

UNITED STATES DEPARTMENT OF EDUCATION

+ + + + +

BORROWER DEFENSES AND FINANCIAL RESPONSIBILITY
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

+ + + + +

SESSION 3

+ + + + +

TUESDAY
FEBRUARY 13, 2018

+ + + + +

The Negotiated Rulemaking Committee met in Barnard Auditorium, 400 Maryland Avenue, S.W., Washington, D.C., at 9:00 a.m., Ted Bantle, Moira Caruso and Rozmyrn Miller, Facilitators, presiding.

PRESENT

TED BANTLE, Federal Mediation and Conciliation Service, Facilitator
MOIRA CARUSO, Federal Mediation and Conciliation Service, Facilitator
ROZMYRN MILLER, Federal Mediation and Conciliation Service, Facilitator
ROBERT ANDERSON, President, State Higher Education Executive Officers Association
BRYAN BLACK, Attorney
MICHAEL BOTTRILL, CFO and CEO, SAE Institute North America
KIMBERLY BROWN, Vice President, Enrollment Management and Student Affairs, Des Moines University
MIKE BUSADA, General Counsel and Vice President, Ayers Career College

STEVAUGHN BUSH, Student, Howard University
School of Law

EVAN DANIELS, Assistant Attorney General,
Government Accountability and Special
Litigation Unit, Office of the Arizona
Attorney General

CHRIS DELUCA, Attorney at Law, DeLuca Law LLC

ALYSSA DOBSON, Director of Financial Aid and
Scholarships, Slippery Rock University

JOHN ELLIS, Principal Deputy General Counsel and
Division Chief, State of Texas Office of
the Attorney General

ROBERT FLANIGAN, JR., Vice President for Business
and Financial Affairs and Treasurer,
Spelman College

JULIANA FREDMAN, Bay Area Legal Aid

JOSELINE GARCIA, President, United States
Students Association

WANDA HALL, Senior Vice President and Chief
Compliance Officer, Edfinancial Services

ASHLEY HARRINGTON, Special Assistant to the
President and Counsel, Center for
Responsible Lending

WILLIAM HUBBARD, Vice President of Government
Affairs, Student Veterans of America

KELLI HUDSON PERRY, Assistant Vice President for
Finance and Controller, Rensselaer
Polytechnic Institute

GREGORY JONES, President, Compass Rose
Foundation

AARON LACEY, Partner, Thompson Coburn LLP

DALE LARSON, Vice President for Business and
Finance/Chief Financial Officer, Dallas
Theological Seminary

KAY LEWIS, Assistant Vice-Provost, Enrollment
Executive Director of Financial Aid and
Scholarships, University of Washington

DAN MADZELAN, Associate Vice President for
Government Relations, American Council on
Education

JULIANNE MARIE MALVEAUX, President Emerita,
Bennett College, President and Owner of
Economic Education

SUZANNE MARTINDALE, Senior Attorney, Consumers Union

MICHALE MCCOMIS, Executive Director, Accrediting Commission of Career Schools and Colleges

JEFFREY MECHANICK, Assistant Director-Nonpublic Entities, Financial Accounting Standards Board

SUSAN M. MENDITTO, Director, Accounting Policy, National Association of College and University Business Officers

LODRIGUEZ MURRAY, Vice President, Public Policy and Government Affairs, United Negro College Fund

BARMAK NASSIRIAN, Director of Federal Policy Analysis, American Association of State Colleges and Universities

JAY O'CONNELL, Director of Collections and Compliance, Vermont Student Assistance Corporation (VSAC)

WALTER OCHINKO, Research Director, Veterans Education Success

JOHN PALMUCCI, Interim President, Chief Business Officer, Maryland University of Integrative Health

KAREN PETERSON SOLINSKI, Executive Vice President, Higher Learning Commission

LINDA RAWLES, Rawles Law

ASHLEY ANN REICH, Senior Director of Financial Aid Compliance and State Approvals, Liberty University

SHELDON REPP, Special Advisor and Counsel, National Council of Higher Education Resources

DAWNELLE ROBINSON, Associate Vice President for Finance and Administration, Shaw University

RONALD E. SALLUZZO, Partner, Attain

ABBY SHAFROTH, Staff Attorney, National Consumer Law Center

VALERIE SHARP, Director, Office of Financial Aid, Evangel University

COLLEEN SLATTERY, Federal Contract and Compliance Officer, MOHELA

KAREN PETERSON SOLINSKI, Executive Vice
President, Higher Learning Commission
JONATHAN TARNOW, Partner, Drinker Biddle & Reath
LLP

STAFF PRESENT

CAROLINE HONG, Office of General Counsel
BRIAN SIEGEL, Office of General Counsel
JOHN KOLOTOS, Office of Postsecondary Education
JIM MANNING, Acting Under Secretary of Education
ANNMARIE WEISMAN, Federal Negotiator, Office of
Postsecondary Education

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

2 MS. CARUSO: Well, good morning,
3 everyone. Welcome back to day two.

4 We are going to pick up where we left
5 off in issue paper number one. There are edits
6 in the works. They are not ready to reintroduce
7 back to this group so we are going to pick up where
8 we left off and not waste any more time.

9 Your facilitators, just a quick note,
10 your facilitators are operating under the
11 assumption that everyone at this table wants to
12 achieve consensus through this process.

13 And I think it's obvious after
14 yesterday's discussion that consensus is going to
15 take compromise from everyone at this table.

16 So that's all that we would like to
17 leave you with. We're not going to waste much of
18 your time this morning with opening remarks. Just
19 that quick reminder.

20 So thank you for your work thus far.

21 There's a lot more to go. And with that I will
22 turn it over to the department for their opening
23 remarks and to pick up where we left off in issue

1 paper number one.

2 PARTICIPANT: Good morning. I'd like
3 to welcome everyone back and thank you for again
4 your hard work from yesterday and your continued
5 hard work that we anticipate throughout the rest
6 of this session.

7 I'd also like to make a quick note about
8 the idea of consensus. I've heard a couple of
9 remarks from people that maybe it doesn't behoove
10 us to meet consensus.

11 And I have to say I was a little taken
12 aback. I think that in general we all came with
13 the idea of let's meet consensus, but perhaps
14 something along with these proceedings has changed
15 people's minds about that.

16 And so I'd kind of like to just
17 reinforce that as a starting point to follow up
18 on the facilitator note that from the department
19 perspective we are very interested in reaching
20 consensus. And we hope that you all are as well.

21 I would say that in my opinion it
22 behoves us to meet consensus. People who think
23 that they might get something they like better by

1 not coming to agreement I think would be
2 disappointed.

3 Again that's my personal opinion. I
4 think that people might think that they'll do better
5 by letting the department write all of the text,
6 but I think what you need to keep in mind is it
7 would not just be me and the staff that you see
8 over here writing the text and coming to agreement
9 on that.

10 There would be many other people who
11 would want to weigh in on that language, many who
12 were not all here to hear what was said and to hear
13 our discussions.

14 And while certainly they would be
15 following the proceedings and reviewing what we've
16 done just as we kind of do some trading here it
17 may be that someone has a very strong opinion about
18 one item that we didn't and then they pull out and
19 say this is what we're going to do for this item.

20 And I think that people here might be
21 very disappointed by that outcome.

22 I think that we always can come up with
23 a stronger outcome by reaching consensus right here

1 at the table. You walk away knowing what you've
2 gotten.

3 Yes, you have to give a little, but I
4 do think that everyone would have to give a little
5 regardless.

6 So I think if we can come to that
7 agreement and give a little herewith each other
8 we have a stronger rule.

9 So I would just like to encourage you
10 to kind of hit the reset button if you were thinking
11 maybe consensus isn't the way to go and kind of
12 come back with us as a team and try to work toward
13 this.

14 I know that some people felt a little
15 down yesterday and I hope that we can start fresh
16 this morning and keep the conversation going.

17 I think as long as we're still talking
18 and we're still working together we've got a good
19 chance at this.

20 So again thank you for being here. I
21 thank you for working with us.

22 I'd like to pick it up on issue paper
23 one on page 3 in about the middle of the page.

1 We were starting to discuss this yesterday. But
2 we'd like to pick up with the definition of
3 misrepresentation.

4 The department has proposed language
5 again making some changes to this text from session
6 two. It would now read a misrepresentation is a
7 statement, act, or omission by an eligible
8 institution to a borrower that is intentionally
9 false or misleading or made with reckless disregard
10 for the truth and that relates to the making of
11 a direct loan for enrollment at the institution
12 or the provision of educational services for which
13 the loan was made.

14 Evidence that a misrepresentation
15 described in paragraph B(1)(i) of this section has
16 occurred includes but is not limited to, and then
17 we go through kind of our list of items.

18 We made a couple of edits from the last
19 session based on your feedback. We changed job
20 placement rates to employment rates. In paragraph
21 C we added accreditation.

22 Over on page 4 in H we mentioned this
23 yesterday as well we added the U.S. Armed Forces

1 or other individuals or entities when the
2 institution has no permission to use such an
3 endorsement.

4 We also talked about the idea of
5 educational resources. These are items that we
6 added in at the last session I believe. So these
7 are items you've seen.

8 We also did remove K which was any other
9 circumstances determined by the Secretary. Again
10 the feeling was we didn't need that text since we
11 put in the stem that it was included but not limited
12 to.

13 In (ii) we talked about what would not
14 make for a borrower defense claim. We can
15 certainly continue through and reach all of that,
16 or we can focus the topic on just misrepresentation.

17
18 I'm kind of thinking that might be the
19 way to go to start since misrepresentation is large
20 enough. So let's cap it with just (i) where we
21 strike section K. I think we can focus our
22 conversation there to start us.

23 MR. HUBBARD: I'd just like to briefly

1 applaud the department on the inclusion of the
2 language that states the United States Armed Forces
3 or other individuals or entities, et cetera.

4 I think that's an important inclusion.

5 We've seen too often that schools in some cases,
6 the predatory ones, not all, but certainly the
7 predatory ones with bad behavior go out of their
8 way to make it appear that there's an affiliation
9 with the U.S. Armed Forces by doing things like
10 including the service seals, the emblems of the
11 branches. So that's definitely an important one
12 that we applaud.

13 PARTICIPANT: Abby.

14 MS. SHAFROTH: On page 3 I think it's
15 4(i) the definition of misrepresentation. I
16 reiterate my strong opposition to requiring the
17 borrower to demonstrate that the institution's
18 false or misleading statement was made
19 intentionally or with reckless disregard.

20 I think that it is very, very difficult
21 if not impossible for a borrower to demonstrate
22 what the institution knew or should have known or
23 was thinking, or what the recruiter who talked to

1 them knew.

2 So I think as a practical matter this
3 is going to make borrower defense relief much harder
4 to access for borrowers who were misled by their
5 school.

6 In addition this would be raising the
7 standard well above and beyond what it currently
8 is under either the 1994 state law standards since
9 the state consumer protection laws do not require
10 a showing of intent or reckless disregard except
11 in I think five states.

12 And it is raising the standard well
13 above and beyond the 2016 standard when we all
14 debated at length and came to the conclusion that
15 it was improper to require intent because it would
16 make it too hard for borrowers to access relief.

17 I think that stays true today.

18 So I would propose striking that
19 language that is intentionally false or misleading
20 or made with reckless disregard for the truth.

21 PARTICIPANT: Michale.

22 MR. MCCOMIS: I had a question about
23 that as well. And it's really more of a process

1 question. Because I read this in conjunction with
2 the reasons for which and by which a student can
3 make a claim.

4 And what it says is that the -- under
5 the reasons that give rise to a claim, the
6 institution at which the borrower enrolled made
7 a misrepresentation.

8 So it doesn't say that the borrower has
9 to show that the institution made a
10 misrepresentation.

11 And then when you go to the definition
12 of a misrepresentation it says that it's a statement
13 that is intentionally false.

14 So my question is is it process-wise
15 then to Abby's point solely upon the student to
16 make a showing affirmatively that there was intent,
17 or will the department through the weight,
18 substantial or otherwise, to all the evidence make
19 its own determination about intentionality.

20 That is to say if the institution comes
21 back and says oh well, it was just a mistake, there
22 was no intention here. When I read those two things
23 together I don't see anything that says that the

1 student has to make an affirmative proven case of
2 intent.

3 PARTICIPANT: So we agree with you that
4 the borrower is not compelled to prove that so to
5 speak. We require the intent to be there, but we're
6 going to look for it in the information that we
7 receive from all parties.

8 MR. MCCOMIS: Thank you. That's what
9 I thought.

10 So then can I -- one more comment?
11 Okay. So I just wanted to remind the department
12 I had suggested moving the material fact, opinion,
13 intention, or law language over into this section
14 here just so people knew that it was on the screen.
15 We moved it over from the other area.

16 PARTICIPANT: Mike Busada.

17 PARTICIPANT: Hang on. So I just want
18 to go back to Abby. Abby, does that change how
19 you feel about (i) and if not I also have a question
20 about the person who's typing and what they've
21 struck out.

22 MS. SHAFROTH: I don't think it fully
23 addresses my concern because the standard here

1 still appears to require the borrower to submit
2 the -- to put forward their claim, their testimony,
3 and support it with corroborating evidence.

4 I mean this gets into issue paper two
5 a bit where the borrower, the initial review looks
6 for corroborating evidence.

7 But my sense is still that the ultimate
8 burden of persuasion is on the borrower, not on
9 the school. So it's not that the borrower gets
10 to just say there was a misrepresentation and then
11 the school has the burden of proving to the
12 department that it was an innocent mistake or
13 negligent even.

14 I'm surprised that even negligence
15 wouldn't be enough to get the borrower relief here.

16 But ultimately I do think that the
17 standard as the department has set out ultimately
18 leaves the burden on the borrower. Even if they
19 don't have to come up with all of the evidence there
20 has to be corroborating evidence that the lie was
21 intentional or made with reckless disregard.
22 There has to be evidence of that.

23 And if there's no evidence either way

1 then the borrower loses under this standard.

2 Additionally I do have, I know that not
3 everyone at this table agrees with me, but I remain
4 of the belief that if a school makes a material
5 misrepresentation to a borrower that the borrower
6 reasonably relies on to enroll in the school and
7 to take out thousands of dollars of loans, and the
8 borrower suffers financial harm that the borrower
9 should be eligible for getting their loans
10 discharged even if the institution says sorry, I
11 didn't mean to.

12 That's a philosophical difference. So
13 even if we were able to somewhat alleviate the
14 evidentiary pragmatic concern I do think that our
15 rule should allow the department to discharge
16 students' loans in that instance.

17 PARTICIPANT: Okay. Thank you, Abby.

18 And just a question because we did have some edits
19 here based on your remarks.

20 Was it your intention to strike all that
21 language, or was it just to strike intentionally
22 and the -- do you agree with false or misleading,
23 but just not intentionally.

1 MS. SHAFROTH: Oh, sorry.
2 Misrepresentation. Yes, it should be false or
3 misleading.

4 PARTICIPANT: Right. Okay. So can
5 we unstrike false or misleading?

6 MS. SHAFROTH: That is false or
7 misleading and that relates to. So to be clear.

8 PARTICIPANT: So strike
9 intentionally.

10 MS. SHAFROTH: Strike intentionally
11 and strike or made with a reckless disregard for
12 the truth. Thank you.

13 PARTICIPANT: Thank you.

14 PARTICIPANT: Mike Busada. Michale
15 McComis, were you finished with your -- okay. Mike
16 Busada.

17 MR. BUSADA: Let me say at my school
18 in most schools that I know of, small schools that
19 I work with go and talk to the association meetings,
20 I think that they would agree overall in principle
21 with what Abby's saying in terms of if a student
22 comes to us and we made a mistake we're going to
23 make it right. That's what we're going to do.

1 I think most people in here would do
2 the same thing.

3 Here's my concern and this is what I'd
4 like to address. The problem is right now anytime
5 there's a borrower defense claim that's successful,
6 whether it's a mistake or whether it's intentional
7 we've heard all week, we've heard for the last
8 several weeks, we heard yesterday a distinguished
9 congressman.

10 And basically the word was you're con
11 artists, you're fraudulent, you're scamming,
12 you're this, you're this. It's always bad and
13 there's never a distinction made whether or not
14 was it a mistake or not.

15 And so at a small school for instance,
16 I mean that is what the message has been is that
17 if a student gets any kind of relief the school
18 is fraudulent. The school is a crook. The school
19 is predatory.

20 And I'm not saying that about people
21 on this panel, but I'm just saying I mean you can
22 just read the newspaper. I mean that's what's in
23 there.

1 And so the issue is that a small school
2 whether it's in Shreveport, Louisiana, Little Rock,
3 Mississippi, wherever it is across the country.

4 And if one student comes with a borrower
5 defense claim and it was an honest mistake and that
6 loan is discharged and it allows for it to be
7 discharged for a mistake the message is going to
8 be oh, that school is a bad school. And in a small
9 community when that goes on Facebook then your
10 school is done. You've lost your reputation.

11 And so I guess my point is, and it goes
12 back to an issue that we raised last time. I would
13 be much more comfortable with a lot of these
14 discussions if there was inclusion of as we
15 discussed last time some type of voluntary
16 mediation to allow small schools like ours that
17 maybe a student for whatever reason doesn't want
18 to -- thinks they need to go directly to the
19 department that's fine.

20 But if there's an opportunity for us
21 to at least say hey, yes, that was a mistake, we're
22 going to take care of it.

23 There's got to be a process here, a

1 mediation process like there are in a lot of other
2 areas of the federal government.

3 I would be more comfortable if there
4 was something like that in a lot of these
5 discussions.

6 PARTICIPANT: Valerie.

7 MS. SHARP: I just wanted to -- I
8 support some of what Mike just said and I support
9 the language that Michale McComis has suggested.

10 I felt -- at first when I read the
11 rewrite I was a bit concerned because I'm one that
12 thinks intent is important. That we had moved it
13 from section -- and then I realized that we'd moved
14 it into misrepresentation.

15 And I felt like that was a good
16 compromise because it moved from the section of
17 this constituting the borrower defense and what
18 the loans would be over into a definition of
19 misrepresentation.

20 And I felt that that did give me the
21 picture that Michale just asked the department
22 about that we're moving that more onto the
23 department is going to determine the intention.

1 I also just in supporting this felt like
2 if the intentionality was retained I was more
3 comfortable with moving the level of evidence that
4 would be required and supporting some of the changes
5 that have been suggested there, comfortable with
6 discussing the switch to sufficient evidence
7 because the intent is left there at the
8 misrepresentation section.

9 So I felt like that's a compromise
10 position to keep the intent because it is something
11 that's important to us. And I know it may seem
12 funny but I agree with Mike it helps you say wait
13 a minute.

14 Because we do make mistakes when they
15 come to our attention. But saying okay, was there
16 intention or not. Reputation is everything
17 especially to the small schools. So it is a big
18 deal for schools across the country.

19 But if you're looking at that in the
20 misrepresentation definition there is some
21 possible room for discussion on the levels of
22 evidence. And I think the two together could work
23 to support what schools are concerned about and

1 also the concerns that the students would have to
2 provide so much.

3 So I think there's a balance there
4 between the two.

5 I was also curious and I don't know if
6 Evan is ready to speak to this or not, but last
7 time Evan did make some suggestions about adding
8 some comments to this definition about deceptive
9 acts or practices. And we didn't really flesh that
10 out.

11 I don't know if he has a suggestion
12 there that might be helpful for the committee to
13 look at, any other suggested wording that everyone
14 might be in support of.

15 PARTICIPANT: Do we have the ability
16 to see Michale's suggested change here adding --
17 oh it's in there? Got it. You put it there.
18 Thank you.

19 PARTICIPANT: Suzanne.

20 MS. MARTINDALE: Thank you. Well of
21 course I share the concerns that others have raised
22 about a borrower's ability to prove some sort of
23 evidence on their own to demonstrate intent.

1 From a consumer protection perspective
2 there's a reason why in the context of cases that
3 are brought under state law or say under the FTC
4 Act for unfair or deceptive acts or practices
5 there's a reason why the focus is typically on the
6 conduct, the conduct that causes harm.

7 Because consumers in the marketplace
8 are at disadvantage. There's a power imbalance.

9 And so businesses are better positioned to prevent
10 harm the vast majority of the time than the consumer
11 is able to prevent the harm simply by being the
12 savviest consumer in the world and somehow having
13 perfect knowledge of business practices.

14 So I appreciate what the department
15 said that the department is looking at evidence
16 other than -- potentially looking at evidence other
17 than what the borrower submits.

18 But I hear that you want to see evidence
19 that in your view looks like something like intent.

20

21 So what I want to know from the
22 department is could you give me a concrete example
23 of what kind of evidence in your view would show

1 you intent or reckless disregard, so forth, and
2 is it going to be the case because it's not clear
3 to me in the language as drafted that -- I know
4 that you say that you're going to look at evidence
5 in your possession as well as what the borrower
6 submits.

7 But are you going to commit to always
8 seeking to gather evidence to ensure that you have
9 a full picture and full context when evaluating
10 the borrower's claim. Would you be willing to say
11 that the Secretary shall gather evidence when
12 assessing a borrower's claim if you are indeed going
13 to be looking for intent.

14 PARTICIPANT: So we certainly can't
15 commit resources or commit the Secretary to doing
16 something in particular right now.

17 We'll never say the Secretary shall
18 because when we're referring to the Secretary our
19 reg writer experts believe that it is best to say
20 the Secretary will.

21 But I think our position has always been
22 that we are going to use evidence in our possession.

23 In our possession means the information supplied

1 from the borrower with their claim.

2 Some of this will make a little more
3 sense when we get into the process piece in issue
4 paper two, but we'll be going out to the institution
5 to get their information. And then any information
6 that we have from other sources.

7 And so if we have findings from our own
8 investigations or program reviews that could
9 include information from other outside sources,
10 other agencies. It could mean state agencies,
11 various agencies.

12 So again I think we'll cover more of
13 this as we get to process, but hopefully that's
14 helpful for now.

15 PARTICIPANT: I just want to take a
16 quick temperature check for this provision as it's
17 currently written, adding Michale's language in
18 there and Abby's striking of intentionally and the
19 reckless disregard. You want to separate them into
20 two? That's fine.

21 Okay. So quick show of thumbs adding
22 in the regarding material fact, opinion, intention,
23 or law and leaving in the rest of the language as

1 written. Can I get a quick show of thumbs?

2 Okay, three thumbs down. How about
3 combining the two, adding in the regarding material
4 fact, opinion, intention, or law and striking the
5 intentionality language and reckless disregard
6 language.

7 Four thumbs down. Okay. So I'd like
8 to get a little bit more discussion around that
9 and see if we can find something that's going to
10 work for everyone.

11 PARTICIPANT: Caroline.

12 MS. HONG: Just a quick question for
13 Suzanne. So you mentioned whether or not there
14 would be a commitment from the department about
15 what we would look for and AnnMarie was mentioning
16 that we just, we have a resource problem.

17 But I wanted to know are there specific
18 categories of things you think are in the
19 department's possession that you would like listed.

20 Or what do you think would be relevant that the
21 department might have in its possession already.

22 MS. MARTINDALE: Well, I think I was
23 trying to understand a little bit more of what kind

1 of evidence would in your view demonstrate
2 something like reckless disregard for the truth
3 or intent.

4 Because the borrower is going to know
5 what they were told. Maybe they'll have written
6 marketing materials and so forth. They're going
7 to know how the school acted toward them.

8 But certainly at the initial, I mean
9 filling out this application we're not in court,
10 we don't have discovery rights and all that sort
11 of thing. I can't visualize right now sitting here
12 what kind of evidence would satisfy your concern
13 that you're trying to get at something like at
14 minimum reckless conduct.

15 What would that look like concretely
16 so I can try to understand what would in your view
17 create a valid claim that warrants relief.

