, Marc Jerome?

MR. JEROME: I'm back on the first.

MS. MILLER: Okay.

MR. JEROME: Because this is back to Chad's comment. So Page 4, Sarah said, if I'm correct, a dot represents one institution. So I'm just giving caution. On -- I've looked at this using six-year earnings, which is, I feel, more closely akin to the gainful employment.

And I just pulled an institution out, regardless of sector, $43,000 of debt, $25,000 of earnings. In my mind, that's closer to a 17 percent under the current GE. So I just ask you to look at that, and I guess -- I'm cautioning the group on it.

It's back to Jordan's point. The data, you have to -- it's a little -- you have to be a little careful how we look at the data.

MS. HAY: Yes. And I think you said we used a nine-year out earnings. We didn't. So we did have to make some assumptions. So with scorecard data, you build the cohort at entry, right. And so then for primarily associates, we assumed two years. Okay. And then we took earnings from three years after that.

Does that make sense? Right. And then similarly, for bachelors, the cohort was built when they started, when they entered. You add four years, and then you add three years. Does that help clarify?

But it's, it was done so that we grasped earnings at the point three years that we would assume past completion, okay, to try and be as comparable, given the data that we had available, to be as comparable as we could be to the way we compute GE debt-to-earnings. Okay.

MS. MILLER: Jennifer.

MS. DIAMOND: So I had a different question, but just to stay on that for a second. So you assumed a normal time to completion for bachelors of four years?

MS. HAY: So --

MS. DIAMOND: I'm just saying.

MS. HAY: That was the assumption that was made, because we had to make an assumption for the purposes of producing a computation.

MS. DIAMOND: Okay. So I think, to Marc and everybody else's points, we just need to be careful about the data, because national reality is national reality on bachelor's degrees.

But can I ask my second question, and it's just to help me fully understand. So going back to the bigger paper, on Page 6, I just want to use one example to -- I just want you to, if everybody doesn't mind, just to make sure that I understand it.

CIP Number -- and I know you did this on 23, but education sort of struck, because there were --

MS. HAY: Which CIP?

MS. DIAMOND: CIP 13.

MS. HAY: Okay. Thank you.

MS. DIAMOND: And of course, you're at the two -- so you're at the two-digit CIP, right, just as, so you're rolling --

MS. HAY: Correct.

MS. DIAMOND: -- a bunch into -- right. So that's -- I don't know if that point was made, but obviously that's a big roll-up. But anyway, education as a whole, can you just walk me through what that, what it says in terms of the students? Because that's only 10 percent.

MS. HAY: Exactly. So what that means is that for 10 percent of the programs, we computed debt-to-earnings in that CIP. So that means that 90 percent of the programs had less than 30 completers.

We -- that 10 percent of programs equated to 70 percent of enrollment in that CIP. So 70 percent of the students enrolled in an education CIP were at a program for which debt-to-earnings was computed at N 30.

MS. DIAMOND: Got it.

MS. HAY: Okay. Thanks.

MS. MILLER: Johnson.

MR. TYLER: Just a follow-up. That means they're -- for the education CIP, there are relatively few programs that educate a lot of people, that were evaluated?

MS. HAY: Yes.

MR. TYLER: Yes. Okay. So on the gainful employment, there is a question there. I think they're like 30 -- if we look at Table 3 on Page 4, there are 32,000 programs. But when we look at, on Page 7, Table 6, only 8,600 programs are reviewed. Is that because the N number is below 30 on all of these programs?

MS. HAY: Sorry. Say it for me one more time.

MR. TYLER: Sure.

MS. HAY: You're comparing Table 3 to --

MR. TYLER: Just look at the number of programs, the universe on Table 3. For 2016, there are 32,000 programs. And then when we go to Table 6, which is scoring --

MS. HAY: Right.

MR. TYLER: -- everyone, there are only 8,650 programs that were evaluated. So that means that all those --

MS. HAY: Correct.

MR. TYLER: -- all those programs have less than 30 students in them.

MS. HAY: Correct.

MR. TYLER: Okay. The ones that were excluded?

