**Issue Paper 2**

**Session 1: November 13 – 15, 2017**

**Issue:** Developing a regulatory framework for the process of submitting and evaluating a borrower defense to repayment (BD) claim

**Statutory cites:** §455(h) of the Higher Education Act of 1965, as amended

**Regulatory cites:** 34 CFR 685.206(c)

**Summary of issue:**

Regulations currently in effect do not describe the process for a borrower to submit and the Department to evaluate a BD claim. An ideal BD claim process should be easily understood, facilitate the submission of sufficient evidence to adjudicate the claim, establish clear expectations for the borrower and the school regarding next steps and timeframes, and assure claims are addressed fairly and equitably for both the borrower and the institution.

Questions for consideration by the committee include:

* What process should a borrower follow to submit and establish a basis for a BD claim?
* Should a borrower be granted an automatic administrative forbearance and should collection actions be stopped while his or her BD claim is being processed?
* What evidence should the borrower be required to provide to support a BD claim?
* What due process and notification requirements should the Department provide to an institution of a pending BD claim? What opportunity should be provided for the school to respond to a borrower’s BD claim?
* Should the process differ depending on whether the school is open or closed?
* Should the process provide an opportunity for borrowers with other Federal loans to consolidate those loans into the Direct Loan (DL) program to allow the borrower to raise a defense to repayment of those loans under the DL regulation?