18 Again, typically in UDAP law you look
19 at the conduct and whether it has a tendency to
20 mislead someone who's acting reasonably under the
21 circumstances because what matters is the harm to
22 the person who has been harmed.

23 And that person, if you're talking

1 about businesses versus consumers the consumer is
2 usually not the one in the best position to prevent
3 the harm, it's the business that's engaging in the
4 misconduct.

5 So I'm trying to be responsive but my
6 question back to you is what kind of evidence would
7 in your view satisfy your need to see that there
8 was some sort of level of intent to deceive.

9 PARTICIPANT: So I think for part of
10 that it's the amount of information that an
11 institution has available to it.

12 So when an institution has information
13 that says their placement rates or their employment
14 rates are 30 percent and they go out and they say
15 they're 80 percent the information is there.

16 Other people at the institution might
17 even confirm that yes, we knew it was 80 percent.

18 Saying it's 30 percent, that's a reckless
19 disregard for the truth. They had that information
20 in their possession but when let's say prospective
21 students came in they constantly consistently
22 quoted a different piece of information. That's
23 a disregard for the truth.

1 And we've seen that type of behavior
2 and I think should we see it again that would be
3 ripe for a borrower defense claim.

4 And just to confirm I wasn't saying that
5 there was a resource problem. What I was saying
6 is that we in this rule cannot commit certain
7 resources that are not already in place. That
8 would be something we'd have to take back for
9 discussion.

10 PARTICIPANT: AnnMarie is too kind,
11 that was my mistake so I apologize.

12 PARTICIPANT: William.

13 MR. HUBBARD: Thank you. I don't know
14 that necessarily any school, and correct me if I'm
15 wrong, but any school believes that the burden of
16 proof of intent should be on the student.

17 I mean that is difficult to prove. I
18 think we can all agree on that. So just maybe as
19 a starting position coming from that point of view
20 would be worthwhile considering.

21 And perhaps it's worth maybe presenting
22 some sort of guarantee that the preamble might
23 identify or make it more explicit that it's the

1 department's burden to prove intent versus the
2 student's just to allay some of those concerns.

3 I don't know exactly what that language
4 looks like, but that might be worth discussing.

5 Also to Mike's concerns about
6 reputation. And reputation is everything, you're
7 absolutely right, especially with a small school.

8 And I think that's why this rule being
9 so strong is that much more important is to weed
10 out the bad behavior in the industry to ensure that
11 schools that are doing well, small schools have
12 the opportunity to bolster their reputation.

13 And quite frankly if there's any
14 student out there for whatever reason it might be
15 that's committed to destroying the reputation of
16 a school I mean there's social media, folks.
17 They're going to do it.

18 Additionally there's an opportunity
19 for them to file a BD claim under the existing rules
20 as it stands.

21 My hope would be that the rules that
22 we come up with here are so strong and fair that
23 it prevents some of that firing from the hip or

1 freewheeling student that might be out -- committed
2 to get a school, that would provide the recourse
3 for both the student and the school to address that.

4 I think too Mike to your point in terms
5 of mediation, I mean I've never had -- speaking
6 from a military perspective never had any problem
7 with mediation as long as it was voluntary. I think
8 the force piece is the challenge.

9 And so providing that as a potential
10 recourse might be worthwhile.

11 So between the fact that sufficient
12 evidence and then making more explicit that the
13 burden of proof as far as intent is not on the
14 student but on the department, I think those two
15 pieces combined with guaranteeing that mediation
16 will be voluntary. That's a package that
17 ultimately I think we could get behind.

18 PARTICIPANT: And I agree with you.
19 I want a strong rule that once and for all gets
20 rid of bad actors in education.

21 It has been just a detriment to every
22 student, to every school out there that's trying
23 to do the right thing. And it's cost everybody.

1 So I'm with you.

2 My concern is in reality what you
3 typically see, and this is any industry. You can
4 look at any industry. The small guys can't afford
5 to meet the regulatory bar that's set based on bad
6 acts of big guys.

7 And it becomes unaffordable. And so
8 the big guys buy the small guys and then there are
9 no more small guys, or they go out of business.

10 That's across the board. Go look at
11 the discussion they're having with banks. That's
12 what typically happens.

13 And so I agree with what you're saying,
14 but I think there's got to be another approach to
15 make sure that you protect the small operators that
16 can't afford all of the attorneys and the staffs
17 and the accountants to meet all of these things.

18 That would be my only thing.

19 But I appreciate what you're saying in
20 terms of I'm for voluntary mediation. Our thing
21 is I want the opportunity before it becomes an
22 adversarial thing to say for the student through
23 the department or through any neutral party to say

1 hey, look, let's both of you all look at this and
2 we say yes, okay.

3 I wish you would have brought it to us
4 before. I understand some people aren't
5 comfortable. But now that we know it, let's fix
6 it.

7 That's the only way that that student
8 is going to be happy and quite frankly it's the
9 only way that that student is going to leave your
10 school and tell their friends hey, that's a good
11 place to go.

12 PARTICIPANT: So, a couple of things
13 that are going across the table right now and it
14 sounds like there might be an appetite for is
15 specifying, whether in the preamble or elsewhere,
16 that the burden to prove intent lies with the
17 department.

18 And then adding something about
19 voluntary mediation. So we want to check both of
20 those. So I will start with specifying that the
21 burden to prove intent lies with the department.

22 Can I get a show of thumbs?

23 PARTICIPANT: I mean maybe Caroline

1 can comment on this. I'm not sure that it's that
2 the burden to prove intent lies with the department
3 but it's the finding of intent is the responsibility
4 of the department if that makes sense.

5 And that finding can occur -- the
6 borrower doesn't have to provide all evidence or
7 corroborating evidence that would allow the
8 department to reach that conclusion.

9 But I just want to -- I think at least
10 from a legal standpoint that's sort of an important
11 distinction. So I don't know if there's another
12 way you'd like to word that.

13 PARTICIPANT: I'll just confirm that
14 that is right. So long as the elements are met
15 regardless of how they're achieved or found then
16 that would be enough for a claim to be discharged.

17 PARTICIPANT: Okay. So would you like
18 to specify what could potentially be added in terms
19 of a finding that there is intent? Sure.

20 PARTICIPANT: So one of the things that
21 we're talking about for (i) but then we've got A,
22 B, C, D, E, F, G, H. We've got a list here of things
23 that the way I read it this is evidence of intent.

1 So if a school's actual license passage
2 rate is materially different than those included
3 in the institution's marketing materials,
4 websites, or other communications made to the
5 student that is evidence of intent or reckless
6 disregard from the school.

7 Same thing with employment rates,
8 marketing materials about accreditation.

9 So getting to the conversation of how
10 does a student prove this and this impossible
11 burden, I don't see that because I see we've got
12 this list that the department has put here
13 specifically saying this is what we're talking
14 about.

15 The only way that your license rates
16 are materially different than what you've included
17 in your materials is that you either, you intended
18 to do that, or you had reckless disregard for
19 putting together your licensing rates, or your
20 placement rates, or whether or not your program
21 is accredited.

22 You don't put your program is
23 accredited in your marketing materials when it's

1 not unless you're either intending to do that or
2 you've got reckless disregard.

3 So it seems to me that that's included
4 in this section.

5 PARTICIPANT: I need to respond to that
6 because I think that's an important distinction.

7 The way it was written when we included
8 the word intentional I think it did that because
9 we then listed that list below.

10 But then there was the proposal to take
11 out the word intentional -- opposite, yes, opposite
12 way around.

13 So I think that it could do what you're
14 saying, but I think we have to pay attention to
15 the changes that we make in this language.

16 PARTICIPANT: Sorry, just to clarify.

17 So when this was originally drafted the change
18 that Michale suggested with the intentionally false
19 or misleading or made with reckless disregard for
20 the truth was previously in the other section about
21 how misrepresentation could be made.

22 So when these examples were drafted in
23 here it was just to go to what would be a

1 misrepresentation. It didn't talk about the
2 intentional piece.

3 So that's certainly something we should
4 discuss here, whether or not the addition of this
5 language here would then go to show that these
6 additional A through J would then be as Chris is
7 suggesting would be proof of intentionality or
8 reckless disregard.

9 PARTICIPANT: Michale, was that what
10 you were suggesting?

11 MR. MCCOMIS: Well, no. The language
12 that I put in had to do with the material fact,
13 opinion, intention and law. Because Caroline, you
14 and I talked about that yesterday and you said that
15 it was important if we were going to strike it from
16 B(1)(i) that you felt like the materiality piece
17 was important.

18 So I had said it would fit better in
19 the definition of misrepresentation.

20 And it got thumbs down. I didn't make
21 that language up. It was there. I don't even know
22 what it means. I was just suggesting where it went.

23 So don't hold that against me.

1 But since I have the microphone
2 Caroline, could the absence of evidence be
3 considered corroborating?

4 MS. HONG: You're going to have to give
5 me a little bit more than that.

6 MR. MCCOMIS: So if the school has no
7 response. The student makes an affirmative
8 statement they told me the placement rates were
9 90 percent and the school has no response to that
10 or they have no evidence to say one way or the other.

11 I'm just trying to spin this out a
12 little bit. So that's part of the evidentiary
13 record that the school chooses to submit in that
14 particular regard.

15 And it could be that the lack of
16 response doesn't disprove the student's claim.

17 MS. HONG: But we did say we would
18 require something in addition to the signed
19 statement.

20 MR. MCCOMIS: Okay.

21 MS. HONG: So assuming they had
22 something in addition to the signed statement the
23 idea -- right, a piece of advertising. The idea

1 that the school responded or not, we consider what
2 we've received at that point.

3 MR. MCCOMIS: Okay. So then my next
4 question really has to do with -- or point really
5 is that intent is not required in every single case
6 because you've chosen the conjunction or as opposed
7 to and.

8 So it's intentionally false or
9 misleading, or there's reckless disregard. Is
10 that correct? All right.

11 Then I'm not sure that I understand that
12 there's a real need for recklessness as part of
13 the evidence.

14 I'm good with the intent piece, the
15 intentionality piece because the burden's not on
16 the student exclusively. But I don't know that
17 there needs to be reckless disregard.

18 Because it seems to me getting to some
19 of the conversations and the public comments that
20 were made the last time around that harm to student
21 regardless of whether it was a mistake or not, there
22 is a sense of well, you should have known. Even
23 if it was a mistake did you have the policies and

1 the procedures in place such that these mistakes
2 wouldn't occur.

3 Did you have the right kind of
4 checkpoints and did you have the right
5 infrastructure. And maybe this is a costly lesson
6 to you, but you need to have these things in place
7 so that harm doesn't occur again.

8 So raising that bar to recklessness
9 maybe is a bridge too far. To kind of meet
10 somewhere in the middle on this proposed language
11 here maybe it's just we keep intentionally but
12 strike reckless would be another position that I
13 would put forward.

14 PARTICIPANT: Michale, would you then
15 be taking out your initial addition regarding
16 material fact, opinion?

17 MR. MCCOMIS: No, I did that as a favor
18 to Caroline. I'm just suggesting intentionally
19 false or misleading, or made with a disregard for
20 the truth.

21 PARTICIPANT: With the understanding
22 as we've heard it earlier that the burden is not
23 solely on the student to prove intentionality.

1 MR. MCCOMIS: Given the question that
2 I asked and the answer that I got then yes, I believe
3 that is the case.

4 PARTICIPANT: Caroline.

5 MS. HONG: I just want to clarify one
6 thing. The mistake was mine. Chris had the
7 reading right. So that's certainly something we
8 should discuss here, whether or not that would work
9 for everyone.

10 PARTICIPANT: Okay. So with that
11 addition striking reckless, keeping intentional,
12 how does the group feel? I'm asking for thumbs.
13 I'm asking for thumbs.

14 PARTICIPANT: Two thumbs down.

15 PARTICIPANT: Okay, can we just hear
16 from the thumbs down first?

17 PARTICIPANT: I appreciate what
18 Michale's trying to do here and I think it's a step
19 in the right direction.

20 I'm still not sure sort of what it would
21 take to show disregard for the truth, sort of what
22 that would mean.

23 The law has recklessness standards and

1 negligence standards and I'm not sure if this would
2 ultimately be interpreted as a recklessness
3 standard versus a negligence standard versus
4 something else.

5 So I'm concerned that I don't know
6 entirely what it would mean.

7 I do think it's a step in the right
8 direction though.

9 I'd had my tag up before because I
10 wanted to respond to Mike's proposal. Can I do
11 that now as well or do you want to keep the
12 conversation on this?

13 MR. MCCOMIS: I would just say in
14 response to that we keep going back to this idea
15 that there are concepts in the law. But yet we've
16 also said this is not a judicial proceeding.

17 So you can't have it both ways.

18 PARTICIPANT: Okay. I just want to
19 stick to this for the moment. We can come back.

20 MR. MCCOMIS: But that's what I'm
21 talking about. My concern is not whether or not
22 there is an evidentiary burden in terms of the
23 judicial review of what it means in the law for

1 disregard versus negligence versus -- I don't know
2 any of that stuff.

3 What I know is that the department is
4 going to make some decisions. And I'm trying to
5 help give them the tools that they can make good
6 decisions and put some faith and trust and
7 confidence in their ability to make those, keeping
8 in mind that part of their intent is in the best
9 interest of students, institutions and taxpayers
10 weighted equally. And that's what I'm trying to
11 get to.

12 And so I get where you're saying well
13 you don't understand what it means, but we have
14 to put some faith and confidence in the department's
15 ability to take these regulations that we give them
16 and to fairly and objectively use those.

17 PARTICIPANT: Joseline, can we hear
18 from you? You were the other thumbs down. Aaron?

19 MR. LACEY: Several comments. So on
20 intentionality from my perspective I'm glad that's
21 back there and I just want to confirm that I feel
22 it's very important to have that intentionality
23 there in that particular spot because without it

1 it does become a mistake standard.

2 If you take intentionality out then
3 false or misleading becomes the lower of the two
4 standards. You would have false or misleading,
5 or a reckless disregard for the truth.

6 And that means if an institution made
7 a statement unintentionally but it was false, so
8 even if it's a mistake, that that could be a basis
9 for a claim and I know I and my constituency have
10 many times said we don't think this is supposed
11 to be a mistake standard.

12 I am sympathetic to the view that if
13 students are wronged even if it is a mistake and
14 they are harmed that they should have some form
15 of resolution with the institution.

16 I don't disagree with that, I just don't
17 think it's a basis for a borrower defense claim.

18 I think that a student should go to the institution
19 and say I was wronged, you made a mistake, you need
20 to make me whole. And I think a good institution
21 should do that. In my experience they very
22 frequently will.

23 But what we're talking about here is

1 is it a basis to discharge \$80,000 in loans and
2 my view is no. If you're talking about what's a
3 basis to discharge the loans in a borrower defense
4 proceeding there needs to be something more than
5 a mistake. There needs to be some level of
6 intentionality or reckless disregard on the part
7 of the institution.

8 Trying to move things forward. So the
9 lower of the two standards there right now if you
10 leave intentionality in is as Abby has accurately
11 pointed out is this reckless disregard for the
12 truth.

13 There are other standards out there as
14 she has also pointed out.

15 The problem I have and that is a real
16 challenge with this process, it's just inherent,
17 I'm not being critical, but there's not a lot of
18 option to give and take like you would if you had
19 attorneys sitting around negotiating an agreement.

20 You'd say how about this or how about that.

21 So I understand that there's a concern
22 with reckless disregard and the idea that that may
23 be too high of a standard.

1 I cannot get behind changing that
2 standard without confirmation that the evidentiary
3 standard is not going to move.

4 My constituency, I and when you're
5 talking -- again I keep going back to this overall
6 model risk allocation, that would be a degradation
7 on both key levels for my constituency which is
8 a non-starter.

9 But if I can get some sort of
10 confirmation that we can live with substantial
11 weight of the evidence and the notion that a student
12 has to supply something besides a certified
13 statement, i.e., corroborating evidence, then I
14 would be willing to talk about potentially
15 modifying the reckless disregard standard.

16 But they are inextricably linked. I
17 don't see how we can try to negotiate or do thumbs
18 on one or the other. It just doesn't work that
19 way in my mind.

20 PARTICIPANT: Are you making a
21 proposal, Aaron?

22 MR. LACEY: Well, I guess my proposal
23 is I'm willing to discuss or entertain -- I agree

1 with Abby, although I also understand Michale's
2 point. This disregard concept is not a concept
3 that's really out there.

4 But my point is if other proposals want
5 to be made whether it be simply disregard, or
6 negligence, or something along those lines I'm
7 willing to entertain that provided that substantial
8 weight of the evidence and the corroborating
9 evidence standards as written are maintained.

10 PARTICIPANT: How does the group feel?

11 PARTICIPANT: Do we need a minute to
12 think about it before we do a show of thumbs?
13 Repeat.

14 MR. LACEY: I'm not -- I mean we don't
15 have to vote on this, but I'm just trying to move
16 us forward in the sense of understanding how for
17 a framework toward resolution it might work.

18 And my point is these two are -- if the
19 folks, the consumer advocates and the folks really
20 representing student rights -- I know this is all
21 linked.

22 But if it is a greater concern that
23 reckless disregard, if that's the bigger hangup,

1 then my point is if we can get a confirmation that
2 we can live with substantial weight of the evidence.

3 So in other words that we can live with B(1) and
4 (2) as they were originally proposed yesterday
5 because I know there's maybe some edits -- I'm
6 sorry, B(1) -- I probably misspoke there. Sorry.

7

8 Yes, those two, the one where you talk
9 about substantial weight of the evidence and define
10 that. Yes, sorry, (3).

11 If we can leave those as they are
12 proposed then I am much more comfortable talking
13 about potentially modifying the reckless disregard
14 standard to consider some other standard that might
15 be deemed more accessible to students.

16 But with the first part of that in flux
17 it makes it all the more important to me that the
18 second part remain the same. So I'm trying to
19 suggest a way that we might move forward.

20 Understanding by the way that if we
21 couldn't reach resolution on the second part that
22 likely folks would not agree on part one either
23 of that equation.

1 PARTICIPANT: So I'm not entirely sure
2 that we have enough clarity to take a temperature
3 check, but does someone want to help out with that?

4 PARTICIPANT: Well, I think simply
5 what Aaron is saying is that under B(1) on page
6 2 substantial weight of the evidence stays and that
7 under 4(i) reckless goes. Is that right, Aaron?

8 MR. LACEY: Well, either that reckless
9 goes or if we want to propose negligent disregard,
10 if that's a concept that would make folks more
11 comfortable because it's got a connection.

12 But my point is we're trying to figure
13 out how do we move forward. And the problem I have
14 is these two are linked. And so I can't negotiate
15 them in isolation.

16 PARTICIPANT: Yes, I get it. So
17 substantial weight of the evidence stays and either
18 reckless is stricken or it's replaced with
19 negligent disregard.

20 PARTICIPANT: So can we hear from some
21 of the student advocates some assistance as to what
22 might be acceptable to get us close. So when we
23 do take a check we're a little bit more accurate

1 about what might get accepted.

2 PARTICIPANT: Will.

3 MR. HUBBARD: So what I would propose,
4 and I probably wasn't as clear before but I think
5 Aaron, I think you and I are getting pretty close
6 to the same point on this.

7 We would be comfortable, we the
8 military community would be comfortable with in
9 B(1) having sufficient evidence. I think that's
10 a fair standard in the sense that if there's not
11 sufficient evidence obviously the claim doesn't
12 go through.

13 And then under 4(i) striking the
14 disregard language and then also including the
15 finding on intent in the preamble as kind of a
16 package offer.

17 PARTICIPANT: Will, could you repeat
18 it.

19 MR. HUBBARD: Yes, no worries. So
20 instead of substantial weight of the evidence
21 saying sufficient evidence, that's B(1).

22 And then in the language under
23 misrepresentation, so that's 4(i) striking the

1 disregard language, keeping the intentionality,
2 but also noting in the preamble finding of intent
3 being the burden of the department, not the student.

4 PARTICIPANT: Okay, Linda and then
5 Michale.

6 MS. RAWLES: I have a question before
7 the vote for the department. Whatever we're going
8 to vote on such as if we vote on sufficient as
9 opposed to substantial weight I'd like at each stage
10 for Caroline to answer whether or not you consider
11 that a higher standard than preponderance.

12 PARTICIPANT: I'm sorry, just to
13 clarify, you want to know whether or not sufficient
14 or substantial is higher than preponderance?

15 MS. RAWLES: Whenever we vote if we're
16 voting on this change, sufficient evidence, I'd
17 like you to tell me if you think that is a higher
18 standard than preponderance.

19 Because we had some conversation
20 yesterday that the department was trying to split
21 the difference between preponderance of the
22 evidence and clear and convincing.

23 And I feel like we're going below

1 preponderance. And not everyone in this room even
2 agrees if substantial weight is above or below
3 preponderance.

4 So I'd like to know the department's
5 position on when we're voting on an evidentiary
6 standard if it's above preponderance of the
7 evidence. Thank you.

8 PARTICIPANT: So I'm going to have to
9 give a very lawyerly answer to that. I'm sorry.

10 But just with regard to specifically
11 to sufficient evidence I think it depends on how
12 the language shapes up.

13 Just because with the way the edits
14 turned out yesterday I'm not clear whether or not
15 it comes with your additional last sentence that
16 you propose about the probative value.

17 I've spoken to other people around this
18 room. Different people seem to attribute
19 different things to corroborating versus
20 sufficient. And as a lawyer I think that's
21 something to consider and take back.

22 But I think it really depends I think
23 on the language. So it's hard to comment on these

1 sort of concepts right now.

2 PARTICIPANT: Any more comments about
3 this proposal?

4 MS. RAWLES: I just want to say that
5 if it's a lower standard than preponderance, if
6 we can't agree that it's a higher standard than
7 preponderance then I would certainly be opposed
8 to it.

9 PARTICIPANT: Will, can you say a bit
10 about your intent by using the word sufficient?

11 MR. HUBBARD: Oh boy. I think
12 ultimately it's twofold. Number one, it's plain
13 language. There's been an expressed interest by
14 the department to have plain language that all could
15 understand. I think it meets that box.

16 Additionally I think the second piece
17 is it affords a level of fairness between the
18 student and school where if the student can't
19 provide sufficient evidence they don't have a
20 claim, period.

21 And so I think it kind of goes between
22 the two.

23 Not having a JD myself, kicking myself

1 saying that, but I don't know necessarily between
2 clear and convincing and preponderance, hard to
3 thread that needle. I think sufficient kind of
4 meets all buckets. So that's the intent with that.

5 PARTICIPANT: Michale.

6 MR. MCCOMIS: But for me the key is
7 really in B(3) because that's where it's defined
8 for corroboration.

9 It's not just the statement, it's that
10 there must also be corroborating -- that's what
11 gives the claim and the evidence substantial weight
12 or sufficiency or whatever term you want to use.

13 Those to me are just adjectives.

14 What gives it weight is the
15 corroboration either as provided by the borrower
16 so that they have a claim and they can prove that
17 claim, or otherwise in the possession of the
18 Secretary.

19 So preponderance, sufficient, what's
20 important I think is the concept of corroboration.

21 And that's here. So whatever words you choose
22 to describe it I think for me are not as important
23 as is the concept of corroboration.

1 PARTICIPANT: So if I could jump in.
2 Will, just to clarify. In your proposal which
3 was building on Aaron's proposal were you
4 envisioning paragraph 3 to build off of Michale's
5 comments as it stands on the screen right now, or
6 as it was proposed coming in to this session?
7 Because there is that addition at the end.

8 MR. HUBBARD: No, building on
9 Michale's piece I think is reasonable.

10 PARTICIPANT: So to include the
11 language at the end there and the evidence proves
12 the assertion is at least more probable than not?
13 Okay.