MS. HAY: That's correct. Yes, that had fewer than 30 completers.

MR. TYLER: Completers. I'm sorry. Less than 30 completers.

MS. HAY: I knew what you meant.

MR. TYLER: Okay. I didn't know what I meant, but I appreciate that.

MS. HAY: Got you. Okay.

MS. MILLER: Okay. Are you done, Johnson?

MR. TYLER: Yes.

MS. MILLER: Okay. Thank you. So we have Sandy, Jordan, Whitney, Jeff. Chad, are you?

(Off mic response.)

MS. MILLER: Okay. So Sandy, Jordan, Whitney, Jeff, Ahmad and then Jennifer.

So Sandy.

MS. SARGE: Okay, thank you.

MS. BUCK: So we want to move on as quickly as we can, because we do want to get through the rest of the --

MS. HAY: Report?

MS. BUCK: -- the report. Yes.

MS. SARGE: This is Sandy. On Table Number 5, at the bottom it says, Total, and then it says 20 percent and 70 percent. Is that really -- can you explain what that really means?

MS. HAY: Sure. so that's for all CIPs.

MS. SARGE: So all CIPs, the whole

universe, only 20 percent of them, which kind of correlates to what he was just saying, 8,000 out of 32,000, 25 percent, so roughly 20 percent of the programs received a D/E calculation, and 70 percent of total enrolled were in those programs for which a D/E calculation was computed?

MS. HAY: Correct. Okay.

MS. MILLER: Jordan.

MR. MATSUDAIRA: I have a couple of questions. So the first one is, during the last Neg Reg session and in following up afterwards, I submitted a list of seven different data requests, none of which are responded to in the data that you've given us here, so I want to ask whether any of that information is going to be forthcoming.

Now a number of these requests don't involve any kind of link to earnings data but are still germane. For each one of the questions that I submitted, I included an explanation of the question before the committee here, that I thought the data would be relevant in making a choice.

A multi-part question follows. First of all, can we expect any more data to be coming from the Department?

MS. HAY: So Jordan, let me just interrupt you. Let's finish the paper we're doing. And if you have questions about your other data requests, let me -- I can address those after we finish this paper. Is that okay?

MR. MATSUDAIRA: Next question is about the data that we're looking at.

MS. HAY: Okay.

MR. MATSUDAIRA: Can the Department answer the question of how you would like us -- what question before the committee do you think each one of the tables is relevant for answering, and kind of what your takeaway from the data is?

And then I'm going to go ahead and insert the last question, which is, I believe the Department has an MOU for the College Scorecard with the Department of Treasury, which could be used to obtain program-level earnings. And that, together with the debt data that you have would allow you to create program-level debt-to-earnings across the full higher ed space.

MS. HAY: So I will ask, Jordan, but

it's my understanding that the MOU for the College Scorecard is at the institution level, not at the program level, and therefore would require renegotiation of that memorandum of understanding.

Relative to which specific question each of these tables is meant to help you answer, the first fundamental question I heard really clearly last time was that you wanted to know what data we had relative to GE programs and what debt-to-earnings looked like across the United States. And so this is our intention of trying to get you that information.

And it may help you answer a lot of different questions, but I did not -- we did not intend for -- you know, to produce a table for each single question that we wanted you to answer.

This is meant to help you understand what's going on in the United States and what's going on in different GE programs relative to the type of institution, or the CIP, or the level, so that you can, for yourselves, try and understand what that means, and help inform your decisions across all the different items that we're asking you to make decisions on. Okay.

MR. MATSUDAIRA: I just want to underscore, you know, with respect about the difficulty of getting these kinds of things done, you know, you knew this was coming. You can put in place the MOUs to be able to do the data runs, to help create a rule that's rational.

And so I just, you know, would like to see that work under way. I'd like an update on the progress. If the agreement needs to be renegotiated, it seems like the kind of thing that would be worth doing if we're really to impose a rule that covers all of higher ed.

MS. HAY: So Jordan, that's heard and noted. I call ELMO on that topic. Let's move on.

MS. MILLER: Okay.

MS. HAY: Other questions --

MS. MILLER: Yes.