14 And Linda, I see you standing up. Does
15 that help address your concern?

16 MS. RAWLES: It is a package.

17 PARTICIPANT: Any other thoughts on
18 this or any additions to this?

19 PARTICIPANT: So just to clarify we've
20 added sufficient, we've added and the evidence
21 proves that the assertion is at least more probable
22 than not, the regarding material fact, opinion,
23 intention, or law is still there, false or

1 misleading is still there, reckless regard is taken
2 out. And we've got the language in the preamble
3 about intentionality. And intention is taken out
4 of this section.

5 Oh intentionality stays here with the
6 preamble language. Yes, thank you. Oh right,
7 disregard is supposed to be in there still. It's
8 just reckless that's stricken out.

9 Any other changes we need to make to
10 the language on the screen? Walter.

11 MR. OCHINKO: Yes, I had a suggestion,
12 it was probably about 20 minutes ago and the
13 conversation has moved on quite a bit so I'm not
14 sure if it's still relevant.

15 But I had a couple of points I wanted
16 to make. I really want to underscore the point
17 that Abby made that the misrepresentation doesn't
18 necessarily have to be with intent. It could be
19 a mistake.

20 And that the student still deserves to
21 have restitution for even an honest mistake.

22 I also want to point out that in 2016
23 when we had these negotiations we were in the throes

1 of Corinthian and soon to follow ITT.

2 And I take with a grain of salt the fact
3 that as a student you can go to an institution like
4 that and you can have an honest conversation with
5 them and they can say yes, I made a mistake. Here's
6 your money back or we're going to fix this.

7 Because the kind of predatory behavior
8 that they engaged in went on for years. I have
9 seen multiple, multiple complaints from veterans
10 that attended these institutions and they did try
11 and correct the problems. They did go to the
12 institutions. Nothing happened.

13 So I really do think it's important to
14 recognize that it's not just by intent, but that
15 it can be an honest mistake. And I would suggest
16 that we change the language here to say a borrower
17 that is either mistakenly or intentionally -- I'm
18 sorry, a statement that is either mistakenly or
19 intentionally false or misleading.

20 PARTICIPANT: Joseline.

21 MS. GARCIA: I support Walter's
22 statement and his suggestion. And I say this
23 coming from the student perspective because again

1 whether it was an honest mistake or not these
2 people's lives are ruined and students came in there
3 with good intention to get their dreams to come
4 true.

5 They put in the work. Also many of
6 these cases they do go to the institutions to try
7 to resolve these matters.

8 I wouldn't support a statement that has
9 the intent standard in there because what would
10 stop an institution from claiming that all of these
11 things are mistakes to save themselves.

12 PARTICIPANT: Okay. So we're going to
13 have to test this. We're going to test it both
14 ways.

15 So with this last addition that Walter
16 made everyone has had a chance to review the
17 language. Let me see a show of thumbs.

18 With Walter's addition of either
19 mistakenly or let me see a show of thumbs.

20 PARTICIPANT: At least eight thumbs
21 down.

22 PARTICIPANT: Now can you strike the
23 either mistakenly or. Yes, please ask your

1 question.

2 PARTICIPANT: So my question is for
3 Abby. Is negligent disregard better than just
4 disregard. I know you expressed a concern and I
5 share it that disregard, understanding Michale's
6 point about this is not a legal proceeding, but
7 I don't know if that's better for you or worse for
8 you. I'm just asking before we vote if you have
9 a strong sense one way or the other.

10 Understanding you may vote the whole
11 thing down. I get that. But just on this one
12 point.

13 MS. SHAFROTH: I don't at this time
14 have a -- it's not clear to me which is better.

15 PARTICIPANT: Fair enough. I'm in the
16 same boat.

17 PARTICIPANT: So have you added
18 negligent? Okay. So now please let me see a show
19 of thumbs, the language as it's written on the
20 screen right now.

21 PARTICIPANT: Four thumbs down.

22 PARTICIPANT: Okay, so we have four
23 thumbs down. I'm going to ask for a response from

1 the thumbs down and I need the result of that
2 conversation to be a proposal that the thumbs downs
3 believe will result in all thumbs up, please.

4 PARTICIPANT: Okay, Mike Busada and
5 then Abby.

6 MR. BUSADA: As I said, I cannot vote
7 for anything that will change this language in good
8 conscience without there being a commitment to
9 revisiting and including a voluntary mediation
10 process.

11 To do so, to vote on anything to weaken
12 this standard without that for small good acting
13 schools would be a death sentence to small schools
14 across the country. It will put them out of
15 business. I can't do that.

16 So if we can include the mediation then
17 I definitely am willing to make changes here.

18 PARTICIPANT: Where would you put it,
19 Mike?

20 MR. BUSADA: In issue paper two.

21 PARTICIPANT: Abby.

22 MR. BUSADA: I mean we all agreed in
23 principle on it too. So as long as everybody's

1 willing to include that into issue paper two then
2 that would change the game for me at least.

3 MS. SHAFROTH: So I'm not sure if we
4 all agree in principle on it but I do think that
5 this is a potential avenue for moving towards
6 consensus.

7 If we were to get rid of the intent --
8 standards. Get rid of intentionally, recklessly,
9 whatever, or negligent disregard and just make it
10 a false or misleading statement.

11 To alleviate Mike's concern that good
12 schools that make a mistake get the reputational
13 harm concern, when there are mistakes if schools
14 want to make it right through a mediation I would
15 be comfortable making that -- working towards that
16 compromise.

17 So striking intentionally and striking
18 or made with negligent disregard for the truth and
19 adding to issue paper two an early complaint
20 resolution process along the lines that Michale
21 proposed at session two.

22 PARTICIPANT: Just a point of note
23 here. If we're spending all this time crafting

1 these last two lines why is it that Abby comes up
2 and basically says let's just strike the whole
3 thing. Why didn't you tell us ahead of time that
4 you're not going to approve any of this?

5 It's really frustrating to sit here and
6 work really hard on crafting two lines, going back
7 and forth, Michale's making points, Aaron's making
8 points. And Abby just responds when we have come
9 to what I thought was a somewhat reasonable
10 conclusion that even William agreed to.

11 She just comes back and says no, I want
12 the whole thing stricken. Why didn't we start off
13 with that?

14 PARTICIPANT: Actually, Kay, you've
15 had your card up for a while.

16 MS. LEWIS: I don't think this will
17 solve it all. But one of the things that -- I don't
18 have a problem taking out the word intentionally
19 and one of the things I thought might make schools
20 more comfortable with that is that if the department
21 could add some language somewhere that talks about
22 -- so give the student their relief, give the
23 borrower their relief, but then in the section where

1 you're going to the school and asking the school
2 to repay have some language in there about the
3 one-off mistakes that might happen, or significant
4 findings, something that would give the school some
5 relief if it really is just a legitimate mistake
6 that was made.

7 PARTICIPANT: We discussed at the
8 beginning of the session that we were trying to
9 balance the needs of the borrowers or the students,
10 the schools as well as the taxpayers.

11 To give schools a pass because they made
12 an innocent mistake, I understand the idea behind
13 it, but how does that protect the interests of the
14 taxpayer.

15 You've covered the borrower which I
16 appreciate, you're helping the school, but then
17 you're putting it on the backs of the taxpayer.

18 MS. LEWIS: Can I respond? I
19 understand that. There have been many examples
20 in the department's history where they've let
21 guarantors and lenders and others off the hook and
22 kept the taxpayer on the hook.

23 So making a small, insignificant

1 findings kind of pass for the schools occasionally
2 seems to me within reason.

3 PARTICIPANT: Okay, folks. It's
4 10:15. We're going to take a 15-minute break.
5 Please come back at 10:30.

6 (Whereupon, a break was taken)

7 PARTICIPANT: Just a quick update.
8 We've had a request for an additional 10 minutes
9 that we've granted so please come back at 10:40.
10 10:42.

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

13 PARTICIPANT: Okay, everyone.
14 Returning to work where we left off hopefully to
15 find a way forward.

16 I know that there are three or four
17 folks who do want to go ahead and get us started.
18 We're going to make our way around the room this
19 way. Chris, Linda, William and Walter. Chris.

20 MR. DELUCA: So again I guess I wanted
21 to just go back to 4(i) as originally proposed or
22 as presented to the group here in our third session.

23 I look at this and we're talking about

1 what is a misrepresentation. When has something
2 occurred that should provide relief to a borrower.

3 And we've got this list. We've got A
4 through H. We've got these things that are listed
5 here saying here are examples of things.

6 And again getting to the idea of when
7 do you have to prove intent. It's important for
8 me that we get beyond a mistake standard because
9 some of the proposals that we have up here would
10 make it, again, from schools that I work with and
11 represent that have 50 students in a massage therapy
12 program, they represent the 40 out of 50 who
13 graduated were placed, that's an 80 percent
14 placement rate.

15 Well, what if the auditor comes in or
16 the accrediting agency comes in and says well, we've
17 reviewed your files and there's one student where
18 you didn't get a signed affidavit back to say that
19 they were self-employed so you can only count 39.

20 Well, that's 78 percent. That's a misstatement
21 on a material fact which is placement rates.

22 Is that going to put a school at risk
23 for that. I would say that's not a material

1 statement so then that shouldn't.

2 But that's what we get to here. We've
3 got a list of things that say here are the things
4 that -- here are examples. We've got eight things
5 here, nine things here that list that out.

6 And we've got the history now, we've
7 got 100,000 claims, borrower defense claims that
8 have been filed.

9 If we need to add more to this list
10 because it's not inclusive. And again recognizing
11 we can't predict 10 years out in the future, but
12 the way it's drafted it says evidence that a
13 misrepresentation described in paragraph B(1)(i)
14 of this section has occurred includes but is not
15 limited to.

16 If there are things -- we've talked for
17 three sessions now about these bad things that
18 schools have done, that some schools have done.
19 And that's what we've included in here.

20 I mean, are there other things that are
21 going on that we're missing that maybe if we add
22 those to here that we can get comfortable.

23 But again it seems to me that the way

1 that this is drafted contemplates here's the deal.

2 We want to protect students against these bad acts.

3 These are bad acts.

4 And again, I don't see where a school
5 could say oh, it was a simple mistake. I didn't
6 mean to tell you that your credits could transfer
7 when they really don't. Or that we were accredited
8 in that program when we really weren't.

9 That's not a mistake, that is by
10 definition intentionally false or misleading or
11 made with reckless disregard.

12 So again that's where I would just ask
13 to the folks around the table if there are things
14 that are missing from this list. But it seems to
15 me that this list spells out these are the things
16 that -- if this happens to a student then they should
17 get relief.

18 PARTICIPANT: So just to clarify and
19 I think open this up to the table. I want to focus
20 on this issue.

21 But Chris, are you saying that you
22 believe that this list is a list of items or acts
23 that may be misrepresentation and would meet the

1 requisite required intent?

2 MR. DELUCA: So maybe we say that
3 evidence of an intentionally false or misleading
4 statement or made with reckless disregard may
5 include but is not limited to and then have this
6 list.

7 And maybe others can say to this,
8 counter this. But I have a hard time seeing how
9 materially different licensure rates, materially
10 different employment rates, misstatements about
11 whether or not your programs are accredited or not,
12 how they can be anything other than intentional
13 or reckless.

14 So I'm comfortable as far as a point
15 of moving forward to say those may be -- that's
16 evidence or may be evidence of intentionally false
17 or reckless statements.

18 PARTICIPANT: I guess to put the
19 department on the spot is that the same -- for the
20 department and the table is that the interpretation
21 that everyone has?

22 PARTICIPANT: So just to clarify, from
23 my perspective yes it is the same. We've defined

1 misrepresentation and then in the end of that we
2 essentially say evidence that a misrepresentation
3 described where we described it includes but is
4 not limited to these items.

5 So what we're saying is these meet the
6 definition. These are examples of something that
7 already give cause to that claim.

8 So I'm not sure what changing the word
9 misrepresentation there gets us because we've
10 defined misrepresentation and then we say examples
11 of such a misrepresentation include this.
12 Hopefully that helps.

13 MR. DELUCA: And I agree with you. But
14 I think the challenge is there's been a lot of
15 conversations about well, how does a student prove
16 intent.

17 In my mind it's not the student trying
18 to get into the head of the people at the school
19 or trying to figure out what was the school
20 thinking. This list is showing intent or
21 intentional disregard.

22 PARTICIPANT: So if I can piggyback off
23 of that. To use your example of accreditation,

1 if an institution has a program that they know is
2 not accredited, it's not accredited. And they say
3 on their website that it is, and they tell students
4 that it is.

5 And a student comes in and they file
6 an application and with it they attach a copy of
7 a print screen from the website that says this
8 program is accredited by and it names an accrediting
9 agency. There you go. To me you're there.

10 The student doesn't have to do
11 something to prove. Because it's so obvious by
12 saying that they're accredited when they're clearly
13 not.

14 We've outlined that here. We've said
15 this meets the definition. So I thought we were
16 there, but I'm sensing that not everybody felt that
17 we were there.

18 MR. DELUCA: And the only other thing
19 because I think we are. I think the way that this
20 is drafted we are there.

21 And my question is we've got this list
22 of things to show examples of based on experience.

23 So if there are other things that needed to be

1 added here, if there are other misrepresentations
2 or harms that are befalling students and borrowers
3 that are out there that we haven't discussed.

4 But it seems to me that whenever anybody
5 talks about these are the things the bad schools
6 are doing I think we've got it covered in A through
7 H.

8 Again, if we need to add I, J and K I
9 think we can discuss that, but I think we've got
10 it covered.

11 PARTICIPANT: And I think just to kind
12 of again lay that foundation as I mentioned at the
13 first session our goal here is not to create a
14 regulation based on everything just that we've seen
15 in the past, it's to be forward thinking and to
16 say what we might see in the future.

17 We can't predict the future so that's
18 why we did the includes but is not limited to.
19 There are going to be things that we cannot envision
20 today that could happen later.

21 If you had asked somebody 100 years ago
22 about online education they'd have said what.

23 So again I want to be willing to be

1 flexible enough that we leave this open for behavior
2 that we can't anticipate.

3 While I appreciate your comments, I
4 don't want anybody to feel like well, we have to
5 sit here now and come up with this exhaustive list
6 because if it's not on the list it'll never fly
7 later.

8 I think that we're trying to
9 intentionally leave it open for the types of things
10 that we cannot anticipate right now.

11 PARTICIPANT: Michale, did you have a
12 comment in response?

13 MR. MCCOMIS: Yes, just quickly.
14 Would it then be helpful AnnMarie, to make that
15 more clear if it was examples of evidence? Would
16 that make it broader to those that have some
17 discomfort with this is maybe too restrictive?
18 So examples of evidence of a misrepresentation
19 described in that last sentence?

20 I don't know if that helps, but Chris
21 seems to think that some folks around the table
22 have some discomfort with it being a definitive
23 list or an exhaustive list. Clearly it's not and

1 you've made it clear that that's not the intent.

2 PARTICIPANT: Chris, you also
3 mentioned something about adding intentionally
4 false before or around misrepresentation. Is that
5 something that you wanted to?

6 MR. DELUCA: I'm just going back to the
7 language as originally presented to us in the issue
8 paper because it included the language
9 intentionally false or misleading or made with
10 reckless disregard for the truth.

11 And again this is where it seems like
12 in conversations this is where there's a hangup
13 on it in the idea how does a student prove intent.

14 But again I think the examples, the last
15 sentence there, evidence that a misrepresentation
16 described in paragraph B(1)(i) of this has occurred
17 includes but is not limited to.

18 Those examples are examples of schools
19 with an intent to mislead or engaging in reckless
20 behavior.

21 Again, I think as written it works.
22 It includes is not limited to. So we're not saying
23 something else could happen in the future that we're

1 not covering.

2 But as far as based on what we know now
3 here's the things that we know about, but you know
4 what, if there's something else that comes up in
5 the future that could be included too.

6 PARTICIPANT: Any questions or
7 comments on this discussion? I know it's sort of
8 a different approach to the intent discussion that
9 we were having before the break. Linda.

10 MS. RAWLES: I'm going to pass because
11 I don't want to interrupt the flow that I understand
12 you're trying to create, but I do have something
13 I want to say when we are in the flow.

14 PARTICIPANT: Okay. So going back to
15 our discussion prior to the break. We had a package
16 for lack of a better term of a number of different
17 concepts proposed I think originally by Will and
18 added to by Aaron and Michale which included some
19 statement of the department making the finding of
20 intent in the preamble, a change to B(i) with
21 substituting sufficient for substantial, a change
22 to B(3) substituting sufficient for substantial.

23 The inclusion of the more probable

1 language in B(3).

2 And then we had the -- I think this was
3 Michale's proposal on the addition of -- or the
4 substitution of negligent disregard instead of
5 reckless disregard.

6 And the combination from Mike Busada
7 on voluntary mediation in some context.

8 Now I know we had some questions on the
9 intent standard itself. Does the discussion we've
10 just had, the clarifying discussion, change that
11 in any way, change the concerns around the table?

12 Are there additional things, understanding the
13 list is not all-inclusive, are there different
14 items that could be added to that list that would
15 help assuage individuals' concerns?

16 Is there a way to work through the
17 intent boulder in the road at this time, or do people
18 need more time?

19 PARTICIPANT: Abby.

20 MS. SHAFROTH: So I hadn't originally
21 read this enumerated list in the way that it has
22 been recently discussed so I would like to take
23 more time to think about it and to discuss it with

1 my community of interest and to think through
2 whether there's additions or other ways it could
3 be modified that would better address our concerns.

4 I will put out there another possible
5 way to try to find some compromise is one of our
6 major concerns with the proposal is that it really
7 only allows borrowers to get relief on the basis
8 of a misrepresentation.

9 And so if that's the case then
10 misrepresentation is really the whole ball game
11 and the further we limit that basis the harder it
12 is going to be for borrowers to get relief.

13 We might be more comfortable giving on
14 a more limited definition of misrepresentation if
15 there are other bases preserved for borrowers to
16 attain relief.

17 So John has spoken about allowing state
18 law claims. If borrowers could continue to bring
19 state law claims then I would be less concerned
20 about a narrower standard for misrepresentation.

21 We and the constituencies representing
22 consumer advocacy groups also submitted a proposal
23 allowing borrowers to bring claims on the basis

1 of unfair or abusive practices. If borrowers were
2 allowed to bring claims on the basis of unfair or
3 abusive practices in addition to
4 misrepresentations then we would be more
5 comfortable negotiating a more restrictive
6 definition of misrepresentation than we had in
7 2016.

8 PARTICIPANT: But Abby, those things
9 exist, right? The state claim exists and it
10 doesn't require a finding of misrepresentation.
11 As I read what is currently being proposed here.

12 So are you asking for something else
13 to be added in to the state law action piece of
14 it? Are you asking for additional or different
15 language in (ii) or (iii)?

16 Because they only discuss that there's
17 a final action that was against the institution
18 relating to what I had suggested enrollment at the
19 institution or the provision of educational
20 services.

21 So the misrepresentation is not the
22 entire ball of wax. Those already exist. And so
23 I guess I don't know what you're asking for.

1 MS. SHAFROTH: Sure, just to respond
2 briefly. We haven't really had much time to get
3 into (ii) and (iii).

4 My concern is particularly in light of
5 the entire package that the department has proposed
6 that those are -- (ii) and (iii) are so narrow as
7 to be pretty much illusory. They would require
8 the borrower to have a final definitive judgment
9 rendered in a contested proceeding that awarded
10 them monetary damages.

11 It is extremely rare for a case to go
12 through all the way to final judgment and it's very
13 difficult for a borrower to obtain a judgment.
14 Really it's rare for a defrauded borrower to obtain
15 a lawyer in the first place.

16 But if they do obtain a lawyer they're
17 going to have a hard time bringing their claim in
18 court because of the arbitration agreements that
19 predatory schools tend to use.

20 And even if they do go to court most
21 cases are settled.

22 This also requires a contested
23 proceeding so if the school has already gone belly

1 up then the proceeding I don't think would be
2 contested. So a default judgment I think wouldn't
3 count.

4 Basically this is a really narrow
5 standard. Our proposal would be something -- if
6 we're going to allow state law claims something
7 more along the lines of the existing standard that
8 allows a claim on the basis of state law.

9 We could have a discussion whether
10 there's something appropriate about settlements
11 or investigations or some other ways to get at that.

12 But as is (ii) and (iii) I think, I can't imagine
13 they will -- I can't think of any circumstances
14 really where they would be used.

15 PARTICIPANT: So, Abby, a little
16 facilitator prerogative here. Did I hear you
17 assigning yourself some homework to think about
18 what additional categories for lack of a better
19 term you might need to see to get into this kind
20 of construct that we're discussing?

21 MS. SHAFROTH: I can do that. I would
22 prefer to do that if people think that there's a
23 possibility of that being. I don't want to give

1 myself futile homework.

2 So if folks think there's no way they're
3 going to consider that then I'd rather spend my
4 time doing something else. The Olympic Games are
5 going on right now.

6 PARTICIPANT: Caroline.

7 MS. HONG: I just had a question. So
8 you were mentioning investigations or settlements.
9 Could you explain a little bit more what kind of
10 parameters you're thinking about?

11 MS. SHAFROTH: I don't have specific
12 parameters in mind, but I would say that a lot of
13 -- the Massachusetts and California state AGs who
14 participated in the last rulemaking explained that
15 they rarely take a case through to a final judgment
16 because it takes too long and it doesn't allow them
17 to get relief to their citizens fast enough, and
18 that it generally makes most sense for all parties
19 to settle.

20 And I think most lawyers in the room
21 know it often makes sense to settle.

22 So it may be that a settlement wouldn't
23 be an automatic basis for relief but would be a

1 possible basis for relief. Just something to allow
2 borrowers to get relief if they have -- if there's
3 pretty good evidence out there that the school
4 violated the relevant state law even if it doesn't
5 fall neatly to this fraudulent misrepresentation
6 bucket.

7 PARTICIPANT: So Chris, I saw your card
8 going up. Bryan, yours has been up for a while.
9 Is it kind of on the same topic? Okay.

10 MR. BLACK: I apologize, I wasn't here
11 yesterday but I did listen online and listened to
12 all the discussion here today.

13 To me it seems that we're making this
14 a lot more complicated than it needs to be.

15 Quite honestly when you inject legal
16 concepts and principles into a discussion and
17 you're dealing with people that haven't dealt with
18 those issues, litigated those issues you can really
19 have a deep misunderstanding what these legal
20 concepts mean.

21 For me what we basically have is an
22 umbrella here. We have an umbrella of intentional
23 acts, misleading acts and reckless disregard for

1 the truth, or I think you could even say negligent
2 disregard for the truth.

3 But under this umbrella you have this
4 laundry list. As a school, a co-owner of a number
5 of schools if we ever had somebody suggest that
6 they weren't treated fairly we would look at this
7 laundry list because it's an example of -- the
8 including but not limited to is an example of
9 defining what is under this umbrella, these legal
10 concepts.

11 I would look at did we ever misrepresent
12 intentionally, negligently licensure, employment,
13 accreditation. You go down this entire list and
14 I can tell you as a co-owner of a number of schools
15 and we too are a very small school. But there's
16 many Paul Mitchell schools around the nation and
17 I consult with owners.

18 We would look at all these and see if
19 we fell short in any of them. And if we did fall
20 short we would have to ask ourselves did we do this
21 negligently, did we do this intentionally.

22 And if we did it makes the analysis
23 very, very easy. If there's a misrepresentation

1 even of like employability right there it's whether
2 we lied about it, we deceived somebody. Intent
3 is established very simply quite honestly.

4 So I really agree with Chris and
5 AnnMarie. As I read this over this seems to be
6 a very, very fair balance and it seems to lay out
7 exactly what a borrower would look at and what a
8 school would look at and the Department of Education
9 would look at.

10 To me all these examples here just fall
11 perfectly under the umbrella of the burden of
12 persuasion that we're so hung up on, whether it's
13 intentional, misleading, or reckless, or negligent
14 disregard.