MS. HAY: -- up to this point on the paper, relative to the paper and the data that I can help you answer from a math perspective?

MS. MILLER: Okay. So I'm going to -- before I call the next name, I do want to say that it is 4:36. So just keep that I mind, negotiators. Whitney, then Jeff.

MS. BUCK: And I think we really should take only about five minutes more for questions so we can hear the rest of the report.

MS. BARKLEY-DENNEY: Okay. I just have a quick question for Marc. With the data that you've referred to, do you have that in any form that could be brought to the committee so that we can see it when you're talking about it? Is that something you can pass out to the group?

MS. MILLER: Jeff.

MR. ARTHUR: Yes, just real quick. I know the first year's data that was released was based on 2014's income. And I'm sitting here looking at this and I'm wondering, is this our first look at the second year's data? Is it -- since you ran if from NSLDS in the 2015 DMYR, is it possible this is actually some data compiled for the first time we've seen it?

MS. HAY: That's a good question. I -- to be totally straight with you, I did not run these numbers myself, but I will double-check and get that answer for you.

MR. ARTHUR: I think the first year's might have been referred to as DMYR 14, so this may be the first time we've ever seen data on the second year's debt-to-earnings --

MS. HAY: Okay.

MR. ARTHUR: -- release. Just FYI.

MS. HAY: This is DMYR 15. Okay.

MS. MILLER: Ahmad.

MR. SHAWWAL: Ahmad here. Table 6, there's a column that describes failing programs. It's my understanding that 97 percent of the failing programs are at proprietary institutions. Is that correct?

MS. HAY: All right. Repeat your question. Sorry.

MR. SHAWWAL: Am I correct to understand that 97 percent of the failing programs are at proprietary institutions, based on Table 6?

MS. HAY: Okay. Well I haven't done the math, but that would be the failing -- oh, I see what you mean. So to compute that, it would be 878 divided by 903.

Mr. Calculator Man, can you do that for me, please?

PARTICIPANT: I need to find my calculator on the iPhone.

PARTICIPANT: 97.23.

MR. SHAWWAL: 97.2?

MS. HAY: 97.23.

MR. SHAWWAL: Okay. Thank you.

MS. HAY: Okay.

MR. SHAWWAL: And Sarah, what would you say are the take-aways from this report for us?

MS. HAY: That there are some differences by CIP, and that the findings at the program level are slightly different than they are when you look at it at enrollment count, and that I would say, you know, there are, there's interesting information across the different sectors. And I want you to think about it before I come up with any conclusions, to sort of pick out one or the other.

So take some time to look at it. But there are some specific CIPs that do have more data behind them than others. Okay. I know that's not a real answer, but I want you to think about it overnight, and we can talk about it again tomorrow.

MR. SHAWWAL: All right.

MS. HAY: Okay.

MS. MILLER: Okay.

MS. HAY: All right. So I do have an answer on the 2015. They're not new data. 2015 DMYR is published in 2017. That's what my analyst said.

MS. BUCK: Are you anticipating that there would be questions that would carry over until tomorrow?

MS. HAY: I think there may be. And I think, as people read it tonight, they may have other questions.

MS. BUCK: Then I'm wondering if you might want to just quickly cover the --

MS. HAY: Sure.

MS. BUCK: -- rest of the report.

MS. HAY: Absolutely.

MS. BUCK: People hold their questions and bring them back tomorrow, since they're going to be bringing additional ones, so that we do have time for public comment, which we do have to have.

MS. HAY: I think that's a good idea. Okay. So remind me where I left off? Were we on Page 7? Okay. So we start on Page 8, or did we do Page 8?

(Off mic comment.)

MS. HAY: Start on Page 8? Okay. Thank you. It's the sleep deprivation. I was up all night with a sick toddler, so thank you. I appreciate it. Okay.

So Table 7 compares mean annual earnings and annual loan payments by debt-to-earnings results for pass, zone and fail programs. So you can see that in the passing category, the mean program level annual earnings were about 8,000 more than in zone or fail, and that the annual loan payment was 1,000 to 2,000 less than in zone or fail.

Okay, so this is in GE programs. There are differences there, as we would assume, right. That's kind of the way the metric is set up. Okay.

So then Figure 1 shows you distribution

of earnings for those programs for which we computed debt-to-earnings rates. And you can see that there is still a lot of overlap. There's a lot of variation there. Just like we talked about in the other box-and-whisker plots, the boxes overlap, and the zone and the fail look a lot alike in earnings.

The box, the sort of the middle 50 percent is larger in the passing programs, but you can see that the range of those whiskers, it covers both the zone and the fail programs. Okay.

Now I want to note they're just different runs of the data and the outliers were not printed on this graph. I assume there are some. Okay. Sometimes math people do that so that it fits on a page, and you can see the bulk of the data. Sometimes the outliers are really, really, really far out, and then your graph looks like this big and the outlier's up here or something. Okay.

Okay. Turning the page to Page Number 9, Figure 2, is the same information but the distribution of annual loan payment. And you'll see that there are some much more meaningful differences here. But there's a lot more difference in annual loan payment than there was in earnings.

So the annual loan payment, there's not a whole lot of overlap in the middle 50 percent of the data, where the passing programs are the lowest annual loan payments, the zone are above that, and the failing programs are above that. There's a slight overlap there between the zone and the fail, in those, sort of the main boxes of the middle 50 percent of the data. Okay.

So that, to me, is a take-away from this paper, that the difference you see in the data is really more meaningfully noticeable in the annual payment than it is in the earnings. Okay.

Table Number 8 breaks down the passing programs by the two different debt-to-earnings rates. Okay. Because remember, there's logic that's applied to those two rates in order to categorize them. Okay.

So for one example, all of these programs passed, they were put in a passing category, but 5 percent of them, for example, were in the zone for the discretionary income rate, but passed the annual earnings rate. Twenty-eight percent of the programs that passed failed the discretionary income rate. Okay. So there are some differences between what those two rates do.

You'll notice that the reverse is not as true, that for the passing programs, 0 percent failed the discretionary income rate -- sorry, 0 percent of them failed the annual earning rate, of those that passed the discretionary income rate. So when you think about it -- let me see if I can explain this a little bit better.

When you look at comparing the discretionary income rate to the annual earnings rate, or the annual -- yes, annual earnings rate, the passing programs were more likely to pass the annual earnings rate than they were to pass the discretionary income rate. So that is, the discretionary income rate was the tougher rate to pass.

Does that help you think about it a little bit better? Okay. So this table is just the passing programs. Okay.

When you turn the page, Table Number 9 is the zone programs, so it's a different group of programs. Okay. But the finding is still the same. They were in the zone, but they're in the zone --

(Off mic comments.)

MS. HAY: Right. So they made the zone because they passed the annual earnings rate, but 78 percent of them failed the discretionary income rate. Okay.

So those -- that's a walk-through of the data. I do, I hear the mediators and them saying we need to move on. So write down your questions tonight. I invite you to read through it. I will try and get answers to the questions that were already asked today. And I will try and make myself available tomorrow, but I know Greg has loads and loads and loads to do with you, right. And I don't want our math discussion to take over the primary work that you're here to do. Okay.

MS. MILLER: Okay. Thank you, Sarah. So to that point, we have a lot of work to do tomorrow. There are still tents up. Are they questions for Sarah or clarifying points that she's already made? Okay. So let me get Jeff, then Sandy and then Todd.

MR. ARTHUR: Just real fast. It's not that surprising that these differences between discretionary and debt-to-income. I mean, as we talk about, if your income's below 30,000, it's the debt-to-earnings. If it's over 30,000, it's the discretionary. It's just the way the math works. It's nothing so amazing.

MS. HAY: No, that's true. Not everyone understands equations as intuitively though, as everybody else.

MS. MILLER: Sandy.

MS. SARGE: Yes. Ahmad, I'd like to point something out about the numbers that you were saying. You're correct in, if you go up the column. So 878 out of 903 fail. However, if you look across the rates, and you compare those categories that are similar, so for example, undergraduate certificates, under proprietary, there was a total of 3,260, of which 196 failed, or 6 percent. I did the math.