15 So to me it's laid out actually and
16 drafted very well. Once these bad acts are looked
17 at it's very easy to check it off. You could almost
18 use a chart with all the burdens of persuasion at
19 the top and licensure and accreditation check off,
20 yes, they fell short here and this needs to be
21 rectified.

22 So to me it strikes a very good balance.
23 I think it's written very well. I think we just

1 need to add that simplicity back to the equation
2 here. That's what's going on in my mind at least.

3 Thank you.

4 PARTICIPANT: So, and we'll go to Linda
5 and then Chris and then William and Walter.

6 But I want to just return. Abby, what
7 I had heard you say and correct me if I'm wrong
8 was that you weren't necessarily thinking about
9 adding items to the list under 4(i) it was adding
10 things to the other, potentially adding other
11 categories affording relief to the other romanettes
12 and that would potentially allow you to consider
13 the 4(i) language. Was that correct? You were
14 asking if that was a worthwhile homework
15 assignment.

16 MS. SHAFROTH: Yes, I was asking if
17 that's a worthwhile homework assignment.

18 PARTICIPANT: What does the group --
19 what is the thought of the group? Linda?

20 MS. RAWLES: I just want to say that
21 I did come in here in good faith to negotiate and
22 I think that my constituency and some of my
23 colleagues' constituencies, I won't speak for them,

1 but I think there are more than just me at this
2 table did like the language the department first
3 came out with.

4 We have moved a lot. So I don't think
5 anyone in the audience or who's watching this live
6 streaming thinking from where we started that we
7 wanted clear and convincing. Now we're down to
8 sufficient.

9 Any lawyer who understands those
10 phrases will either say they don't know what that
11 means, the department doesn't know what that means,
12 or we've gone down three or four levels of
13 evidentiary standard. We've weakened the intent
14 standard.

15 I'm a little worried because every time
16 we compromise other people say no. Then we come
17 back in the room and we compromise some more and
18 other people say no.

19 So in all fairness we have gone far
20 beyond 50 percent to the other side. And then the
21 way this process works is we come back in the room
22 and we're pushed to give another 50 percent. As
23 long as other folks continue to say no that aren't

1 berated for saying no they get more and more of
2 what they want.

3 I don't think that's a conciliatory
4 process. I don't feel that this is turning into
5 a conciliatory process.

6 Frankly, and I was one of those people
7 that said at some point if what we have on the table
8 is worse than what we think would be written we
9 owe it to our constituencies to say no.

10 That doesn't mean I'm not willing to
11 reach consensus in the room. What some of us are
12 afraid of is that if we sit here and concede and
13 concede and concede that we're sending a signal
14 to the department that if you go back and write
15 the rule we're okay with sufficient evidence when
16 really we started wanting clear and convincing.
17 Because you're taking notes and if we don't reach
18 consensus you're going to go write the rule.

19 So I just want to say we're willing to
20 reach consensus. We've gone far over halfway.
21 But if we don't reach consensus please don't take
22 some of the things we're conceding on to mean that
23 we're not fine with the original language that you

1 first came out with because that's really what we
2 want.

3 So we've gone a long way off that and
4 I feel like we're just going down this black hole
5 where you might get someone on that side of the
6 table to say yes and we can't possibly say yes.

7 I also wanted to add that there's been
8 a lot of criticism of legal terms. It isn't because
9 lawyers want mysterious phrases put in here that
10 only we understand.

11 It's that sometimes when it's a legal
12 phrase we do know what it means and we think it's
13 good to have a regulation that somebody knows what
14 it means.

15 So if you put a phrase in like
16 sufficient evidence that no one really knows what
17 that means you might think you do as you sit there
18 but it doesn't have any case law or anything to
19 say it that you really end up maybe without legalese
20 but you end up without a rule that means anything
21 or that anybody understands, even the department
22 that is interpreting it.

23 So I wanted to throw that in. But my

1 main point is that some of us like the language
2 as written. We've gone a long way and every time
3 we go a long way we hear okay, now we have to go
4 further. And that's very frustrating.

5 And I thought that was an important
6 point to say. I don't mean to interrupt the flow
7 of your attempting to reach consensus. But if your
8 goal is to reach consensus in the end that needs
9 to be addressed.

10 PARTICIPANT: Chris.

11 MR. DELUCA: So, I wanted to follow up.

12 Abby was talking about the issues with going back
13 to B(1) (ii) and (iii) and the idea that it requires
14 a final judgment, final definitive judgment from
15 a state and talking about state AGs' actions.

16 This is my understanding of how the rule
17 is drafted is that if a student is part of a group
18 and a state AG's office does an investigation and
19 the state AG's office has a finding and there is
20 a public settlement that says we find this against
21 school X, and there is a student that was in school
22 X, again I think the idea of the rule is that student
23 files a complaint, provides a copy of that

1 settlement as corroborating evidence, and so that
2 is part of the consideration and that's part of
3 the Secretary's determination. So that settlement
4 does get into it.

5 And I'm looking at this list, I've been
6 saying A through H and pardon me, it's A through
7 J, there's 10 things on here that are examples of
8 but not limited to.

9 So are there things that AGs are finding
10 or have found. I mean, again this is just where
11 we are today as examples but not limited to.

12 Are there things that AGs are finding
13 that aren't covered here. Because again it seems
14 to me that the behavior that we've talked about,
15 the behavior that some AGs have found against some
16 schools, that the department has found against some
17 schools is captured here. We've got that here.

18 And again the way the rule is intended
19 be is okay, so the student can't -- it's not a final
20 definitive contested judgment but that settlement
21 still gets into the determination and can still
22 be used by the student as corroborating evidence
23 for his or her claim.

1 Am I missing something? Is my
2 interpretation wrong, or is that how this rule is
3 drafted and is supposed to work?

4 PARTICIPANT: Did you want us to
5 respond?

6 MR. DELUCA: Please.

7 PARTICIPANT: Certainly the rule as
8 written talks about the borrower submitting
9 evidence and evidence the way I read this is not
10 limited to anything.

11 So if a borrower has a copy of a
12 settlement or a default judgment that would not
13 fall under the final definitive judgment of a
14 contested hearing. That could be submitted as part
15 of their claim that would be evaluated by the
16 department.

17 PARTICIPANT: Okay. William, Walter,
18 I know you guys have been patiently waiting. Thank
19 you.

20 MR. HUBBARD: Thank you. I just want
21 to quickly see if there's anybody that disagrees
22 around the table with the concept that students
23 shouldn't be on the hook to prove intent. No one

1 disagrees with that.

2 PARTICIPANT: So I think I just want
3 to clarify the idea of students on the hook for
4 proving versus the discussion that I heard earlier
5 that talked about the department would have the
6 burden to prove intent.

7 The department at this time does not
8 feel that taking intent out is appropriate. So
9 we believe in that intent standard being there.

10 That said I think there seems to be some
11 confusion about the idea of what it means to prove
12 intent.

13 It's more that I would say the
14 department will determine. I don't see it so much
15 as the student has to prove it versus the department
16 has to prove it. It's more that the department
17 will review the information received and make a
18 determination.

19 And I would feel better phrasing it in
20 that way versus it being anyone's burden to prove.

21 MR. HUBBARD: Okay, great. So
22 understanding that I suppose is there a way that
23 we can maybe codify that that's the case?

1 It just doesn't feel like that that is
2 how the language reads. As I interpret it
3 essentially the student, it ultimately is up to
4 them to prove it.

5 And I fully appreciate Chris's points
6 about in some cases it's easy for the student to
7 demonstrate that readily and clearly. There's no
8 doubt there will be examples of that.

9 I think alternatively there's -- I
10 could come up with literally thousands of other
11 examples that make that demonstrating that nearly
12 impossible.

13 PARTICIPANT: So I would need a
14 suggestion then in terms of the place that you think
15 would be most appropriate for that. Because I
16 think that earlier what I heard you request was
17 putting it in the preamble. And I know I've said
18 this multiple times, but I'm a big believer in if
19 it's really that important it should be in the
20 regulation as opposed to something in the preamble
21 which is just meant to explain the regulation.

22 I don't want to introduce significant
23 new concepts in that preamble space. It's more

1 for explanation and clarification.

2 MR. HUBBARD: I'm fine with that too.

3 I'd actually prefer it to be in the regulation
4 myself.

5 The reason of proposing the preamble
6 was recognizing that some were a little
7 uncomfortable with that being included. I was just
8 trying to -- a little bit of a give and take there.

9 I think the point about this being
10 forward thinking is important. It provides
11 flexibility, you're 100 percent right. Eventually
12 when AI takes over and none of us are thinking at
13 all there's going to be a whole new type of
14 education.

15 And so that is important. I appreciate
16 that. I just want to emphasize the fact that in
17 some cases for an individual to demonstrate intent
18 whatsoever or for that to be found on the part of
19 the student is nearly impossible.

20 The bad behavior schools find ways
21 around that. They literally will comb this
22 language and find the loopholes and exploit the
23 crap out of them. And we want to try and buffer

1 that as much as possible while also recognizing
2 that good schools should be allowed to operate in
3 a good way. I think that's important as well.

4 I would say as a proposal where it says
5 examples of evidence, et cetera, somewhere in that
6 sentence and maybe AnnMarie if you can provide the
7 language that you sort of stated that it would be
8 a determination. It sounds like that might be more
9 appropriate. I don't know exactly how that would
10 look.

11 PARTICIPANT: Okay, we've got a
12 recommendation from Kelli.

13 MS. PERRY: In that sentence that
14 starts with evidence maybe it says evidence that
15 the department will use to determine that a
16 misrepresentation described in this section has
17 occurred includes but not limited to.

18 PARTICIPANT: I'm sorry, could you
19 repeat that.

20 MS. PERRY: Evidence and then add that
21 the department will use to determine that a
22 misrepresentation described in paragraph B(1)(i)
23 of this has occurred includes but is not limited

1 to.

2 PARTICIPANT: Thoughts from the group?

3 Chris, do you have another suggestion?

4 MR. DELUCA: Along those same lines.

5 The way that I was thinking about drafting this,
6 and again it's that same last sentence there.

7 It's because there seems to be this
8 concern about proving intent. So this is my
9 suggestion.

10 That last sentence starting with
11 evidence that a misrepresentation, that sentence,
12 I would change that to say evidence of a
13 misrepresentation described in paragraph B(1)(i)
14 of this section that is intentionally false or
15 misleading or made with reckless disregard for the
16 truth may include but is not limited to and then
17 we've got our list.

18 So putting into that sentence the idea
19 of here are examples of evidence that may prove
20 that the statement was intentionally false or
21 misleading or that the statement was made with
22 reckless disregard for the truth.

23 So putting that concept there to make

1 it clear that it's not the student's burden, it's
2 not the department's burden, it's looking at does
3 the evidence show that there was intentionally
4 false statement or reckless disregard for the
5 truth.

6 It's going to be based on the evidence
7 and this is evidence. And again in this list it's
8 based on evidence -- cases that have been gathered
9 over the years in this area.

10 PARTICIPANT: Can I respond to that
11 really quickly? I think that's good. I would say
12 the reckless piece, if we can strike that and then
13 keep everything else as you stated with the piece
14 about the determination of the department I think
15 that would be a pretty strong approach.

16 MR. DELUCA: I didn't have the sentence
17 that the department will use to determine that.
18 That was Kelli's suggestion.

19 PARTICIPANT: And I think Will's
20 suggestion that they be combined for building the
21 proposal.

22 PARTICIPANT: My proposal included the
23 phrases intentionally false or misleading or made

1 with reckless disregard for the truth.

2 I think that that's -- it might not have
3 been intentional but some of the statements on here
4 you could argue -- a school could legitimately argue
5 I didn't intend to do that. But if you publish
6 80 percent placement rates when it was really 25
7 it's hard to say that it's not reckless to do that.

8 PARTICIPANT: Chris, do we actually
9 need that though? Because I feel like we've
10 defined what misrepresentation is and this is
11 duplicative of the definition.

12 So I know you said that some people are
13 not comfortable, or seem to be not comfortable.

14 So by re-adding what we already have
15 like two sentences earlier, does that make it any
16 different for people? Because that's not the way
17 I read it.

18 I feel like we've already defined this.

19 We do not need to say it again.

20 PARTICIPANT: I just want to add onto
21 that and say it's almost like we're saying it three
22 times. Because we say it in a sentence, we then
23 repeat it again and then we also make the reference

1 where we say in B(1) of this section. To me we're
2 saying it three different times within two
3 sentences.

4 PARTICIPANT: I agree, but it seemed
5 to me that there were folks at the table that weren't
6 clear or wanted more clarity that this list here
7 gets into the idea of these are things that prove
8 whether the statement was intentionally false or
9 made with reckless disregard.

10 So that's why, it's just trying to
11 clarify for this list.

12 I don't think it needs to be here but
13 if that gives -- I mean it was being proposed in
14 an attempt to provide a little more comfort to
15 people who didn't read it the same way I did.

16 PARTICIPANT: So if we keep the
17 department will use to determine does anyone still
18 feel that that duplicatous language is necessary?
19 Can we take that out, please.

20 PARTICIPANT: Thoughts from the group.
21 Understanding that this language would be part
22 of a larger proposal which we've discussed multiple
23 elements of this morning is the group comfortable

1 with this sentence as it stands. Show of thumbs.

2 On this sentence. I see no thumbs down.

3 PARTICIPANT: Walter please, and then
4 John and then Ashley Harrington.

5 MR. OCHINKO: I feel compelled to make
6 a comment about some of the comments that have been
7 made around the table about what other negotiators
8 have said or what the reaction to some of the
9 proposals is.

10 I think we all came here in good faith.

11 We don't always see eye to eye on some of the
12 statements or some of the text.

13 But I don't think it's really helpful
14 to impugn the intent or statements of other
15 negotiators.

16 It's very easy to do that. I think we
17 have strong held beliefs and I think some of the
18 people at the opposite side of the table have strong
19 held beliefs.

20 But I think we all came here in good
21 faith and I just don't think that it's appropriate
22 to make those kinds of comments.

23 PARTICIPANT: John.

1 MR. ELLIS: Forgive me that I'm a
2 little off the thread here, but I wanted to go back
3 to something that was said earlier just so that
4 no one's surprised later.

5 There was some discussion of including
6 investigations and possibly investigations by
7 attorneys general as evidence that there had been
8 misrepresentation in the case.

9 A number of attorneys general have
10 written the department in another context to make
11 it clear that they have some due process concerns
12 with the mere existence of an AG investigation being
13 evidence that misconduct has occurred.

14 And also just some practical objections
15 that it makes it very difficult for an AG's office
16 to make the decision to launch an investigation
17 if they know the mere existence of that
18 investigation could have legal consequences before
19 it's even concluded.

20 So we obviously think that the AGs
21 should have a role in state investigations and
22 judgment should have a role in this process, but
23 we do want to make sure we're respectful of the

1 rights of the people who are the subject of the
2 investigation too, and also the prerogatives of
3 AGs to protect consumers by not feeling that they
4 can't launch an investigation without causing legal
5 consequences.

6 PARTICIPANT: John, just as your
7 community of interest is the AGs is there a modifier
8 to the investigation term in the AGs' world that
9 would allay that concern?

10 MR. ELLIS: It's difficult to
11 generalize because every AG's office is a little
12 different.

13 Obviously a public settlement that's
14 been reached with a defendant that admitted some
15 kind of wrongdoing, I don't think we have concerns
16 with at least the department considering that
17 probative of whether or not misconduct occurred.

18 And in some cases some states have a
19 process where AGs render formal decisions on these
20 complaints that become public that may not end up
21 in litigation.

22 Certainly I don't think we would have
23 a problem with the department considering those.

1 But there's also been discussion in the
2 past, and I'm not saying anyone suggested it here
3 today, but in the past there's been discussion of
4 consequences being triggered by the mere fact that
5 an attorney general's office has launched an
6 investigation.

7 Investigations get launched all the
8 time. Frequently they find misconduct and
9 frequently they don't.

10 PARTICIPANT: I think I can alleviate
11 that concern and say that that's not something that
12 the department has been considering.

13 We agree that the idea of an
14 investigation just as when we open a program review
15 does not imply guilt of anything, wrongdoing of
16 any type. We're going to take a look.

17 It would be the results of an
18 investigation that rose to a different level that
19 I think we would be willing to consider.

20 PARTICIPANT: Ashley Harrington.

21 MS. HARRINGTON: I just want to
22 piggyback on what Walter said because I think it
23 bears expressing again how frustrating it is that

1 some folks are being characterized as
2 non-compromisers or that they didn't come in good
3 faith.

4 And I just want to say that for those
5 who feel like they've perhaps given up so much so
6 far in this process perhaps they could consider
7 or remember that they came in with so much. And
8 we feel like we came in with very little.

9 As the issue papers were written from
10 session to session, as they were characterized from
11 the very beginning we had so much further to go
12 in what we feel like would protect and help our
13 constituencies.

14 So it is really, really frustrating
15 that that has happened a couple of times today to
16 the point where specific people have been called
17 out for being non-compromisers or not coming in
18 good faith and it's just not fair and not true.

19 PARTICIPANT: Abby.

20 MS. SHAFROTH: Thanks, Ashley. I
21 wanted to respond to the point I think Chris had
22 made. And there was a discussion of sort of isn't
23 it enough that borrowers can point to potentially

1 state AG investigations or settlements as
2 corroborating evidence to help them support a
3 fraudulent misrepresentation claim under the
4 federal standard that the department has provided.

5 Part of what that leaves out is that
6 there are other types of predatory misconduct that
7 state law prohibits that are things other than
8 misrepresentations. So that wouldn't help the
9 borrower out here.

10 For example, I think every state has
11 an unfair and deceptive acts and practices law.
12 And unfair acts or practices are ones that offend
13 established public policy, are unethical,
14 oppressive, or unscrupulous, or cause substantial
15 and unfair injury to consumers.

16 Those practices might not involve a
17 misrepresentation but they might be otherwise
18 unfair. They might be using really coercive
19 high-pressure sales tactics and taking advantage
20 of a vulnerable group in a way that we would all
21 agree is really outrageous. But they manage to
22 do it without specifically lying about something.

23 That's something that we have seen and

1 that would be excluded under just the
2 misrepresentation standard.

3 So if we opened things up by allowing
4 borrowers to have claims based on unfair acts or
5 practices in addition to misrepresentations that
6 would make me feel better about this.

7 Alternatively if we allowed --
8 continued to allow borrowers to make claims based
9 on their state law that would make me feel better.

10 That's an example of the sort of thing.

11 Massachusetts where I'm from has really robust
12 consumer protection laws and a number of unfair
13 and deceptive provisions laid out specifically
14 about school recruiting that involve things that
15 are other than misrepresentations but that would
16 be a legal conduct that are the type that we care
17 about as a community and that seem relevant to the
18 discussion we're having now.

19 PARTICIPANT: That's a fair concern.

20 I just wanted to point out I think that this
21 language does capture unfair practices. It is a
22 definition of misrepresentation and I know we're
23 sort of appropriating a word that does show up in

1 other states and is used in different ways, but
2 here if you look at these evidence of
3 misrepresentation, some of these examples would
4 be unfair practices. They're not actual
5 misrepresentations.

6 For example, a representation
7 regarding employability or specific earnings of
8 graduates without an agreement between the
9 institution and another entity.

10 Well, that's not a misrepresentation
11 but apparently the department is taking the view
12 that it is an unfair practice or act.

13 Similarly if we adopt Will's
14 formulation in H which I don't have a problem with
15 and you talk about a representation without
16 permission to use, a representation without
17 permission again is not a misrepresentation, but
18 you're doing something you shouldn't be doing.

19 So the department and Will are making
20 the point that look, even if you have that
21 theoretically an endorsement, even if someone made
22 the endorsement if you didn't get permission to
23 use the endorsement that's an unfair practice.

1 So my point is just I think this
2 language is responsive to that concern. And of
3 course these are examples that are illustrative.

4 So I think the department has the flexibility to
5 the extent that there is an act that falls within
6 the range of what these different things illustrate
7 to find that an unfair act or practice is a
8 misrepresentation under this standard.

9 PARTICIPANT: Mike Busada.

10 MR. BUSADA: And also when we look at
11 state law I think we need to be very careful. I
12 spoke with some people in my state about this and
13 asked them about our laws just to get more
14 education.

15 And keep in mind, and I fully support
16 the consumer protection laws in my state, but keep
17 in mind most of those law makers will tell you that
18 they came up with their standards after a long,
19 thoughtful discussion that included a number of
20 due processes.

21 So there was the thought that yes, we
22 can allow more causes of action because there's
23 going to be plenty of due process for anybody that's

1 accused of that.

2 And so that's -- it was created in that
3 context.

4 What we're creating is not a legal
5 procedure. This is basically a way recognizing
6 that students have limited resources and that there
7 have been some students harmed, this is a way to
8 say you know what, we're going to allow you to bypass
9 that long, arduous process and come through this
10 process that is not a judicial process but we feel
11 like it needs to be there because there is a need
12 for that.

13 But as Aaron has talked about so much,
14 keep in mind you can't just take the state law
15 because they weren't creating this non-judicial
16 process. They were creating a judicial process.

17 So I don't think that you can take
18 something that they created for a totally different
19 situation and just put it on top of here.

20 So I just think that's important to
21 remember that that context has a lot of importance.

22 PARTICIPANT: So I'm going to put this
23 back on the department. Has the department heard

1 enough information.

2 PARTICIPANT: Yes. That said, we do
3 have to get to issue paper two soon.

4 PARTICIPANT: We do. And the time is
5 now 11:42. So do we want to move forward and work
6 until 12 or until lunchtime? Okay.

7 Are we on (ii) which starts on page 4?
8 A violation. Comments, thoughts, suggestions to
9 the department language.

10 PARTICIPANT: And AnnMarie, correct me
11 if I'm wrong, thinking back to yesterday you I
12 believe mentioned there is a lot of red ink but
13 that is because it has been moved to issue paper
14 two, correct?

15 MS. WEISMAN: That is correct. Not
16 absolutely everything but most of it, especially
17 that on pages 6 and 7.

18 PARTICIPANT: So (ii) to the end,
19 correct? Okay. Chris DeLuca.

20 MR. DELUCA: I'm looking at (ii) and
21 this is an issue I'm just trying to understand how
22 this might play out. And I appreciate the
23 limitations of saying this is not borrower defense.

1 But I'm having a hard time -- here's
2 the issue.

3 So we've got under borrower defense if
4 a school materially misstates their job placement
5 rates and I rely on those job placement rates to
6 go to that school that that may give rise to a
7 borrower defense claim. Correct.

8 What if a school materially misstates
9 its campus crime statistics and there's a finding
10 by FSA the Clery enforcement that there was
11 intentional disregard for the school as far as their
12 Clery enforcement. They failed to train staff,
13 they failed to report crimes.

14 And say you've got a student who thinks
15 that he or she is going to a safe school, enrolls
16 in that school and given the sad statistics that
17 we see on this area is subject to sexual violence
18 on school.

19 Would that student have a borrower
20 defense claim to say hey, I thought I was going
21 to a safe school. Now I find out that that school
22 has got findings from FSA saying that they're not
23 safe. I took out loans to go to that school and

1 maybe as a result of this I've dropped out of school.

2 Can I get my loans forgiven.

3 MS. WEISMAN: So that is not really
4 part of provision of educational services. It's
5 not what we intended under the construct of borrower
6 defense. And there would be separate avenues for
7 relief for those types of issues that are not
8 covered here.

9 PARTICIPANT: Dan and then Aaron.

10 MR. MADZELAN: I think Chris started
11 to make my point for me but I'll go a little bit
12 broader.

13 We were just talking about in the
14 previous section our laundry list of evidence but
15 not limited to.

16 Could we construe (ii) here as being
17 sort of speaking to that not limited to. Because
18 you say generally a violation of the Higher
19 Education Act is not applicable for this purpose
20 unless that violation gives rise to something.

21 And so trying to look forward several
22 years about some things that we don't know now but
23 might know later, and some of those things that

1 we might know later might otherwise be covered.
2 I'm thinking administrative capability for
3 example.

4 So, can we read (ii) as providing an
5 avenue for a borrower defense claim that is not
6 obviously explicitly stated previously but would
7 fall under what we stated previously as other things
8 that we just haven't thought about yet.

9 MS. WEISMAN: It makes sense but I'd
10 need to see some language to kind of get behind
11 it or not.

12 MR. MADZELAN: I don't know if there's
13 language that's needed because what you've already
14 said here in (ii) that violations of HEA don't
15 matter unless they do, and they do if they give
16 rise to -- the violation gives rise to an
17 opportunity for a borrower to assert a defense.

18 And does that opportunity for a
19 borrower to assert a defense arise from your
20 previous section where we have an inexhaustive list
21 of actions that give rise to a borrower defense.

22 Yes, no? Too convoluted?

23 PARTICIPANT: I'm sorry, so what

1 you're proposing assumes that the list previously
2 is a definitive list and not an illustrative list?

3 MR. MADZELAN: No, no, not at all.
4 Because you've said that we have 10 items plus other
5 things that maybe we haven't thought about yet.

6 And I'm suggesting that the other
7 things that we haven't thought about yet because
8 we are not living in the future, that some of those
9 future things may in fact be addressed or covered
10 or umbrellaed under an existing provision in the
11 Higher Education Act that you say in (ii) does not
12 give rise to a defense unless it does.

13 And maybe it would if it's a violation
14 of the program participation agreement or some
15 action that's a violation of the administrative
16 capability standards, or something like that.

17 I'm thinking back to Abby's comment
18 earlier where she said that misrepresentation is
19 a box and she would like to be able to address things
20 outside that box. And I'm wondering if this is
21 a way to get outside that box.

22 Because we sort of know where the box
23 is today, but we're not going to know where the

1 box is tomorrow.

2 PARTICIPANT: Can you be a little bit
3 more concrete about what that would look like and
4 the language?

5 MR. MADZELAN: No. I'll have to think
6 about a concrete example, but again what I'm getting
7 at is in (ii) a violation of the HEA doesn't count
8 unless it does.

9 And we don't know if it does today, but
10 it may tomorrow. And the thing that might occur
11 tomorrow perhaps is a violation of a provision,
12 I'll just use administrative capability, that would
13 otherwise -- my answer's still the same, I can't
14 give a concrete example.

15 MS. WEISMAN: So I think that we're in
16 a similar place in terms of the concept, but I
17 thought we were kind of already covered by the
18 language that we have here.

19 Because the idea is that the other list
20 does say includes but is not limited to. And so
21 here we're more putting a box around some things
22 that we already know are not fair game to create
23 a claim.

1 You would not bring a claim because of
2 a personal injury and expect to get borrower defense
3 relief. So we can essentially save the borrower
4 some time from applying because we know we're not
5 going to approve that.

6 Again, maybe you feel that this list
7 should include something else and then we could
8 certainly entertain that if you had an item you'd
9 like to add in H or however much further you'd like
10 to go.

11 But I think right now we're just trying
12 to give some examples of things that it is not.
13 We've already said what it is so here's this is
14 what it's not.

15 And while it's true that we may want
16 to add to the list of what it is not later, again
17 we don't live in the future so we can't necessarily
18 do that now.

19 But I don't think we'd want this list
20 to say and could include a bunch of other things
21 not knowing what those things are.

22 MR. MADZELAN: So I guess then what I'm
23 asking is can we construe this to be a route to

1 the other unknown things in the future that we
2 previously spoke to. Remember we have the 10
3 misrepresentations basically, plus whatever else
4 we didn't think of.

5 So the whatever else we didn't think
6 of has to be a misrepresentation, or the everything
7 else we couldn't think of could be some violation
8 of the HEA not listed here because these are not
9 allowed, personal injury, et cetera.

10 But some other thing that is beyond
11 misrepresentation but is a violation of a program
12 rule that would give rise to a borrower action.

13 MS. WEISMAN: So I think that we have
14 an idea that might help with this. On the bottom
15 of page 4 what is currently (ii) involves two
16 different items and I think that that might be a
17 little confusing as I hear Dan's comments.

18 So what I would suggest is that perhaps
19 we need to split these out. Because they're almost
20 implying a oneness that doesn't exist.

21 So if we would make what is currently
22 two that says a violation by the institution of
23 a requirement of the HEA or the department's

1 regulations is not a basis for a borrower defense
2 claim unless the violation would otherwise give
3 rise to a successful borrower defense claim under
4 this section or section 685.206(C) as applicable.

5 I think we could stop it there and then drop the
6 next sentence down and make that (iii).

7 And that way that sentence would stand
8 alone, and I think it would clarify what we're
9 trying to say here. The other piece of it is just
10 saying okay, and now here's the things we won't
11 approve.

12 But yes, that then gives us the
13 flexibility if the Higher Education Act is
14 reauthorized at some point in the future and it
15 includes things that are not there now that it would
16 give us the ability to go back to those and consider
17 those as well without having to change this text.

18 PARTICIPANT: Does that address your
19 question, Dan?

20 MR. MADZELAN: Yes, I think so.

21 PARTICIPANT: Okay. Just a check.

22 MR. MADZELAN: I'm not sure I can say
23 that concretely.

1 PARTICIPANT: Is everyone around the
2 table on the same page with their understanding
3 of this? Does everyone feel they understand the
4 comments AnnMarie just made? Okay. Walter.
5 Sorry, Michale was up and then we'll go to Walter.
6 And we have your cards as well.

7 MR. MCCOMIS: I think that's right.
8 I would support that change because I think that
9 breaks out the two things.

10 I was just going to make the point that
11 what is now (ii) has a very important component
12 to it. And I'm in favor of the language as it is
13 because it's the unless the violation would
14 otherwise give rise.

15 So there are other sections that would
16 give rise within the HEA such as subpart F under
17 668 that is the definition of misrepresentation
18 in the other areas, correct? Do I read that
19 correctly that if the department were to find that
20 an institution violated those misrepresentation
21 regulations under subpart F of 668 then that would
22 be, for example, corroborating evidence that the
23 department would have -- no?

1 MS. WEISMAN: So, I would disagree with
2 that because the language that we have here as
3 written says would otherwise give rise to a
4 successful borrower defense claim under this
5 section or 685.206(c). It doesn't mention the
6 other regulations that you mentioned.

7 MR. MCCOMIS: What I'm suggesting is
8 that --

9 PARTICIPANT: Aaron, do you have a
10 clarifying?

11 MR. LACEY: If I can jump in, Michale.
12 I think I understand where you're going but let
13 me try.

14 I agree with Michale, I think the point
15 is there are violations of the HEA that could serve
16 to substantiate that this standard in this section
17 was violated.

18 So it's not a guarantee that if you
19 violated one of those other sections it would
20 necessarily rise to a borrower defense, but
21 certainly to Michale's point evidence that the
22 department had of another could serve as
23 corroborating evidence under this standard.

1 MR. MCCOMIS: Yes and why I think
2 that's important is because the box now has some
3 air holes in it. It's more opportunity for the
4 department to use the tools and the resource and
5 the information that it has at hand.

6 I point that out because there has been
7 some evidence -- there's a broader swath of
8 information there that the department will have
9 at its resource.

10 And if that gives any comfort to folks.

11 If there were other violations then they probably
12 or could have been determined in other proceedings
13 like a program review or some other finding where
14 the department has made an affirmative finding
15 under subpart F.

16 That finding will sit there. And if
17 a student submits a BD claim then the department
18 will have that to use as corroborating evidence.

19 PARTICIPANT: Do we all understand?

20 MR. MCCOMIS: So if you don't know 668
21 subpart F is another definition of
22 misrepresentation that's used in other sections
23 of the HEA.

1 I think -- is it under the PPA
2 requirements? It's just another section.

3 PARTICIPANT: Okay. We're back to our
4 list of names and I apologize. I misstated the
5 order earlier. It is Aaron, Valerie, Michale,
6 Ashley and then Walter.

7 MR. LACEY: So I have unrelated
8 comments but in these sections.

9 I will though just because it's up on
10 the screen. We made this comment during last time
11 during session two.

12 I think that J probably needs to be
13 wordsmithed to conform in a way that makes sense.

14 Right now if you read it it says evidence of a
15 misrepresentation is the nature or extent of
16 prerequisites for enrollment in a course or
17 program.

18 I think what we want to say is the
19 representation that's significantly different from
20 the nature or extent of prerequisites for
21 enrollment or rather a representation regarding
22 the nature or extent of prerequisites for
23 enrollment in a course or program that is

1 significantly different from, and if I look here
2 it's like the actual, you can use the language from
3 I that's right up above, the actual nature or
4 extent.

5 But the point is it needs to reference
6 a distinction of some sort. So that's just a
7 drafting note.

8 PARTICIPANT: I'm sorry, Aaron, could
9 you repeat that one more time.

10 MR. LACEY: Sure, I can try. Although
11 I'm not wed to the language. Really the point is
12 just right now it doesn't -- you get the idea.
13 Just a drafting note.

14 The second point I have is sort of in
15 the same -- it's a little more substantive, but
16 really in the same vein. It's on the next page.

17 It's B so it's I guess (iv)(b) is that what it
18 is or (iii)(b). It's the lower or lost wages.
19 It's just on the next page.

20 My concern here is sort of similarly
21 we don't say lower than what. And I think that's
22 a problem for both institutions and students.

23 We're talking about trying to quantify

1 or represent that this is somehow represents
2 financial harm.

3 Certainly from the institutional
4 perspective I would be concerned if we're talking
5 about lower and we don't have some way of
6 quantifying how significant it has to be.

7 If I were a student I would also be upset
8 if I brought a claim and found out it was not lower
9 enough.

10 But the other thing I'll point out is
11 A speaks to a significant difference between the
12 borrower's earnings after completing the program
13 and earnings listed on the borrower's program of
14 study in the institution's marketing materials,
15 et cetera.

16 So A is about a difference between
17 earnings which I would also equate to wages after
18 graduation and there is a way that we're measuring,
19 you know, we've got significant difference and
20 we've got the benchmark that we're measuring
21 against.

22 So in a sense it seems to me that B is
23 redundant of A at least insofar as it's talking

1 about lower. I don't know if that covers lost.

2 So I guess my two points are lower is
3 ambiguous or vague. And A also seems to already
4 define lower wages, what would represent financial
5 harm in the context of lower wages.

6 So I would suggest probably striking
7 lower and just going with A or otherwise somehow
8 defining lower so that borrowers and institutions
9 alike would know what we're talking about and how
10 significant that has to be.

11 My final comment. So the department
12 removed, it's on page 6 of my redline. I don't
13 know if it's going to show up up there. But it
14 was this (4) that talked about circumstances the
15 Secretary would take into consideration in
16 determining whether or not there were either
17 mitigating facts or efforts on the part of an
18 institution that should -- in this case it was sort
19 of defeat a borrower defense claim.

20 Michale made some comments previously
21 about whether this was appropriately placed here
22 or whether it might be better placed in subpart
23 G.

1 I will just say and of course others
2 may have opinions about whether it should be here
3 or not.

4 But I would certainly and strongly
5 advocate to the department that it would be of great
6 value in the least to include this in subpart G.

7 It is a may on the part of the Secretary
8 so we're not suggesting that any of these items
9 are an absolute defeat to a recovery action. But
10 I do think there's a public policy reason, we talked
11 about this a little bit last time, to articulate
12 in subpart G the types of actions on the part of
13 an institution that could be considered or taken
14 into consideration when determining whether or not
15 it was appropriate to recover against the
16 institution.

17 So this doesn't impact the borrower's
18 right to recover on the claim. But what it does
19 mean is you know in ALG (phonetic) when considering
20 these facts and whether or not it's appropriate
21 to recover would take into account whether the
22 institution cured a misrepresentation or whether
23 this was really a one-off bad actor scenario, that

1 kind of thing.

2 I think that's very valuable to include
3 in subpart G. We don't have a draft of subpart
4 G so I don't know if that's the department's
5 thinking.

6 PARTICIPANT: Sorry to jump ahead but
7 my comment is on the same topic.

8 Maybe I missed it but I wasn't sure
9 where this moved once it came out. But assuming
10 it's moved somewhere my only concern about what
11 my colleague has said is I haven't seen anything
12 about provisionally certified schools and whether
13 subpart G is available to them on borrower defense.

14 And we had talked about that last time.

15 Now maybe I've missed it in one of the papers.
16 And I was waiting till we got further along.

17 But because this has come out now I
18 think it's very important. Where has this gone,
19 and if it moves to subpart G is subpart G available
20 to provisionally certified schools.

21 MS. WEISMAN: So some of the text that
22 we removed from this section went over to issue
23 paper two. Some of it was just removed.

1 The idea of the one-off claim that Aaron
2 had mentioned, I think our feeling was that we could
3 remove some of those items because we had the intent
4 standard there, that we didn't need some of this
5 other text.

6 Regarding provisionally certified
7 schools my understanding is that they do not have
8 the same protections afforded to them that a fully
9 certified school would have.

10 But I think that that discussion will
11 come up more as we get into process and that piece
12 about recovery from schools. So as we're getting
13 closer to lunch I don't want to shut down the
14 conversation, but I think that we need to postpone
15 that until that period.

16 PARTICIPANT: I'm fine with that. I
17 just don't want that to get lost. Thank you.

18 PARTICIPANT: I would like to get
19 through the tags we have up prior to lunch. With
20 that in mind, Aaron you had made changes I think
21 to J and then -- J in the previous list and then
22 B in this list.

23 And I wanted to open that up to the

1 group. Are those changes things the group
2 generally agrees with in concept? And I don't know
3 if the B changes that are on the board are the same,
4 but we'll start with J.

5 I believe it was just drafting. Okay,
6 we'll scroll down to B. And I believe your concern
7 was that A and at least the beginning of B were
8 repetitive. I guess it's the next page if you could
9 continue to scroll down.

10 PARTICIPANT: Quickly on J, that
11 drafting piece though has to have -- it has to have
12 the difference. It can't just be a representation
13 that is materially different than what they said.

14 PARTICIPANT: So what do we need to add
15 to that?

16 PARTICIPANT: At the end of the
17 sentence it has to just be parallel to what you've
18 done up above in some of the other pieces. Right,
19 Aaron?

20 PARTICIPANT: I think we're --

21 PARTICIPANT: We had said to add that
22 are materially different at the end of that
23 sentence.

1 PARTICIPANT: Maybe that's something
2 the department can take a look at. But the concern
3 has been noted.

4 And then going down to the next concern
5 which was the repetition between A and I think the
6 beginning of B.

7 MR. LACEY: My point was sort of
8 similar to J when you say -- it's two points.

9 One is we have in A a concept of lower
10 wages that does create two standards. And we say
11 you have a significant difference between A and
12 B meaning earnings that the borrower actually had
13 and those that the institution represented.

14 But the other thing is just more
15 specifically lower just like J previously. That's
16 not a standard, it just says lower wages. And we
17 don't know what that means. Lower than what. And
18 I think that's problematic for all the parties
19 because folks need to have some sense as to what
20 the department's thinking is here and what
21 constitutes lower wages that would be financial
22 harm.

23 PARTICIPANT: And do you have a

1 proposal on how to resolve your concerns?

2 MR. LACEY: My proposal was to strike
3 lower or and just say lost wages with the
4 understanding that A represents the standard for
5 lower wages.

6 PARTICIPANT: Suzanne, is that a
7 comment on this section?

8 MS. MARTINDALE: Yes, in response. I
9 think I read this a little differently. And the
10 department should please correct me if I'm wrong
11 if I'm misinterpreting your intent here with the
12 drafting.

13 But I think that the idea is that
14 basically that the student is worse off than if
15 they had never enrolled. I think that's what
16 that's trying to get at which I think is a different
17 concept from A.

18 Given the fact that there has been
19 extensive data showing that students who attended
20 certain bad schools in fact received lower wages
21 than they had before they enrolled.

22 I think that's a different concept than
23 a difference between the borrower's actual earnings

1 and what was being marketed to them as their
2 potential earnings.

3 So I don't know if it would need to be
4 lower or lost wages, et cetera compared with prior
5 to enrollment. That's kind of what I'm trying to
6 get at. I don't know if I have exactly the quite
7 right wording.

8 You could say lost wages, extended
9 periods of involuntary unemployment or the cost
10 of -- comma, the cost of obtaining
11 non-transferrable credits, comma, or wages that
12 are lower than the borrower had prior to enrollment
13 or something kind of like that.

14 But I don't want to lose that concept
15 because it's really important and it's based on
16 past experience.

17 PARTICIPANT: So I believe that
18 suggestion is now on the screen. Thoughts from
19 the group.

20 PARTICIPANT: I'm not philosophically
21 opposed to that. I think the practical challenges
22 are a lot of students aren't employed before they
23 go to school.

1 I also think there's a fact-intensive
2 dilemma for students and institutions alike because
3 students might have a challenge of validating or
4 demonstrating it.

5 But those are challenges the student
6 would face. Because presumably the student would
7 have to substantiate what their wages were before.

8 The institution would have no way to do that.
9 So that's really a burden on the student.

10 But the other question is just to the
11 department. Is that the standard? Because I hear
12 you. I understand there's a concept other than
13 this distinction between earnings and earnings that
14 were marketed. There are other ways to interpret
15 lower earnings.

16 But to your point there are lots of
17 other ways you could determine what represents
18 lower earnings.

19 So my point to the department is just
20 I don't think that's sufficient the way it's written
21 and we need better clarity on exactly what the
22 department means when they say lower wages.

23 Because you have to have some benchmark

1 against which to compare the wages that the student
2 actually is earning to know if they're lower or
3 not. And both sides may have concerns about that
4 benchmark and how it's determined.

5 PARTICIPANT: Valerie and then Ashley
6 Reich.

7 MS. SHARP: I'm moving us onto a
8 different topic so if you want to respond to that
9 one before I -- do you have anything you want to
10 say on that one?

11 MS. REICH: Well, I think that Suzanne
12 gave one example. If a borrower enrolls in a
13 program and they believe they're going to make a
14 certain income when they finish and they make
15 substantially lower than that I think that is a
16 concern of the department.

17 So if there are other ways to say that
18 I'm open to the drafting changes. We'll just say
19 that the department has other homework over the
20 lunch hour. We've already got some of the other
21 items that we had discussed even from yesterday
22 that we are still trying to nail down to present
23 back to you this afternoon or in the morning.

1 So anything that we can do here that
2 we can come to some tentative agreement on is
3 helpful.

4 PARTICIPANT: My one comment to that
5 would be I don't speak for anyone else obviously
6 except my constituency but I expect institutions
7 would have a significant issue if the benchmark
8 were the borrower's expectations independent of
9 any representation that was made by the
10 institution.

11 MS. REICH: No, it would obviously --
12 well, maybe not obviously because you didn't
13 understand what I meant, but I definitely meant
14 that it would include a representation made. Not
15 just what they think.

16 PARTICIPANT: In which case it ties to
17 A. So I guess not to be glib. So we can talk about
18 it, but you can see why there could be significant
19 concerns depending on how that's going to be
20 determined.

21 And I think that the preference
22 certainly of risk managers at institutions would
23 be to have some certainty as to how that's going

1 to be determined so that we could talk about it,
2 and not to just leave it open-ended.

3 PARTICIPANT: Are there any other
4 examples of language? Michale McComis.

5 MR. MCCOMIS: So on that same one B I
6 might suggest taking and breaking out the cost of
7 obtaining non-transferrable credit from the wage
8 piece.

9 And I think that -- there are all kinds
10 of reasons why credits don't transfer, and they're
11 all not nefarious. There are lots of terminal
12 degrees and lots of terminal credentials and lots
13 of credits that just don't -- they're for the sole
14 purpose of teaching somebody how to weld. And so
15 they're not transferrable.

16 That should not be a determinant of
17 financial harm.

18 However, if the institution told them
19 that they would transfer. So I think there needs
20 to be a qualifier here that -- and I'm even okay
21 with opportunity cost. I'll kind of take the
22 temperature on that.

23 As a separate item the cost of obtaining

1 non-transferrable credits when the institution
2 told the students that the credits would transfer
3 would be my addition to that one.

4 And like you say breaking that out and
5 making that the new C.

6 And I agree with Aaron that lower is
7 covered sufficiently in A.

8 PARTICIPANT: Any other thoughts on
9 this particular piece before we go back to Valerie?

10 PARTICIPANT: So we're sort of looking
11 at A, B and new C.

12 PARTICIPANT: Okay, Valerie.

13 MS. SHARP: Okay, my question on
14 current C, I guess might be new D on the significant
15 difference in the actual amount or nature of tuition
16 and fees.

17 And my question is when the department
18 shared this with us, going over the paper in general
19 this is where the concern that the financial aid
20 folks at the table had. Alyssa submitted a
21 proposal. Also there was another proposal in case
22 that one didn't work.

23 And those were addressed here in C.

1 However, C is more in relation to tuition and fees.

2 And actually our proposals were submitted in
3 regards to F on the prior page, on page 4 in the
4 list of the misrepresentation items.

5 There it talks about a representation
6 regarding the availability, amount, or nature of
7 any financial assistance available to students from
8 the institution.

9 And so the proposals that we had
10 submitted for suggested wording were actually for
11 F. And those concerns have been addressed where
12 it's talking about tuition and fees in C.

13 So my question is then we don't have
14 those concerns addressed in F where when we send
15 out corrected award letters, et cetera, we are
16 talking about the amount of financial assistance,
17 or the nature of that assistance.

18 I don't want to belabor the point if
19 we think we're covered, but I am concerned that
20 our proposals to kind of cover that section F were
21 actually addressed on a different topic in section
22 C.

23 I just want to make sure that if schools

1 are sending students new award letters with a change
2 in financial aid because new information has come
3 to our attention. It can be as simple as NSLDS
4 wasn't updated at the time we did the original
5 letter, or something else has changed the UFC
6 (phonetic) due to verification or something.

7 That that is covered in the rule and
8 schools wouldn't be held liable because we had to
9 change something we had told the student
10 originally. Because our concerns are not
11 addressed in F but a change has been made to C.

12 So I don't know if we need to consider
13 another change to F or if we feel comfortable.
14 I'm a little concerned but maybe I shouldn't be.

15 MS. WEISMAN: So would you be
16 comfortable with adding the text from the prior
17 page, something to the extent of where it says on
18 5 it says a significant difference in the actual
19 amount or nature of the tuition and fees, or the
20 nature or amount of financial assistance. Adding
21 that text in there as well. Would that satisfy
22 your concern?

23 MS. SHARP: I think so. I think that

1 most schools are going to make sure the student
2 knows. It's to our advantage that the student
3 knows well in advance that there's been a change.

4 But that we don't feel like oh great,
5 we found this out and now we're going to be in
6 trouble because we had to make a change. Because
7 often it's not really changes that we're just
8 randomly making. There's a valid reason and in
9 most cases students will have very clear notice.

10 It won't be hidden in some multipage document or
11 something.

12 MS. WEISMAN: So just to recap then,
13 what we're looking at is in what is now C after
14 we say tuition and fees we would add in or the amount
15 or nature of financial assistance. So we would
16 do the insert after we say of the tuition and fees
17 charged by or the nature -- I want to make it
18 parallel -- the amount or nature of financial
19 assistance provided by the institution.

20 PARTICIPANT: Comments from the group.
21 Kelli on this paragraph?

22 MS. PERRY: I still have the same
23 concerns I think that Valerie has under

1 misrepresentation letter F.

2 Because here we're talking about
3 financial harm to the borrower and it's falling
4 under that category.

5 Under misrepresentation where it talks
6 about that it's regarding the availability, amount
7 and nature of the financial assistance. That could
8 change.