And then you look at the privates, there was 21 out of 405, the same certificate program. So that was 5.2 percent of those within the category. And what I want to make sure that we understand, if you go up, it's obviously going to be the higher amount in the proprietary because that's the majority of programs that have to report.

So when you're looking at your totals, it does not surprise me that 97 percent were failing. But you really have to look at comparatively the same categories within the schools if you want to see if there's an issue. So I just wanted to make sure we looked at it. I'd be glad to go over it with you again, privately, if you want to talk about it. Thank you.

MS. MILLER: So Todd is going to be our last negotiator to comment up to this point, because we will have time, we will bring Sarah back. She is not leaving.

But I do want to -- before we do that, how many public comments do we have? One, two.

MS. BUCK: So we do need to allow time for that.

MS. MILLER: Okay. So Todd, take us home on this point.

MR. JONES: It's a short question. Going back to Page 6, Table 5, what we're saying is, in essence, that currently of, that 70 percent of the students who are enrolled in the programs are within 20 percent of the programs?

MS. HAY: Exactly.

MR. JONES: And that the effort to decrease cell or data size from 30 to 10 is an attempt to massively increase the number from 20, to squeeze out some percentage of that last 30 percent. Is that a fair analysis?

MS. HAY: I would say that that would be the impact of changing the N size.

MR. JONES: Okay. Thank you.

MS. BUCK: I think we really do need to allow time now for the public comment, because it is 10 of 5, and we said we would end at 5. Are there any final process points by anyone around -- by any of the negotiators before we ask the public for public comment?

MS. MILLER: What's the deal with

tomorrow as far as weather and things like that? Any update? And then also, is there any thought about whether tomorrow should be a similar caucus day like we had this afternoon? Only because, to be respectful of people in the public to come all the way down here from various places only to be told to go away may not be fair. And if we make a thought about that, would it be helpful to the team?

MS. BUCK: Well first, let's answer the first question.

Greg, is there anything you want to say about the start time?

MR. MARTIN: Well, I don't think the weather's supposed to be a problem tomorrow. I haven't heard that it will be. So I think we can start at the proper time.

As far as what we have to cover, we have, as by my estimation here, 5, 6, 7 and 8. I don't know how much time we need with all of them. Obviously, with appeals, I think we would all agree -- I'm not trying to come to consensus for everybody, but I think we would all agree that if we reintroduce a sanction aspect, that appeals is definitely back on the table. So there might be some discussion around that, more than would have been had we just looked at that.

But I think if -- to finish these tomorrow, we're going to have to lay some probably strict guidelines as to the time we're going to spend on each, because I do want to cover all of them before you leave. And I don't think anybody wants to be here past when their flights leave, right. So --

MS. BUCK: So it doesn't sound to me like -- well, okay. Go ahead. Do you have a --

MS. MILLER: Well first, can I have the public comment people line up, so that we can have them ready to go, so that when it's time for them to go?

So those who are making public comment, your microphone is here. If you could come and line up right here.

MS. BUCK: Whitney, did you have a proposal?

MS. BARKLEY-DENNEY: Yes. I was just

going to say, I think we should keep it open tomorrow. I think that we, you know, tried the closed thing. We got what we could out of it. And now, in the interest of public, you know, knowing what's going on, I'd like to keep it open.

MS. BUCK: I saw some nods around the table with regard to that.

MS. MILLER: Can we do a thumbs up?

MS. BUCK: Would you like to do thumbs up? Our thumb sides, or thumbs down for having it public tomorrow, open to the public.

MS. DIAMOND: I mean, just to clarify, we can call a small caucus whenever we feel like that.

MS. BUCK: Certainly. Certainly. You still have that option. But we'll start -- you're proposing to start out this way. Okay.

MR. MATSUDAIRA: Can I put --

MS. BUCK: It seems like there are no thumbs down that I can see. Okay.

MR. MATSUDAIRA: I want to make just a small request. So I just want to follow up about the data request, and just ask whether data are forthcoming or not, Greg.