9 So I think we need to be very clear,
10 and I think Alyssa did provide language to address
11 F that if an award letter does change that that
12 isn't considered a misrepresentation.

13 PARTICIPANT: And that is now on the
14 screen. What would need to be added to F?

15 MS. SHARP: It could be similar to what
16 we're adding in C.

17 MS. WEISMAN: So I think that it would
18 -- again I'm trying to go with what you're
19 intending. On the issue paper is on page 4 is F.

20 And so where we have a representation regarding
21 the availability, amount, or nature of any
22 financial assistance.

23 PARTICIPANT: Can you just add actual

1 in front of amount and then you added that the
2 institution represented to to alleviate our concern
3 about award letters changing. So can that phrase
4 be added to F?

5 So I think it should read -- this is
6 for F -- a representation regarding the
7 availability, actual amount, or nature of any
8 financial assistance available to students that
9 the institution represented. I don't know where
10 exactly that needs to be.

11 PARTICIPANT: The other option would
12 be to take out the word amount and just talk about
13 the representation of the availability and nature
14 of the aid.

15 Because the amount is really what's in
16 question. That's what potentially will change.
17 And I think the idea behind this one was that schools
18 would be misrepresenting the fact that financial
19 aid is available.

20 MS. WEISMAN: I think the concern when
21 we were drafting what we were thinking though was
22 that also the concern of somebody saying oh, don't
23 worry, we've got you covered, you're going to get

1 a grant for \$10,000 and really the grant is for
2 \$2,000 and the rest is made up of loans. So amount
3 was important in that context.

4 PARTICIPANT: Alyssa I saw your tag go
5 up and then Mike it seems like you have a suggestion.

6 PARTICIPANT: Well, I was just going
7 to -- isn't that covered under availability and
8 nature. Amount makes me nervous just because of
9 what they're bringing up.

10 But I feel like your example is clearly
11 covered under availability and nature.

12 PARTICIPANT: I have concerns with the
13 phrase "or any other entity." I think that's
14 difficult to control from a school's perspective.

15 And I think -- it's been a month or so,
16 but I think the language that I suggested said any
17 other entity influenced or controlled by the
18 institution.

19 MS. WEISMAN: So I think the concern
20 with that is that people would represent that there
21 were scholarships available from certain
22 organizations that again it could be at all or
23 within the amount.

1 But that if the institution is
2 providing information for example on an award
3 letter. Yes, an award can change and I think we're
4 trying to cover for the situations where it changes
5 versus someone telling somebody, trying to entice
6 them to enroll that something that exists and really
7 it does not.

8 PARTICIPANT: Yes, I agree and I can
9 definitely see that being an issue. But I also
10 don't want to create verbiage that provides a
11 loophole.

12 I see daily, well maybe not daily,
13 weekly where a student is disgruntled because of
14 some agency outside of our school either changing
15 their award, or informing them that they're no
16 longer eligible for some reason and we have nothing
17 to do with that.

18 So I think just adding that small
19 change.

20 PARTICIPANT: Does source matter?
21 Why would it matter? Just stop after students.
22 It doesn't matter whether it's from the entity or
23 from the institution or from other controlled.

1 It's just the nature, availability of available
2 students. And just don't misrepresent those
3 things.

4 PARTICIPANT: I think the concern is
5 that the school could be held accountable for
6 misrepresentation when we didn't misrepresent
7 anything. Another outside entity promised them
8 something they didn't follow through with. So you
9 can't say the school misrepresented that because
10 we didn't.

11 And if you're going to have the school
12 pay back the loan and it's because an outside entity
13 misrepresented something then the wrong person is
14 being held accountable for it. Because this is
15 under misrepresentation.

16 PARTICIPANT: But that's not what that
17 says. It's a misrepresentation occurs when a
18 representation is made regarding those things.

19 If another entity makes a
20 representation then the school did not make that
21 representation.

22 PARTICIPANT: But it will be in most
23 cases showing from the institution on that award

1 letter because we have to know about it and record
2 it.

3 PARTICIPANT: But I think though we're
4 getting caught up in the idea of a change versus
5 something that truly never existed.

6 So if you have something from voc rehab
7 that says student, you're going to get this much
8 money and it comes through the institution and then
9 you get something else that says no, there's been
10 a change there's been a change. I mean there's
11 no misrepresentation there.

12 I think a change is something that I
13 felt that we had covered here. The issue is when
14 you say you're getting this, you're covered, don't
15 worry, enroll, we've got you taken care of and they
16 really do not.

17 And so the borrower enrolls thinking
18 that he or she is getting grants and ends up with
19 loans, or they get a little grant but almost nothing
20 and the rest of it is loans, or they have no ability
21 to pay, or then they're brought into a private loan
22 that the institution offers.

23 There's all kinds of things that we've

1 seen that I think give us pause.

2 PARTICIPANT: Further, sorry. The
3 way the misrepresentation language is written now
4 requires an intentional or reckless disregard
5 standard.

6 So if for example you wrote a letter
7 saying that whatever foundation has X amount of
8 dollars available and that changes later on your
9 representation would not have been intentional and
10 it wouldn't have been reckless disregard because
11 at the time you made it it was probably true. It
12 was true.

13 PARTICIPANT: Right, but in that
14 instance you're going to ask the institution to
15 prove that they have evidence that that was the
16 original amount. Which in some cases they will
17 but in others they may not.

18 If the student basically tells them
19 that I've been offered \$10,000 from XYZ that could
20 potentially go on the award.

21 PARTICIPANT: I will say I do not
22 remember what we proposed last time. I actually
23 wrote it with a few of the other school

1 representatives. I wrote it in paper and handed
2 it in.

3 But it was something very simple and
4 minimal that just spoke to the fact that to pay
5 the cost of attendance if it was not fulfilled
6 following the enrollment of the borrower, something
7 to the effect that and the borrower is not notified
8 of the change or something.

9 So that the coverage would be if the
10 school notified the borrower obviously they had
11 good intentions which most schools would do.

12 And in some cases we don't know if a
13 scholarship is not going to be paid until the
14 outside scholarship company doesn't pay it, but
15 that's a different situation.

16 But it was very just a simple thing.

17 And I think we added at the end just covering if
18 we had taken the effort it would also hold
19 accountable those schools who don't bother to tell
20 students when there's changes because that should
21 be happening.

22 Not subsequently updated. Something.

23 It was quite short and sweet. I apologize, I

1 didn't keep a copy of it.

2 PARTICIPANT: Ashley Reich, your tent
3 is still up.

4 MS. REICH: I just have a question
5 about going back to page 5. So in A we indicate
6 very clearly that this is for the borrower's program
7 of study.

8 And we sort of allude to field of study
9 in D.

10 My question is I would assume that the
11 list that we have on 5 are for the program of study.

12 And I don't know if to make it more concrete that
13 in I think it's (iii) if we just indicate somehow
14 that this is for the borrower's program of study
15 and that way all of that list would represent that.

16 Is that the intention there? Because
17 I know we call it out in only a few of them, but
18 I do think like especially for C I would imagine
19 the tuition and fees would also be for the
20 borrower's program of study and things of that
21 nature.

22 So I don't know if we could put it in
23 the leading paragraph where maybe evidence of

1 financial harm related to the borrower's program
2 of study includes but is not limited to or something
3 like that.

4 I'm not sure if that makes it worse or
5 not. I was just trying to think for consistency's
6 sake if it's meant to be for the program of study
7 that we be consistent.

8 PARTICIPANT: Okay, so Michale, did
9 you want to respond to that?

10 MR. MCCOMIS: Yes. So Ashley, would
11 it go -- the second to last sentence, financial
12 harm is such monetary loss that is due to related
13 to the student's program of study and not
14 predominantly due to intervening local, regional,
15 or national. Is that where you would put it?

16 MS. REICH: I was thinking either the
17 last sentence or the one before. So either/or.
18 I'm not really married to where it goes, but I think
19 in that paragraph is where it belongs.

20 PARTICIPANT: Okay, so we have three
21 tents still up and we do want to finish that, but
22 the time is 12:35. So do we keep going or do we
23 want to break for lunch now? We'll just finish

1 it out. So Walter, Abby and then Kelli.

2 MR. OCHINKO: So I had a comment and
3 then I had a question for the department.

4 I just wanted to point out that
5 transferability of credits or non-transferable
6 credits is a big issue for veterans. And that the
7 Forever GI bill which was passed and signed into
8 law in August does have provisions that credits
9 that are not transferable can be restored to the
10 veteran.

11 My question has to do with what I see
12 as sort of a conflict between I guess it's 4(i)
13 which at the very end of that long paragraph says
14 which may include representations regarding the
15 institution's size, location, facilities, training
16 equipment, or the number, availability, or
17 qualifications of its personnel.

18 And on page 5 number F which says that
19 claims about the general quality of the student's
20 education or the reasonableness of an educator's
21 conduct in providing educational services.

22 I think this came up in the last session
23 but it seems to me that those two are somewhat in

1 conflict because it seems to me that you're saying
2 that an educator's conduct in providing educational
3 services is off the books, but yet you're saying
4 in (i) that if there's misrepresentations regarding
5 the number, availability, or qualifications of its
6 personnel that is -- I mean it seems to me that's
7 quality.

8 And yet you're saying that quality
9 isn't applicable.

10 MS. WEISMAN: So over on page 4 in (i)
11 we list out some very specific items kind of in
12 that list of we're willing to go there.

13 Over on page 5 the discussion is about
14 general quality or reasonableness of conduct.

15 And I think the feeling was that those
16 items were much more vague and would not lead to
17 a claim.

18 Additionally, the idea of quality of
19 education is something that is more within the
20 purview of the state and accrediting agencies than
21 the department.

22 MR. OCHINKO: So basically you don't
23 see those in conflict because you're talking about

1 general versus specific.

2 MS. WEISMAN: Correct.

3 MR. OCHINKO: Okay. I get it. Thank
4 you.

5 PARTICIPANT: And just also where we
6 talked about the specific items one of the changes
7 that were made was to say that they have to be
8 necessary for the completion of the student's
9 educational program.

10 So basically this makes it more
11 specific than just sort of general claims about
12 the quality of a program.

13 MR. OCHINKO: Thank you.

14 PARTICIPANT: Abby.

15 MS. SHAFROTH: So I also wanted to
16 comment on that provision and I will also have a
17 comment on financial harm.

18 The first comment on this provision,
19 so provision F which says that students can't bring
20 claims based on the quality of the education or
21 reasonableness of educator's conduct in providing
22 educational services.

23 We were just chatting about this as the

1 rule that basically a school can be absolutely
2 terrible, it just can't tell you that it's good.

3 If it tells you it's good and it's absolutely
4 terrible then you have a claim, but if it is
5 absolutely terrible but it hasn't said anything
6 about its quality prior to enrolling then you
7 specifically don't have a claim here.

8 I would offer that if a school is
9 absolutely terrible you should be able to have a
10 claim regardless of what the school told you before.

11 We had public testimony yesterday from
12 a former ITT student who said that he had for one
13 of his core classes he had a teacher who didn't
14 know anything about the course and was reading from
15 the book and couldn't answer questions. That's
16 not really a sufficient education.

17 And I take the department's point that
18 they see states and accrediting agencies as being
19 the gatekeepers for the quality of education.

20 But I'm concerned that this rule would
21 preclude those sorts of claims in all instances,
22 even where say maybe an accrediting agency later
23 makes findings that that institution did not meet

1 standards but they have to complete a review period
2 before they're able to make those findings.

3 This seems unnecessary to really carve
4 out and bar that type of relief. And this is again
5 an example of why I would like there to be something
6 beyond misrepresentation as a standard on which
7 a borrower could get relief such as including sort
8 of unfair or abusive or state law claims because
9 it might be considered unfair to offer a course
10 of program of education where you only offer
11 instructors who don't know the material.

12 It might be that a borrower is not going
13 to win on that claim very often. It's going to
14 take -- it will be harder for them to really meet
15 a threshold, but I think that should be available.

16 The second comment is on financial
17 harm. We had a discussion in session two about
18 the fact that just taking out a loan and being on
19 the hook for thousands or tens of thousands of
20 dollars that you wouldn't have taken out but for
21 a material misrepresentation, that itself is
22 clearly financial harm.

23 And so I don't know why we are -- the

1 proposed rule seems to say that that's not
2 sufficient and that opportunity cost. All that
3 time that someone could have been working and
4 earning money instead of getting a worthless
5 degree, that that's not considered financial harm.

6 I think that is considered financial harm.

7 So I would absolutely strike the
8 carve-out for opportunity cost. I would say that
9 opportunity cost specifically is an example of
10 financial harm as is taking out a loan that if the
11 borrower says they would otherwise not have taken
12 out, that that can be an example of financial harm.

13 This set of examples for what financial
14 harm includes, I'm also concerned that to the extent
15 that these are trying to be illustrative of what
16 types of evidence the department will consider it
17 leaves out some big things such as just the fact
18 that none of these get at the fact that a borrower
19 might have taken out a lot more loans and paid a
20 lot more to go to a school based on
21 misrepresentations when they could have gone to
22 a much cheaper program that was available.

23 And they chose to go to the much more

1 expensive school because of the
2 misrepresentations. So this doesn't get at -- they
3 might still get a job. They might still get a job
4 in the field. They might still have sort of average
5 earnings, but they wouldn't have paid so much if
6 they'd known the truth about the school. They
7 would have gone to a cheaper alternative.

8 Also, the idea that if a borrower is
9 able to secure employment in the field of study
10 that that and maybe typical wages are enough.

11 That might not be enough especially if
12 we're forcing a borrower to bring their claim within
13 a three- or five-year period of when they graduated.

14 Because maybe that borrower hustled and
15 they have a family friend who was able to get them
16 a job in the field. But if the school lied about
17 their job placement rates and in fact that school
18 has a terrible reputation in the field they might
19 not be able to ever leave that job.

20 They might not be able to get a job with
21 any other employer.

22 What I'm getting at is we're trying to
23 define that financial harm only exists in these

1 various circumstances, but there's a lot more harm
2 out there. There's a lot that this doesn't
3 capture.

4 And so I'm really worried of putting
5 this additional burden on borrowers.

6 PARTICIPANT: Caroline.

7 MS. HONG: I just want to respond
8 briefly.

9 So first of all, with regard to the
10 quality of education I certainly understand your
11 point. But I think the attempt here in creating
12 examples was so that someone couldn't just say look,
13 this is a terrible program. And then someone at
14 the department couldn't just -- I mean how do we
15 evaluate that.

16 So if there are specific instances that
17 you think need to be added to flesh out this list
18 so that someone evaluating the claim can have more
19 specific guidance then I think as opposed to just
20 saying something is terrible then that would help
21 us a lot.

22 Second of all, with regard to what
23 you're talking about opportunity costs, I certainly

1 appreciate that. And definitely a lot has been
2 said at the table these past few days and last year
3 and just consistently about what kind of harm these
4 students can face.

5 However, our ability to provide relief
6 in these circumstances are related to the direct
7 loan program and also with regard to the
8 circumstances of how a direct loan was made.

9 What a student could have taken out
10 otherwise, that's not necessarily within the
11 purview of the direct loan program.

12 So I would urge you that if you have
13 specific things that you think should be added to
14 this list and that's something concrete that we
15 can talk about and examine. And so that's my
16 comment. Thank you.

17 PARTICIPANT: Kelli.

18 MS. PERRY: Going back to page 3,
19 letter C at the bottom there was reference there
20 to within a reasonable period of time. And I think
21 last time we talked about potentially quantifying
22 that.

23 It looks from my notes that someone made

1 a recommendation of seven days possibly, but I think
2 that that probably should be clarified so that there
3 is no interpretation of what a reasonable period
4 of time is.

5 PARTICIPANT: Is seven days your
6 suggestion, Kelli? Seven days. Seven years.

7 PARTICIPANT: Where are we?

8 MS. PERRY: The bottom of page 3,
9 letter C.

10 PARTICIPANT: Or the failure to remove
11 within a reasonable period of time, is that where
12 you are?

13 MS. WEISMAN: Just to clarify our
14 thinking, we did not add in a time period because
15 our feeling was that what is reasonable for some
16 institutions may not be reasonable for others.

17 A much larger school may have more
18 resources. For example, they may have a dedicated
19 webmaster whereas if you're at a smaller school
20 the webmaster may be the person who does five other
21 things.

22 So it's not that we didn't consider
23 that. We specifically did not qualify it within

1 a period of time.

2 If the group feels that it's important
3 to do that we can certainly have that discussion
4 again. But there was a reason for not including
5 something that was more concrete.

6 PARTICIPANT: So does the group think
7 that a period of time needs to be specified here?
8 Is that a no? Okay.

9 Any other comments on I guess the rest
10 of issue paper two. Because it is 12:47. Issue
11 paper one. I have high hopes. Mike Busada.

12 MR. BUSADA: I just want to say too,
13 and this may not be any consolation, but just I
14 think it's important that we do make it very clear
15 that this is only one piece of an opportunity to
16 attain redress.

17 A student that does have their loan
18 discharged does still have the opportunity and if
19 there's legitimate issues should go and then pursue
20 these additional actions against the school in a
21 full legal proceeding.

22 So this is just one piece to try and
23 help the student. There are still all the other

1 remedies available as well.

2 PARTICIPANT: Okay. So with that I
3 think this is a good place to go to lunch. So let's
4 return at 1:50. Have a good lunch.

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

7 PARTICIPANT: So before we begin our
8 afternoon session I do want to say building off
9 of what Moira talked about, the facilitators are
10 going to operate in the vein that you want to reach
11 consensus.

12 We're also going to operate in the vein
13 that you want to get through your issue papers with
14 the days that you have left. So we're going to
15 open up with issue two.

16 We're also going to be harder on you
17 about hearing what you have to say, but moving on
18 and making sure that we get everyone's voice heard.

19 We don't want to cut anyone off, but we will if
20 we have to. And that's not an interest in not
21 hearing what you want to say but that's to get to
22 you moving along.

23 So we're going to move on with issue

1 two. Tomorrow we want to start with issue paper
2 three because we will hear a report out from the
3 subcommittee. And then we'd like to get through
4 issue papers three through eight and then come back
5 to any more issues that we have, especially in issue
6 papers one and two. Does that sound like a plan?

7 So with that I will turn it over to the
8 department to open up issue paper two.

9 MS. WEISMAN: Issue paper two is what
10 we think of as our process issue paper, looking
11 at the process of submitting and evaluating a
12 borrower defense to repayment claim.

13 So we've made a few editorial changes
14 in this issue paper. Anywhere we had BD previously
15 we've spelled that out and now list borrower
16 defense.

17 We also have adjusted some language
18 again here. Keep in mind that the language that
19 is shaded in gray is our language that has changed
20 from the prior session to this one.

21 So on page 1 the only adjustment we've
22 made is to instead of just saying related to a loan
23 it's a loan or loans.

1 Moving over to page 2 we have no changes
2 from the prior session.

3 On page 3 under (iv) we have a
4 renumbering item.

5 Changing some clarifying language.
6 Dropping down to 3 in the middle of the page on
7 page 3 we've added in accordance with 34 CFR 668
8 subpart G to the area where we talk about initiating
9 an appropriate proceeding.

10 So again that's using the process that
11 we already have in place.

12 We then continue on to say that the
13 Secretary will not initiate such a proceeding more
14 than three years after the date of the final
15 determination of the borrower's defense against
16 repayment claim.

17 In D we have updated our regulatory
18 citation and added words under penalty of perjury
19 on a form. That language is already contained in
20 the form, it's just we felt it important to stress
21 in the regulation that that was the case.

22 In (ii) still under 3 we struck the word
23 documentation, providing documentation, and it now

1 reads providing evidence that supports the borrower
2 defense claim.

3 And I think although most of that is
4 fairly minor I'd like to break it there and take
5 comments on the paper up to that point.

6 Unless everyone just wants to agree and
7 that would be fine too.

8 PARTICIPANT: Comments? Thoughts?
9 I was going to say I feel like a temperature check.
10 Do we like it as is up to (ii)? Show of thumbs.
11 I don't see any thumbs down. Let's move on.
12 There's chocolate going around, but there is no
13 thumbs down. That's not from us.

14 PARTICIPANT: AnnMarie, since it is
15 Mardi Gras can I toss this candy to everybody?

16 PARTICIPANT: Valerie does have a
17 question. Valerie.

18 MS. SHARP: Just a question on item 3
19 on page 3. It says that then the Secretary may
20 initiate appropriate proceeding in accordance with
21 34 CFR 668 subpart G.

22 So we've talked a bit, Linda's asked
23 some questions about how does this impact

1 provisionally certified institutions. So is there
2 going to be a different standard than this applied
3 to those provisionally certified.

4 There's no clarification as to if they
5 don't fall under subpart G what might apply to them.

6 MS. WEISMAN: Do you have a suggestion
7 for what we might add instead of leaving it as is?

8 MS. SHARP: I would think that you'd
9 want this to apply to all institutions, not just
10 those that are fully certified. Of course all
11 institutions should be held accountable and
12 probably the statute would make sense for all due
13 to the statute on retention of documents.

14 So do we have to say in accordance with
15 34 CFR 668 subpart G, or could we say something
16 about -- isn't it part of our agreement on our PPA
17 that we can be held liable.

18 Is there another item that applies to
19 all institutions that we could refer to that would
20 hold both fully and provisionally certified
21 institutions to the same standard.

22 PARTICIPANT: Mike Busada, can you
23 help with that?

1 MR. BUSADA: Just as a purely legal
2 suggestion, trying to get to where Valerie's
3 talking about, we could put after subpart G for
4 purposes of this part, and we could even spell out
5 borrower defense, provisionally certified
6 institutions that otherwise would not be afforded
7 -- or would be governed for these purposes under
8 subpart G.

9 So I mean we could basically just carve
10 it out in here and say that they would be able to
11 utilize it.

12 PARTICIPANT: Can you look to see that
13 language there? Would be governed.

14 MR. BUSADA: It might be better if you
15 say this provision would be applicable for
16 provisionally certified institutions that
17 otherwise would not be governed by 34 668 subpart
18 G.

19 PARTICIPANT: Linda.

20 MS. RAWLES: I gave some language on
21 this between the last session and now. If you had
22 that handy too we could look at that. It was
23 similar to Mike's.

1 PARTICIPANT: Okay, so Mike, does this
2 look like.

3 MR. BUSADA: Yes. Put governed by.
4 Yes, I think from a legal standpoint that should
5 do it.

6 PARTICIPANT: Okay, Valerie.

7 MS. SHARP: I'm not the legal wording
8 expert here so if Mike and Linda think that is the
9 right legal wording to protect those provisionally
10 certified I support it.

11 PARTICIPANT: John.

12 PARTICIPANT: I have to beg the
13 committee's indulgence here because this may have
14 been covered in the last meeting because this is
15 not really new language, but I just had a question
16 for the department.

17 In subpart D here where we're
18 incorporating in a form approved by the Secretary
19 I'm correct in assuming, right, that changes to
20 that form in the future wouldn't be subject to
21 notice and comment or anything like that?

22 PARTICIPANT: So any new form, or any
23 replaced form or edits in a form do need to go

1 through a notice and comment period through OMB,
2 Office of Management and Budget. So we would
3 definitely be getting comments.

4 And we would absolutely need to adjust
5 the form to conform with these regulations.

6 PARTICIPANT: Thank you.

7 PARTICIPANT: Linda, are you -- okay,
8 Linda.

9 MS. RAWLES: I know it's always tough
10 to do this on the fly, but I like that language
11 but I just want to make sure that we're not just
12 pulling provision schools in for purposes of
13 pursuing them for reimbursement of the loan, but
14 that they also get the due process that's in subpart
15 G.

16 PARTICIPANT: Okay. Chris.

17 PARTICIPANT: If anyone wants the
18 candy bowl just wave at me and I'll bring it over.

19 PARTICIPANT: Linda, could you restate
20 your question now that we have the text higher where
21 everyone can see it on the screen? Thank you.

22 MS. RAWLES: I just want to make sure
23 we interpret the added language that provision

1 schools are not only pursued under subpart G but
2 they get the due process provisions of subpart G.

3 If we have that understanding then I like the
4 language. If we don't then we need to tweak the
5 language.

6 PARTICIPANT: Do we have that -- Aaron?

7 MR. LACEY: What if we said the
8 Secretary may only initiate an appropriate
9 proceeding to require the school whose act or
10 omission resulted in a borrower's successful
11 defense against repayment of the direct loan to
12 pay to the Secretary the amount of the loan which
13 applies in accordance with 34 CFR 668 subpart G,
14 including institutions that are provisionally
15 certified at the time the recovery proceeding is
16 initiated. Does that get there?

17 Well, I think under that language
18 certainly my intent is that what we're saying is
19 if the Secretary is going to initiate a recovery
20 action against an institution it must be done with
21 consistent with subpart G, including provisionally
22 certified institutions. So it would have to go
23 through subpart G.

1 What we're saying is the only way you
2 can initiate a recovery action, even if the school
3 is under provisional certification is pursuant to
4 subpart G. That's the intent. But if folks think
5 it's not getting there let me know.

6 MS. RAWLES: I agree with Aaron's
7 language, but I'd just like the confirmation the
8 department interprets it the same way and then I'd
9 be happy.

10 MS. WEISMAN: I'd like to take that
11 back for discussion. I hear what you're saying
12 and I apologize to Linda. She did submit language.
13 We received it. We looked at it, but we didn't
14 have the conversation with everyone who needed to
15 be included. So I'd like to do that before I can
16 make that confirmation.

17 PARTICIPANT: So I know we took a
18 temperature check on this before, but I want to
19 get another one now that we have all our negotiators
20 here and that the candy is not distracting us.

21 Given that AnnMarie's going to take
22 this back for that same understanding about the
23 due process for provisional institutions can I get

1 a show of thumbs if it's okay to move on to the
2 next section of issue paper two. So no thumbs down.

3 So now I believe we're on page 3, (iii).

4 Is that correct?

5 MS. WEISMAN: So I believe we finished
6 on page 3. (iii) is language that had existed from
7 the last session. So we're moving over to page
8 4 under 2(b).

9 It says suspends collection activity,
10 it used to say on a defaulted loan until the
11 Secretary issues a decision on the borrower's
12 claim.

13 What we've now done is broken that out
14 into two. We now say suspends collection activity
15 on a defaulted loan and then under (ii) we say if
16 a borrower's claim is denied the Secretary ends
17 the forbearance or resumes collection 90 days after
18 the date of the denial -- 60, I'm sorry, 60 days
19 unless a request for reconsideration under
20 paragraph D(5) of this section is accepted.

21 We have then renumbered and the new
22 number 4 includes some new text that now it reads
23 if the borrower's claim is denied the forbearance

1 or suspension of collection activity will be
2 reinstated. And that also is -- we list out unless
3 it will be reinstated for reconsideration if a
4 reconsideration claim is made that meets the
5 eligibility criteria in paragraph D(5) of this
6 section.

7 We then go on to 3 talking about the
8 adjudication of a claim. (i) if the Secretary
9 determines that the borrower's claim does not meet
10 the minimum threshold for consideration of a
11 borrower defense claim the Secretary provides a
12 written notification to the borrower denying the
13 claim.

14 The new (ii) talks about what that
15 minimum threshold is for reconsideration. A
16 states that the borrower's application provides
17 the information specified in paragraph D(1) of this
18 section. B states that the claim alleges a
19 misrepresentation on the part of the school as
20 described in 685.222 and talks about establishing
21 that the borrower has obtained a judgment and
22 provides minimum supporting evidence to
23 corroborate the borrower defense claim.

1 So I'd like to break it there and get
2 some feedback.

3 PARTICIPANT: Aaron and then Ashley
4 Reich.

5 MR. LACEY: My opening comment on this
6 section regards something that is not here unless
7 I've missed it and that is an early dispute
8 resolution concept.

9 My impression from session two was that
10 while there may not have been unanimous agreement
11 to that there was a lot of positive conversation
12 around it.

13 It struck me that one of the great
14 concerns that the borrowers have on their side is
15 that you've got individuals who may not understand
16 the process, or there may be a lack of
17 sophistication, and that having a voluntary
18 non-binding but like the Office of Civil Rights
19 has an early resolution process where someone from
20 the department would be able to work with both
21 parties, help facilitate the exchange of
22 information, help them understand what the
23 potential process and outcomes are could be

1 extraordinarily beneficial one, for the borrower
2 in helping inform them, but also for institutions.

3 We've had multiple conversations among
4 institutional folks that most of the institutions
5 that we know of and work with if presented with
6 an opportunity to do something right and to fix
7 something with the student would much prefer to
8 do that in an informal process than to engage in
9 a lengthy or more expensive process.

10 The other thing is you have the
11 potential to resolve issues quickly.

12 The only real objection that I heard
13 last time from the department that I can think of
14 was cost, and that that cost had not been built
15 in.

16 I just want to -- and it may be that
17 the timing was so tight between rounds two and three
18 that there wasn't time to do a fulsome cost
19 analysis, and I certainly appreciate that.

20 But it is hard for me to believe that
21 it is less expensive to put, for example, 90,000
22 claims in front of a staffer at the department and
23 then subsequently in front of an attorney for the

1 department and an administrative law judge than
2 it would be to engage in some sort of early dispute
3 resolution mechanism, particularly if it was
4 streamlined.

5 I think there's great opportunity
6 there. It is my personal opinion that that is
7 probably the best idea that has been floated in
8 this entire process that wasn't sort of on the table
9 at some point or presented by the department.

10 And I just want to say that I strongly
11 encourage the department to do a fulsome cost
12 analysis and consider whether there are really any
13 impediments to embedding some sort of voluntary
14 resolution process on the front end that would allow
15 students and borrowers and schools the opportunity
16 to try to resolve the issues, non-binding, not
17 compulsory, but just some sort of way to try to
18 resolve things prior to going through all the
19 machinations that we've been dealing with here.

20 PARTICIPANT: Did the department want
21 to respond?

22 MS. WEISMAN: So I think there are a
23 couple of issues related to the idea of a voluntary

1 process that was -- multiple ideas were floated.

2 We talked about it extensively at the last session.

3 As you noted it did not appear in the language
4 here.

5 One of those reasons was cost and the
6 concern about not just the actual monetary cost
7 but the time that it would take to do such an action,
8 the possible delay that the borrower then would
9 experience in waiting for that type of a process
10 to occur.

11 There is nothing in the regulations
12 that would stop the two parties from having that
13 kind of a conversation.

14 We did have concerns that we did not
15 want borrowers to feel pressured or required to
16 participate in such a process, especially when
17 again they do not have the same resources that an
18 institution would have.

19 And the department did not want to be
20 in the position of I would say mediating between
21 the two parties.

22 We did not feel that in this case that
23 was really our role as an agency in this purpose.

1 We have a very different role here than
2 would OCR for example, Office of Civil Rights.
3 And I think that it was important to us that we
4 try to stay true to our role.

5 That said if people feel very committed
6 to that idea we could certainly entertain language
7 that would open up the idea of doing it. But
8 without the department really having an active role
9 there, that it would be something if you felt better
10 about having a statement that the two parties could
11 voluntarily come to some agreement I don't think
12 we would oppose that.

13 I'm not sure what it would add though
14 because from our perspective that's not something
15 we would typically regulate. Parties can always
16 have that kind of a discussion if they wish.

17 PARTICIPANT: And just to clarify, I
18 think something that's been lost in this
19 conversation is just with the standard we're
20 talking about a borrower bringing a claim that's
21 basically charging the taxpayer. That's separate
22 from our claim against the institution for
23 recovery.

1 And so a mediation with the
2 department's active involvement would be
3 definitely a departure from the way the department
4 views this process.

5 PARTICIPANT: Abby, I saw your tag go
6 up. Is this on the notion of an early dispute
7 resolution process? Go ahead, please.

8 MS. SHAFROTH: I just wanted to chime
9 in that I would be, as I expressed earlier,
10 especially to the extent it would allay some of
11 the concerns of schools that schools that made a
12 mistake or had one-off problems, that they have
13 these reputational concerns about borrower
14 defenses. If this would help address them to have
15 a mediation process that that's something that I'm
16 happy to have discussion of and I think could be
17 potentially a valuable area to help us reach
18 compromise.

19 If the department is saying that they
20 would be willing to entertain voluntary dispute
21 resolution but not with the department mediating
22 then that's harder for me to get behind because
23 what made it seem acceptable from a student

1 perspective is having some protection from a
2 neutral department mediator to help ensure that
3 an unrepresented student doesn't get taken
4 advantage of through the process.

5 So I echo Aaron's interest in hearing
6 from the department about the willingness to do
7 this, but if the department would not be willing
8 to be involved in a sort of mediation type role
9 then I think that that unfortunately might not work
10 from my perspective.

11 PARTICIPANT: Chris DeLuca and then
12 Aaron.

13 MR. DELUCA: So, the thought process
14 is looking at the number of cases that are currently
15 backlogged. And I realize this is a rule going
16 forward so in light of what we've experienced though
17 with all those backlog of cases what can we do better
18 in the future with respect to this.

19 And again the idea of early dispute
20 resolution. And again, it's not just OCR that uses
21 early dispute resolution. To my knowledge every
22 court system in the country, state and federal
23 court, the idea is to use a mediation process

1 because I assume that these hundreds if not
2 thousands of tribunals out there use early dispute
3 resolution because they think they can get a
4 resolution quicker.

5 It seems to me even just looking at it
6 purely from the standpoint of in this instance the
7 department is being asked to adjudicate a claim.

8 Does the borrower have a defense to repayment.

9 And so what's the most efficient way
10 to do this. And that's why the proposal was brought
11 up to begin with.

12 And I recognize that there is the
13 particulars of how that works. And the proposal
14 that was put out last time we were together was
15 to use the OCR as an example.

16 But I recognize there are different
17 considerations and things. From my perspective
18 I would be happy with a placeholder to say that
19 under rules to be determined by the Secretary.

20 I assume that whoever gets hired at the
21 Department of Education to process these claims,
22 there's going to be training. There's going to
23 be training manuals, there's going to be handbooks,

1 there's going to be this is how we process a claim.

2 The regulations aren't going to go into
3 the nitty-gritty. And if the nitty-gritty ends
4 up being in a handbook. That's what the OCR policy
5 I took from was in their handbook. It wasn't from
6 the regulations, it was in a handbook that they
7 use.

8 So I don't feel like the process needs
9 to be, you know, we need to tie the Secretary's
10 hands in the regulations, but I do think from
11 whoever's perspective you're looking at I think
12 it's going to be quicker. There's going to be an
13 opportunity for quicker resolution. There's going
14 to be an opportunity for it to be -- and again from
15 the department's standpoint even if it's just
16 purely a standpoint of looking at we just need to
17 resolve these cases quicker. Our job is just to
18 decide these cases.

19 My gut tells me, my experience tells
20 me, I firmly believe that you'll be able to process
21 claims quicker if you have this built into your
22 process. Again recognizing it needs to be fully
23 vetted by the folks at the department.

1 Again, I'm strongly encouraging that
2 we have that concept in the regulation.

3 PARTICIPANT: Aaron.

4 MR. LACEY: Just two or three things.

5 The first is I agree with Abby. I have no interest
6 in bad actors being able to capture students or
7 force students into something. I think it is
8 critical the idea here is that there's a
9 representative from the department facilitating
10 the exchange of information and helping to inform
11 the parties.

12 And this doesn't have to be extensive
13 or lengthy or over a period of many days. This
14 can be a pretty brief thing.

15 But helping people understand the
16 process, their opportunities in that process and
17 what the opportunities might be to reach a
18 resolution.

19 And I agree that's a critical component
20 here. It doesn't help to force students to deal
21 with bad actors. It doesn't even help to have two
22 good actors if they don't really understand how
23 the process works and no one is helping to

1 facilitate. So I think that is a critical
2 component.

3 And again I think the cost savings on
4 the back end, it just seems impossible to me that
5 it could be more expensive or for that matter a
6 quicker resolution for the borrower.

7 And speaking to the issue of timing,
8 you can just set a fixed time period. You can just
9 give the parties 60 days to resolve the issue.

10 But if you're thinking about when does
11 the taxpayer actually get the money back from the
12 department I mean gosh, a subpart G proceeding could
13 take months. So the taxpayers could be out for
14 a much longer period of time.

15 And even a borrower defense claim. Who
16 knows how backlogged those would be.

17 I just, I don't see the timing or the
18 cost as necessarily dispositive issues here.

19 The other point I'll make is, and I
20 appreciate in some sense structurally how this is
21 different from say a Title 9 claim and dealing with
22 OCR. But as a practical matter it's not.

23 The department claims an absolute right

1 to recover these monies if they're discharged from
2 the institutions. From day one when the claim is
3 made really what the department is doing to Chris's
4 point and as I think our AG friends have pointed
5 out and others if I can characterize you as AG
6 friends, I hope that's okay -- as has been pointed
7 out by the AGs, look, you've got a misrepresentation
8 or a fraud style claim and you guys are adjudicating
9 that claim. Right? So that's what this is.

10 It's just like any other claim like that
11 in a sense between two parties. And as Chris has
12 eloquently pointed out in many, many, almost all
13 cases elsewhere you have an idea of voluntary early
14 dispute resolution, however the best way to say
15 it is.

16 But again, I think the hurdles can be
17 overcome.

18 PARTICIPANT: So just to jump in here
19 as a facilitator, I am not sensing much disagreement
20 from the table on this issue. Perhaps some of the
21 individuals that have spoken and advanced the issue
22 would be willing to maybe put together an idea in
23 concept of what it would look like.

1 But I think just at this time probably
2 we'll move on to the other comments. I had Ashley
3 Reich next on the list and we will keep moving.
4 Thank you.

5 MS. REICH: I have a question and then
6 a suggested wording based on how you guys are
7 processing.

8 So on page 4, 3(i) when you are denying
9 a claim do you inform the borrower the reason or
10 the reasons as to why the claim was denied? And
11 if so I would suggest adding some text there to
12 say a written notification to the borrower with
13 the reason or reasons denying the claim. Just to
14 clarify that.

15 And that would help the borrower and
16 I think give us some assurance that the student
17 or borrower would know why their claim was denied
18 if they didn't meet that minimum threshold.

19 MS. WEISMAN: So I think anything we
20 want to do here related to process we need to specify
21 here more than worry about what's been done on the
22 previous applications.

23 MS. REICH: I just wanted to be sure

1 that that was what the department would be doing
2 or you all could agree to that. And I think that's
3 very important that we indicate the reason or
4 reasons.

5 PARTICIPANT: Walter.

6 MR. OCHINKO: So I had a question
7 related to that, but I'm not sure I'm following
8 Ashley's question.

9 My question was basically the same but
10 it really applies to section 3 where you have it
11 has to meet a minimum threshold. And it says you
12 provide a written notification, but I don't see
13 that there's any language there about providing
14 the reason for the decision.

15 Whereas if you look on an application
16 that you accept the written decision on page 5,
17 4(ii) providing the reasons for the decision.

18 I just wondered if you couldn't
19 incorporate that language into 3, section 3.

20 PARTICIPANT: So Walter -- one second.

21 So Ashley, is the blue addition on there in line
22 with what you were suggesting?

23 MS. REICH: I think Walter and I are

1 -- I think we're saying the same thing, that we
2 need to know the reason or reasons as to why the
3 claim was denied. Is that what you're saying?
4 Yes, then we're in agreement with that.

5 PARTICIPANT: Okay. Any additional
6 comments on the inclusion of that language in 3(i)?

7 MS. REICH: You could also if it's
8 easier, I don't know from like a wordsmithing
9 perspective if you say with the reason and then
10 the S in the parentheses. I don't know if that
11 makes a difference.

12 PARTICIPANT: Is it covered under 4,
13 written decision and then it says providing the
14 reasons for the decision? That's different?

15 PARTICIPANT: That's different
16 because that's after a final decision whereas the
17 other one in 3 is looking at the initial
18 determination. So really just looking to see do
19 we have enough to process a claim. Do you have
20 the basis for a claim.

21 Not evaluating all of the evidence but
22 do you have some evidence, for example. Do you
23 have a fully completed application that includes

1 what we need to go forward.

2 PARTICIPANT: Dan, I saw your card up.

3 Was it on this item or is it a separate item?

4 Okay, so I'll put you on the list.

5 Abby, is your card for this item or a

6 separate item? Okay. Your comment on this item

7 and then I'll add your name to the list as well.

8 MS. SHAFROTH: I wanted to voice

9 support for notifying the borrower of the reasons

10 denying the claim. It also hadn't been clear to

11 me to what extent the written decision provision

12 number 4 on the next page would apply here.

13 It sounds like you're saying it's not,

14 that that's only if there's a decision after the

15 initial review.

16 But given that then I would like some

17 clarification from the department if the borrower's

18 claim is thrown out at this initial review period,

19 if it's denied then does the borrower have an

20 opportunity to ever submit a claim again.

21 MS. WEISMAN: Yes. Yes, the borrower

22 could always send in a new claim to say that well,

23 now I have the evidence, or they've included it

1 if they didn't include it previously.

2 PARTICIPANT: So before we jump back
3 into our queue here just a quick show of thumbs
4 on this language here that was added and suggested
5 by Ashley Reich and supported by Walter with the
6 reason/reasons. No thumbs down. There is one
7 question from Juliana.

8 MS. FREDMAN: For the initial
9 threshold determination will the department look
10 to information in its own possession related to
11 the claim for evidence, or is it only what the
12 borrower attaches to their application? When
13 determining whether the claim should be processed
14 at all.

15 MS. WEISMAN: So to clarify, it's kind
16 of what I thought but I wanted to make sure before
17 I spoke.

18 What we intended to do probably isn't
19 worded as best we could do it here so we may want
20 to wordsmith a little bit.

21 The intent is that we would look for
22 a completed application and they're at a station
23 would be the initial evidence. So it wouldn't have

1 to contain more than that, but it would need to
2 be a fully completed application and have their
3 signed statement attached. Their under penalty
4 of perjury they sign this application form.

5 As I read it though where we've adjusted
6 the language based on what we talked about at the
7 last session we edited that to say providing
8 evidence that supports the borrower defense claim.

9 MS. FREDMAN: So the evidence is before
10 or after the minimum kind of threshold
11 determination about whether to review the claim
12 is determined.

13 In other words if a borrower submits
14 an attestation signed under penalty of perjury and
15 doesn't attach documents but the department has
16 documentation that might support that claim will
17 it get processed.

18 MS. WEISMAN: Yes. Because again our
19 initial review is not evaluating evidence but just
20 looking at is there something there.

21 So if in their form they say the
22 department made a finding against X school well
23 then we have that information, we're aware of that.

1 We've got the completed form so it meets that
2 initial screening and we keep processing.

3 MS. HONG: And just to provide some
4 context, we've heard from people that review these
5 claims that oftentimes people will submit
6 incomplete applications. So this is just an
7 initial screen just to sort of ameliorate that
8 issue.

9 PARTICIPANT: Michale, do you have a
10 quick comment on this?

11 MR. MCCOMIS: So if that's the case and
12 because we cross reference with 685.222. This is
13 on page 4, number 3, arabic 3, and we use the word
14 qualifying borrower defense claim I think that's
15 where the confusion might lead.

16 Because what I think that you're saying
17 is presented a complete borrower defense
18 application period. Like you don't even need to
19 cross reference to 685 because 685 sets forth the
20 qualification for the claim itself as well
21 qualitatively.

22 So if Caroline, what you just said is
23 what we're really looking for is a complete

1 application then why don't we say that.

2 MS. WEISMAN: Yes, I mean I think it's
3 a completed application but they have to allege
4 something that makes the basis of a claim. So I
5 think we do still want that cross reference in there
6 because -- and I think what Caroline was alluding
7 to is we get applications in that say things like
8 my school was terrible. Okay, they signed it and
9 dated it. Well, that would be a completed
10 application but it doesn't allege anything. It
11 doesn't yield anything.

12 So we're looking for a completed
13 application that states something that would be
14 grounds for a claim. And so for that reason we
15 feel it's important to outline the idea of the
16 standards in 685.222. We want to refer them back
17 to something so they know what those contents would
18 need to include.

19 PARTICIPANT: Ashley Harrington, did
20 you have suggestions or comments on this?

21 MS. HARRINGTON: So, appreciate the
22 explanation. If it is just that you want a
23 completed form then do we even need C at all? C

1 provides minimum supporting evidence to
2 corroborate the borrower defense claim.

3 Or is the attestation that
4 corroborating evidence. But it seems redundant
5 then to B.

6 MS. WEISMAN: So I think that we're
7 talking about two different things. We're talking
8 about the idea of having the completed form that
9 alleges something.

10 And so we would want there to be some
11 evidence. Now the signed statement is some
12 evidence, but here once we get to adjudicating the
13 claim we're looking for a little more.

14 So there's the initial screening and
15 then there's the actual processing.

16 MS. HARRINGTON: Right. So I'm
17 talking about for the initial screening. It seems
18 like C provides minimum supporting evidence is
19 under your initial screening process.

20 MS. WEISMAN: Right, and there the
21 initial what we would call minimum supporting
22 evidence could be the attestation or the signed
23 application.

1 MS. HARRINGTON: Right, which would be
2 the claim alleging a misrepresentation as in B.
3 Why do you need C spelled out in this way is what
4 I'm asking.

5 MS. HONG: So this was written in
6 tandem with issue paper one where we set forth that
7 it has to be found that there's substantial weight
8 of the evidence.

9 So the way that standard was written
10 at the time, that also said attestation plus
11 corroborating evidence. So they kind of work
12 together.

13 So if there's changes to be made then
14 this is certainly language that would move an
15 adjustment to that.

16 MS. HARRINGTON: Then that doesn't go
17 with what you're saying because this is the first
18 step, just the minimum step to even get your claim
19 evaluated based on whatever evidence standard we
20 come up with.

21 And if you're saying you're just
22 looking for a completed form C could be confusing
23 to borrowers as in the completed form that details

1 what happened is not enough to get their claim even
2 considered.

3 PARTICIPANT: So looking for
4 suggestions on how we can improve this. Abby, you
5 had your card up. Michale, I see your hand up.
6 A suggestion on how we can improve this?

7 MR. MCCOMIS: I have several.

8 PARTICIPANT: Okay.

9 MR. MCCOMIS: So you use under (i) and
10 (ii) you use the phrase minimum threshold for
11 consideration. So if that's -- maybe you move that
12 into 3, whether the borrower has presented an
13 application that meets the minimum threshold for
14 consideration and you can keep your cross reference
15 in there.

16 And then under C to Ashley's point --
17 the form will have a checklist. Did you submit
18 a claim, did you -- and one of the things that you'll
19 check off is is there evidence. Maybe the word
20 minimum is not because that's a qualitative, an
21 assessment kind of term.

22 So provides supporting evidence that
23 the borrower believes to corroborate the borrower

1 defense claim.

2 That way you're not making any kind of
3 affirmative judgment at that point, you're just
4 saying does the application contain evidence that
5 the borrower believes supports his or her claim.

6 PARTICIPANT: Kelli.

7 MS. PERRY: Just another thought
8 because I feel like we're doing two things in one
9 here where we're evaluating a minimum threshold
10 and then we're getting into the adjudication of
11 the borrower defense claim once it's either
12 approved or denied.

13 So where we have number 3 adjudication
14 of borrower defense claim maybe 3 becomes minimum
15 threshold for consideration. And then you list
16 1 and 2, the denial and the minimum threshold.

17 And then the adjudication of the claim
18 becomes number 4. And you go on to list the
19 additional evidence. And then the school, what's
20 in (iii) and so forth.