MR. MARTIN: Jordan, I'll say this to you. You gave us data requests. We made every effort we could to get back to you the data that we had available. We have made no efforts to hide any data, or obfuscate anything. We had a lot of good people spend a lot of time putting data together.

I understand and concede that it wasn't everything you wanted. And I'm, you know -- but we've done everything we can. I had our data expert come up here and explain what we've done. You know, I don't think it's in the interest of the committee for me to sit here and go into --

MR. MATSUDAIRA: I understand that, but --

MR. MARTIN: -- extreme details as to why I couldn't get every little thing.

MR. MATSUDAIRA: It wasn't -- to be clear, it wasn't every little thing. It was only information that was already publicly available.

MR. MARTIN: But I'm sensing that you're characterizing it as an effort on our part to somehow keep something from you. And I'm a little bothered by that characterization --

MR. MATSUDAIRA: I don't --

MR. MARTIN: -- because we have not done that.

MS. BUCK: So there is a difference of perspective here on the data. That's pretty clear. But I'm not sure --

MR. MATSUDAIRA: Can -- let me just emphasize --

MS. BUCK: I'm not sure continuing --

MR. MATSUDAIRA: Please let me just emphasize why it's important. The data in the Gainful Employment Data Analysis suggests 95 percent of failing programs are in the proprietary sector. That's why I, in particular, feel like the asymmetric treatment of sanctions in the rule is appropriate, because the problem seems so concentrated there.

Marc and others have been saying if we had data on other programs we'd see that there were actually a lot of problems in that sector as well. And if the data showed that, I'd be a lot more sympathetic to that position overall. And so that's the, what I see as one of the main issues of the rule.

And I believe the Department has the ability to create that data. So I, you know, I'd just like to, again, ask that every effort be made to produce that. I don't mean to ascribe motives to anybody. That's not my point. I just --

MR. MARTIN: Again, and I will reiterate that you are welcome to make any data request you want to. And I can say on behalf of the Department that we will make every effort to comply with it. If there's something else you want, or something you want to reiterate, or make a case for, for us to reconsider, whether we can do it, I'm more than willing to entertain that.

I can't promise anything, and I don't mean to belittle the importance of data in any way. I think if we had more data, it certainly would inform our decisions more. But I can't create it out of thin air, and I can't make possible something that isn't possible.

MS. MILLER: Okay.

MR. MARTIN: But certainly, if you have more requests, feel free to send those to Scott.

MS. MILLER: Okay. Thank you, Greg.

So now at this time, we will have -- open the floor to public comment. The time is now 4:55. So if we could have our first public speaker come up, say your name, and then give your comment. Thank you.

MS. LUBYA: Hello. My name is Lubya (phonetic). I'm a student in higher ed, and I'm just here to read a former student's story, because I feel like it's very important for this conversation.

"My name is Jensy Morales (phonetic). I am 39 years old and I work two jobs to take care of my mom and myself. One job is as a greeter at Home Depot and the other is as a salesperson/cashier at The Gap. I have worked since I was 16 to help support my mom who received only a seventh grade education in the Dominican Republic before immigrating to the U.S., where I was born.

"Most of my work has been in stores where clothes are sold, such as Gap, where I only earn -- where I earn only a little more than the minimum wage. In 2004, I received in the mail a brochure that promised top pay of $35,000 to $65,000 and up, and even a $100,000 annually as a medical biller.

"I had no idea what a medical biller did, but I was intrigued by the pay, which was much higher than what I had ever earned. So I enrolled in a eight-month certificate course at the Career Institute of Health and Technology. I paid the $6,600 tuition with Pell Grant and federal loans.

"Halfway through the course, my teacher left, leaving us with a clueless substitute. My course work included a 120-hour unpaid internship at a small medical coding office which contracted with outpatient doctors. My job was to help the outpatient doctor get paid for claims that were rejected by insurance companies.

"My medical coding internship involved little more than telephone work. I called Cigna or Blue Cross, et cetera." Sorry. "Asked why -- and asked them why the claim was rejected, asked for correct billing or treatment code and resubmitted the claim.

"When school ended, I could not find a job that paid well. Eventually, I went back to my boss at the internship, who hired me for $9 an hour, $18,000 annually, about the same as what I was making in retail. After 18 months of employment without better pay despite such promises, I left in search for a high-paying medical billing job that supposedly was out there.

"Perspective employers were unimpressed by my skills, which admittedly were minimal, given the poor quality of my instructors. Unable to find a better paying medical biller job, I returned to retail work. I also ignored my student loan debt as I felt I'd been ripped off.

"In 2011, the U.S. Department of Education began garnishing my Gap wages for my loans that had now doubled in size. Unbeknownst to me, during the 2000s, dissatisfied students at my school regularly sent complaints to New York regulators about the school.

"These complaints included false promises of hands-on instruction, bogus internships, large class sizes, unprepared instructors and fee gouging. In 2011, New York had received so many complaints that it closed the school. Nevertheless, the U.S. Department of Education continued to garnish my wages, and more recently, my tax returns.

"In 2017, I filed a Defense Against Repayment Discharge application with the Department of Education that is still pending. While I am hopeful that my discharge application will be granted and the money taken to repay the loan returned, I remain upset. I am 39 years of age and support my ailing mom with whom I live.

"I tried to better my life when I was 25 by studying hard for a job that I was told would increase my earnings by 75 percent or more. That sales pitch was a total lie. I didn't know that then. In fact, the median wage of a medical biller a few years after school completion is $20,000, according to the U.S. Department of Education's own data.

"Had I known, I would have gone to a different school and studied something else.

Perhaps by making the right choice on school, I would be in a better financial place than I am today.

"I have recently learned that the U.S. Department of Education has created measurements that identify trade school programs that are shams. More particularly, the Department of Education identified in its 2017 Gainful Employment Data, 75 percent medical billing coding programs that are so expensive that the borrowers will have great difficulty repaying their loans given their modest wages.

"But the Department of Education is planning on doing little with this data other than ask the failing school to warn their students and prospective students that the school needs improvement.

"New York State received almost 600 pages of student complaints about my school, The Career, Inc. New York then acted on this information and closed the school.

"The Department of Education must do the same with gainful employment data that identifies failing programs. Otherwise, tens of thousands of men and women from humble origins will find themselves in my own situation, behind a cash register, or in some other minimum wage, with nothing to show for their schooling but debt."

Thank you.

MS. MILLER: Thank you. Next.

MS. GARCIA: Good afternoon. Buenas tardes, everyone. My name is Joseline Garcia. I serve as the president of the United States Student Association. I'm also the primary student negotiator for the borrower defense rule, so I will be in your shoes next week. Fun.

So I am here to express my concerns over the closed session that happened earlier. As someone who is familiar with this process, I think and strongly believe that that was very inappropriate. It was disrespectful, and completely goes against the process of negotiated rulemaking.

There are students, in addition to other public members inside this room. This process is a public process that is what everyone who is a negotiator in gainful employment and borrower defense signed up for. Having a closed session completely eliminates that.

A lot of the injustices that take place in our society often happen, or the decisions that lead to those injustices happen behind closed doors, when the people who are most impacted are not in the room. And although we do have student negotiators at the table, it is not okay that we did not have the public in the room.

So I hope that tomorrow, and also for the final session, you all comply to what you all signed up for, and that is having a public meeting.

This room is already very inaccessible, and I appreciate that you all have allowed for livestream, which has made it more accessible, not only for students but other members of the public to understand what is going on.

But when we closed those doors to the public, I got numerous phone calls and messages from students saying, what is going on here? My life is going to be greatly impacted by the decisions that take place at this table and I have no idea what is going on.

So please, as negotiators and also as people who I hope to be professional and responsible, do not agree to go through that process again. Thank you.

MS. MILLER: Thank you, Joseline. Thank you to our public commenters. You've given us something to think about. And with that, I'll see you all in the morning. Thank you.

MS. BUCK: So we will see you at 9 o'clock. We have a lot to do tomorrow.

(Whereupon, the above-entitled matter went off the record at 5:00 p.m.)