21 MS. WEISMAN: So can we have just a few
22 minutes to confer?

23 PARTICIPANT: Why don't we just take

1 a 10-minute break. So be back at 2:54.

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

4 PARTICIPANT: Okay. Brian, are you
5 filling in for Caroline? Okay.

6 So we took a break to give the
7 department some time to confer on what was asked
8 of them right before the break. So do we want a
9 report out or keep moving?

10 MS. WEISMAN: For right now I think we
11 need to keep moving through. We will get some
12 answers for this and some other questions later.

13 But I appreciate the conversation.
14 I'd like to move on to (iii). (iii) at the bottom
15 of page 4 now reads if the Secretary determines
16 that the borrower meets the minimum threshold for
17 consideration of a borrower defense claim as
18 described in paragraph D(3)(ii) of this section
19 the Secretary provides written notification of the
20 determination to the borrower and the school.

21 The notification to the school provides
22 the school with a copy of the borrower's application
23 and any supporting evidence submitted with the

1 application.

2 The school may submit a response to the
3 borrower's claim as described in D(3) and I can't
4 see if there's a strikethrough. I believe it's
5 (v) (c) of this section.

6 Moving on to page 5, the new (iv) is
7 the borrower and the school may provide the
8 Secretary any additional relevant evidence within
9 45 days of the date of the notification specified
10 in paragraph D(3) (iii) of this section.

11 And then we've renumbered in (v) (b).
12 We've changed documentation to evidence.

13 Renumbered again. We also added that
14 the response or information submitted by the school
15 we've listed out that it would also be able to
16 request additional relevant information from the
17 borrower or the school.

18 And then we want to close out this
19 section in (vii) upon request the Secretary
20 provides the borrower any information submitted
21 by the school and provides the school any additional
22 information provided by the borrower.

23 The Secretary further provides the

1 borrower and the school with any other relevant
2 information obtained by the Secretary in resolving
3 the borrower defense claim.

4 And I think I'd like to break it at that
5 point.

6 PARTICIPANT: Okay. So Valerie and
7 Dan, your tags were up before we went to the break.
8 So we'll go Valerie, Dan and then Walter.

9 MS. SHARP: I just have two quick
10 comments.

11 One of them is just a wording point.

12 I noticed that in this issue paper we've switched
13 from institution to school. Then we switch back
14 in the following issue papers to institution.

15 I think probably for the sake of just
16 being consistent throughout the issue papers that
17 in the wording we might want to use just
18 institution. I mean it would be just in multiple
19 places. It almost looked like maybe this was
20 written by a different person because they always
21 refer to the school and the other papers refer to
22 the institution. There may be a couple of other
23 places where school is mentioned. So just a point

1 there.

2 My other point was since you may be
3 working on this portion of our request on the
4 subpart G for provisionally certified, that is
5 mentioned again, and I know we're not there yet,
6 but in case they're looking at it right now on page
7 7 in numeral 9 it refers to subpart G again.

8 So if we're going to consider wording
9 for the beginning there could we also consider it
10 here at the same time. So I apologize for jumping
11 ahead, but in case they're working on that at this
12 moment I wanted to skip ahead.

13 PARTICIPANT: Dan.

14 MR. MADZELAN: I had a comment or a
15 suggestion or a question on D(1), (2), (3) up
16 through (i) and (ii). But if the department is
17 -- they indicated they were thinking about that
18 and would come back I'm willing to hold off until
19 they come back with something. Or I can ask now.

20 PARTICIPANT: I'd say make the comment
21 or question now just so while they're considering
22 it they have that.

23 MR. MADZELAN: Okay. I guess, well

1 Ashley stole my thunder on C, the minimum supporting
2 evidence.

3 But I guess, let me see if I have this
4 sequencing right. It looks like under D(1) there's
5 an application. And the application doesn't have
6 to be complete because in D(2) as long as there's
7 an application in hand a forbearance is available.

8 However, even though that application
9 is not complete at that point and there is
10 forbearance available now you come to arabic 3 where
11 there's an evaluation of the quality or
12 completeness of that application.

13 And depending on thumbs up, thumbs
14 down, some things happen.

15 So first of all, do I have that right.

16 And if there is an instance, assuming I'm right,
17 that there's an initial application that even if
18 it's incomplete a forbearance can be triggered then
19 once an evaluation is made of the quality of that
20 or completeness of that application then is there
21 a further review or dismissal of the forbearance
22 if it's an unqualified application.

23 So again, first question is is the first

1 check of any sort of an application there because
2 any sort of an application can trigger a forbearance
3 even if it's not a quality application.

4 MS. WEISMAN: We can discuss whether
5 it might be appropriate to move the forbearance
6 until the point -- after the point that the initial
7 determination is made.

8 PARTICIPANT: Walter.

9 MR. OCHINKO: So I had a comment
10 similar to the one that Valerie just made. They
11 say consistency is the hobgoblin of little minds.

12 But I noticed in C on page 4 -- I'm sorry,
13 (v) up to this point you use the word evidence pretty
14 consistently. All of a sudden this section bottom
15 of page 4 you say response or information.

16 On the next page, A, considering the
17 relevant information. B, request additional
18 relevant information.

19 I wondered if there was any reason for
20 not using the word evidence.

21 And frankly I like the word
22 information. I think it's a lot more neutral than
23 the word evidence. Evidence sounds like you're

1 in a court.

2 So I would propose too that you might
3 consider changing the word evidence previously and
4 using the word information instead.

5 PARTICIPANT: Alyssa.

6 MS. DOBSON: It says upon request that
7 the Secretary will provide any further information.

8 I'm just curious as to how either a student or
9 school is supposed to know that more information
10 was even submitted in order to request it.

11 Either party can submit things within
12 the 45-day period. So if you're only going to give
13 us any subsequent information upon request would
14 you like me to email you daily.

15 MS. WEISMAN: Can you clarify where in
16 the paper you are?

17 MS. DOBSON: It's (vii) middle of page
18 5. I can't imagine a case where either party
19 wouldn't want the information that was submitted.

20 Yet how would we know it was submitted to request
21 it.

22 PARTICIPANT: Do you have a
23 suggestion, Alyssa, of language?

1 MS. DOBSON: Striking upon request.

2 PARTICIPANT: Striking upon request.

3 Any other suggestions? Ashley --

4 MS. REICH: I would just say I agree,
5 strike upon request and say the Secretary will
6 provide the borrower.

7 PARTICIPANT: Chris.

8 MR. DELUCA: Similar with that (vii)
9 I think it's out of place. I think because we've
10 got (iv) says the borrower and the school may
11 provide the Secretary with additional relevant
12 evidence within 45 days.

13 And then you've got in resolving the
14 borrower defense the Secretary will consider and
15 then in resolving the borrower defense claim under
16 6.

17 It seems like this section should go
18 to become the new 5. It should move up. So the
19 borrower and the school may provide the Secretary
20 with additional relevant information within 45
21 days, and then it seems like the next step, and
22 maybe this gets to your point, Alyssa, as far as
23 when that is, is okay, you've had 45 days to submit

1 any relevant additional information. After that
2 then the Secretary will provide the parties with
3 the information and then that kind of ties into
4 -- we want to think some more about where to put
5 in the early dispute resolution pieces of it.

6 But again that seems to be okay. The
7 school gets all the information from the student
8 and then the student gets all the information from
9 the school.

10 Then they have all the relevant
11 information and then they can have an opportunity
12 to say okay, do we want to go through with the formal
13 full-blown proceeding or is this the right time
14 to take a deep breath and say okay, is there a way
15 that we can resolve this now that we know where
16 everybody is coming from.

17 PARTICIPANT: Michale.

18 MR. MCCOMIS: So, trying to achieve
19 some parallel-ativity.

20 In 685.222(b)(3) we say that the
21 Secretary will find substantial weight of the
22 evidence either by -- that's provided by the
23 borrower or otherwise in the possession of the

1 Secretary.

2 And then in this section under 6(A)
3 consider other relevant information obtained by
4 the Secretary.

5 In order to make those align I might
6 suggest either using parallel words, or changing
7 it to consider other relevant information in the
8 possession of or obtained by the Secretary. Or
9 just making it match and say consider other relevant
10 information in the possession of the Secretary.

11 PARTICIPANT: Juliana.

12 MS. FREDMAN: So I think some of what
13 I might have to say may be an echo, but the way
14 it's structured now the school automatically gets
15 a copy of everything the borrower submits and then
16 upon request the borrower can get copies -- both
17 parties can get copies of additional information.

18 So the school has a chance to look at
19 what the borrower submitted and submit evidence
20 based on that, and the borrower should have the
21 same opportunity. Whether it's upon request with
22 some kind of explicit notification or automatically
23 as Alyssa suggested there should be a time frame

1 after that for them to submit additional
2 information once they have whatever the school
3 submitted.

4 So maybe Chris's suggestion of flipping
5 the 45 days to before that would do the trick.

6 PARTICIPANT: Aaron, you say you have
7 language?

8 MR. LACEY: Yes, actually I had the
9 same point. I think there's several things that
10 can be improved here so let me make some suggestions
11 and I think they address that concern.

12 So I would go up to (iii) and I'm going
13 to have sort of a package of suggestions here.

14 So the first thing I would do is insofar
15 as you're making edits. So where it says, you go
16 down to the last sentence of that (iii) starts with,
17 "the school."

18 The first thing I would ask you to do
19 is to break apart these paragraphs. And then I
20 would suggest a placeholder because this is where
21 we will provide language tonight before close of
22 business for an ADR concept.

23 Because the idea -- I think that would

1 be the right place. Claim has been certified and
2 then at the time the notification goes out
3 essentially at that same point is when the parties
4 would both be supplied with an opportunity if they
5 wanted to participate in ADR. So I would put
6 brackets and a placeholder.

7 And then the next paragraph starts,
8 right now it says the school may submit a response
9 to the borrower's claim. What I would propose is
10 first of all the school has 45 days to submit a
11 response to the borrower's claim as described in
12 whatever from the date it receives notification
13 of the claim.

14 Now if we add in an ADR we'll say and
15 provided the parties determine not to pursue ADR
16 or whatever.

17 And then right after that we would say
18 at the end of that period the department supplies
19 the borrower with any response that the school has
20 provided.

21 And then I would say (iv) needs to be
22 revised to say the borrower and the school may
23 provide the Secretary any additional relevant

1 evidence within 45 days of the date of the
2 notification specified -- but instead we would say
3 within 45 days of the date the borrower receives
4 the copy of the school's response.

5 So that way you've got the school is
6 notified, the school has 45 days to respond. Then
7 the department has to supply the borrower with the
8 response. And from the date the borrower receives
9 the response both parties then have 45 days to
10 provide any additional relevant information.

11 And the department still has an
12 obligation without request to provide the borrower
13 and the school any information submitted by the
14 other.

15 So there would still be a point
16 following the end of that 45 days when the
17 department would need to provide any additional
18 evidence that had been supplied to both parties.

19 So, that way the borrower has a chance
20 to respond to the school's reply. The school is
21 getting provided any additional information that
22 comes in and can also provide any additional
23 information, et cetera.

1 PARTICIPANT: Wanda.

2 MS. HALL: So in this instance I'll use
3 the word tentative. It's tentatively approved is
4 not the right word for the borrower. School has
5 45 days to respond.

6 School responds with some type of
7 information. Then they send that information to
8 the borrower so we're talking another 45 days or
9 whatever for the borrower to then come back.

10 PARTICIPANT: And the school and the
11 borrower have 45 days from the date the school
12 receives a copy -- let me restate this.

13 The school and the borrower have 45 days
14 from the date the borrower receives a copy of the
15 school's response to provide any additional
16 information.

17 MS. HALL: And the school had 45 days
18 to provide that information.

19 PARTICIPANT: Previously. Correct.

20 MS. HALL: And if the school doesn't
21 respond then you move to the written decision step.

22 PARTICIPANT: Well, the school has 45
23 days to respond. If it didn't there would just

1 be no --

2 MS. HALL: So then you'd go to the
3 written -- because I was mapping out the forbearance
4 period.

5 PARTICIPANT: Understood.

6 MS. HALL: And so you're 45 days, 45
7 days. That helps because I was trying -- that's
8 why I was up and down. I was trying to map out
9 the process.

10 PARTICIPANT: Caroline.

11 MS. HONG: Just a clarification. So,
12 since you have a placeholder for ADR do you mean
13 all the information exchange, like the initial
14 45-day window would be triggered after the ADR?

15 PARTICIPANT: I apologize. I may have
16 suggested breaking those at the wrong point.

17 What I would suggest is after the
18 department certifies a claim that it would send
19 a notification to both parties that the claim had
20 been filed and it would provide them information
21 about the opportunity to engage in ADR over a set
22 period of time. We'll say 60 days.

23 And then it would say if you don't elect

1 to participate or if some sort of resolution is
2 not achieved in 60 days then we will provide you
3 a subsequent notice that will detail the borrower
4 defense process.

5 And so the first 45-day period for the
6 institution to provide a response would be
7 triggered by the receipt of that official notice
8 that the borrower defense process was beginning.

9 Does that make sense?

10 So that first correspondence from the
11 department would not represent the official notice
12 that a borrower defense proceeding was being
13 engaged.

14 Rather it would represent a
15 notification that a claim had been filed and here
16 are the parameters for ADR if you choose to engage
17 in that.

18 And you have a fixed amount of time to
19 do that. And if you either choose not to, either
20 party, or you don't reach resolution then at the
21 end of the 60-day period we will send you an official
22 notification like a briefing schedule. We'll send
23 you an official notification and that will start

1 the 45, 45-day process.

2 PARTICIPANT: So Chris had proposed
3 starting an ADR process after the exchange of
4 replies and information. But you're saying to
5 start it before.

6 PARTICIPANT: Well, we can talk about
7 it.

8 PARTICIPANT: We can talk about it.
9 I think it's just a question of obviously an ADR
10 process is going to include an exchange of
11 information. That's going to be part of it.

12 So just questioning and thinking
13 through how to facilitate that, if there's an
14 exchange of information that's built into the ADR
15 process then obviously that's information the
16 department's going to have and ultimately is going
17 to be used as part of the ultimate resolution.

18 So I think thinking through the
19 mechanics I think the idea is that somewhere in
20 that there's a notification, there's an opportunity
21 for the parties to choose if they want to try to
22 resolve it informally.

23 Whether they choose to or not there's

1 going to be an exchange of information and then
2 if there's not a resolution through ADR then the
3 department's going to make a decision.

4 But we need some time to think through
5 the particulars of when, what makes the most sense
6 in trying to make it efficient for all three parties
7 involved, the department, the student and the
8 schools.

9 PARTICIPANT: We'll talk about it.
10 But my thinking is typically after you have a
11 complaint filed in court or -- the complaint is
12 filed and then you have the ADR process. And that
13 would preempt a formal response from the
14 respondent. So I was trying to insert sort of
15 consistently that ADR process.

16 We're going to come up with language
17 and we're going to get it to you guys.

18 PARTICIPANT: So just to check in here,
19 and understanding the language is pending. So if
20 we extract the ADR bullet point from this thoughts
21 and comments from the group on the other changes
22 suggested.

23 Any thoughts, questions, concerns,

1 additional modifications? Will, was that a hand
2 up? Can we scroll down to (vii). I was mainly
3 looking at the paragraph that's on the screen.
4 The school has 45 days from the date received.
5 And then that would scroll down to (vii) which is
6 now on the screen.

7 Again, we're not doing a temperature
8 check here. We're taking additional comments.

9 PARTICIPANT: Will, did you still have
10 a comment on this?

11 MR. HUBBARD: I did, just a small one.

12 In terms of (vii) I'm curious what the department
13 intends to -- sort of the vehicle for this
14 communication. We're talking a letter, this is
15 online sending an email.

16 MS. WEISMAN: That's still to be
17 determined.

18 MR. HUBBARD: Is that something that
19 we would look to determine here potentially?

20 MS. WEISMAN: I think that level of
21 process we would expect we would do outside of the
22 regulation. Similarly to how when we say something
23 needs to be done in writing it could include an

1 email. I think we would kind of reserve that same
2 discretion for us.

3 There are some things that maybe
4 because of personally identifiable information we
5 might want to choose not to send in an email versus
6 other things that we might prefer to send by email
7 because of the volume of it.

8 I think those kinds of processes we'd
9 need to work out later.

10 The reason that we put in upon request,
11 for example, was because we were concerned about
12 the amount of communication going back and forth,
13 and that in some cases especially if a school feels
14 that oh yes, I know that case.

15 Just as what we hear about when we
16 contact schools about student complaints sometimes
17 schools will say I was expecting this call. I knew
18 you'd be calling me about that.

19 I think our feeling was that sometimes
20 a school might not want to receive the information,
21 that they wouldn't necessarily feel the need to
22 see it. But I do hear the concern that was
23 expressed.

1 But again to get back to your concern
2 I think that we can take care of that administrative
3 piece outside of this.

4 PARTICIPANT: Ashley Reich.

5 MS. REICH: My question is on page 5.
6 It would be (v) and then the list of A, B, C.

7 I think we've had some discussion that
8 not all of those items would be present necessarily
9 when you're looking to resolve the borrower defense
10 claim.

11 So was this list meant to be like all
12 of those items had to be present? Because right
13 now there's an and statement there. So I don't
14 know if we need to make it an or statement. Because
15 I know you said you want the application for sure,
16 but some of that evidence could also be department
17 records as supporting evidence.

18 So I'm not sure if that needs to be an
19 or.

20 MS. WEISMAN: So I think we felt the
21 need to keep the and because we were saying we would
22 look at all of these items. Now they may not all
23 be present, but that in resolving the claim we'll

1 consider all evidence we have which would include
2 these things.

3 In some cases it might be all of them.

4 In some cases it might be one of them.

5 PARTICIPANT: Michale McComis.

6 MR. MCCOMIS: Also in (vii) we've got
7 another obtained word in the very last sentence,
8 information obtained by the Secretary.

9 And I wonder, not really sure -- because
10 Chris had mentioned moving that up I'm not sure
11 where this is going to fit in, but either maybe
12 for consideration by the Secretary would be a better
13 way, or consideration by. Or to be considered.
14 Or something along those lines.

15 How far down are we going?

16 MS. WEISMAN: My plan was that we would
17 stop at that item. So at (vii) in the middle of
18 page 5.

19 MR. MCCOMIS: I will reserve my other
20 comments.

21 PARTICIPANT: Valerie.

22 MS. SHARP: I'm going back to the
23 facilitator request for comments on the 45 days

1 changes in (iii).

2 I think that is good. Forty-five days
3 is a normal response time for the schools to respond
4 to the Department of Education so I think it is
5 good to set a time frame on that so that schools
6 are responding in a timely manner.

7 And I fully support the opportunity
8 then that that is supplied to the student and
9 another 45 days is provided for the parties to
10 respond because the student should have the
11 opportunity to respond after they see what the
12 school has submitted. So I think those are good
13 changes.

14 I also think that it probably is a good
15 change to move (vii) up so that there is that
16 information provided to both parties. That means
17 the department's not sending every time they get
18 one item sending something to both parties, but
19 they can collect it all and then submit back to
20 the parties at the end of that process.

21 PARTICIPANT: Chris and then Wanda.
22 Okay, Chris.

23 MR. DELUCA: Valerie made the comment

1 that I was going to make as far as I still think
2 we need to move (vii) up to between what's now (iv)
3 and (v).

4 Again the idea that the borrower and
5 the school may provide the Secretary any additional
6 relevant evidence or information within 45 days,
7 and then once that's collected then the Secretary
8 will provide that information to the borrower and
9 to the school.

10 That seems like a much more natural flow
11 of how the process would work.

12 PARTICIPANT: Abby.

13 MS. SHAFROTH: So I'm a little confused
14 the way we've layered these 45 days on now. So
15 the borrower submits their application and
16 evidence, the Secretary certifies it, notifies the
17 school, gives the school a copy of all the
18 borrower's evidence.

19 The school has 45 days then to submit
20 its evidence at which point that evidence is shared
21 with the borrower. But then there's another 45
22 days -- as currently drafted there's an additional
23 45 days for the borrower and the school to submit

1 evidence.

2 And so as drafted I'm not sure that this
3 puts any incentive on the school to submit its --
4 to really submit its response and evidence within
5 the 45 days and give the borrower an opportunity
6 to respond to it.

7 As written it seems like the schools
8 could not really do much during the first 45 days
9 and then wait until that -- wait until the second
10 45-day period and sort of ambush the student at
11 that point.

12 Obviously I don't think that most
13 people around the table would be doing that, but
14 I want to make sure that the rules as written make
15 sense and prevent that from happening.

16 I think our idea was that in the normal
17 course of procedure a plaintiff, in this case a
18 borrower submits their case. The defendant or the
19 school has an opportunity to respond and then once
20 the borrower or plaintiff sees that response they
21 get a quick reply. So that's the way things would
22 be set out normally.

23 To bring that to a proposal I would in

1 (iv) here I would say the borrower may provide the
2 Secretary any additional relevant evidence within
3 45 days of when they see the school's response.
4 I would strike and the school.

5 And I'd be open to discussion of
6 something if what the borrower submits triggers
7 some newly discovered evidence for the school, but
8 otherwise I'm worried that the borrower might not
9 have an opportunity to really see the school's
10 response and respond to it before there's a
11 decision.

12 PARTICIPANT: Valerie, did you want to
13 respond to Abby's concern?

14 MS. SHARP: I did want to say that it
15 would be very unwise and would not behoove the
16 school to withhold anything they have in that 45-day
17 period.

18 When the department requests
19 information from a school and sets a 45-day deadline
20 it is a very strict deadline usually with some
21 strong language and penalty attached if you don't
22 respond within the time frame.

23 So schools would be very, very careful

1 about making sure that they provided everything
2 they possibly could.

3 And the only thing that would be
4 provided after that deadline would be like you said
5 something newly discovered or something that came
6 up.

7 Just from past history of working with
8 the department schools are usually very careful
9 to meet those deadlines because they are pretty
10 strict with us on those.

11 PARTICIPANT: Chris.

12 MR. DELUCA: And Abby I understand your
13 point but that certainly cuts both ways. So a
14 borrower could submit a bare bones claim with
15 additional information holding back that the school
16 doesn't know of until they send their response in.

17
18 That could go either way. So I think
19 whatever the process is here. And again we're
20 thinking in terms of open and honest, and again
21 I'm looking at it from the standpoint of
22 representing small schools who are just trying to
23 quite frankly resolve it as quickly as possible

1 and move on because they don't have the resources
2 to have a long, drawn out process involving the
3 U.S. Department of Education. They want to get
4 to resolution.

5 But having said that making sure that
6 there's protections for both sides and whether
7 that's -- what that looks like. If you've got
8 suggestions.

9 Under your suggestion there with (iv)
10 but do you have any suggestion as far as what
11 language would go ahead of that from the school
12 standpoint or making it incumbent upon the student
13 to say okay, you're going to make your claim,
14 present all your evidence with your claim. We
15 don't you sandbagging and holding back and saying
16 oh, I sent you 3 affidavits but now I've got 20
17 affidavits that I'm going to send in after the
18 school has responded and the school can't make any
19 more response then.

20 PARTICIPANT: Any other thoughts or
21 proposals on this section? Comments? Abby.

22 MS. SHAFROTH: So I appreciate those
23 points and it was helpful hearing from Valerie that

1 there is generally pressure on schools to respond
2 by a deadline.

3 My concern was that there are sort of
4 two deadlines here and a school could technically
5 satisfy them by really just meeting the second.

6 So maybe what you described is the
7 school would want to provide all the evidence they
8 have by the first 45 days and provide their
9 response, and they would mostly only want to provide
10 newly discovered evidence or evidence that they
11 discover is responsive to new information submitted
12 by the student after.

13 So maybe just making that explicit in
14 the rule that the school can provide additional
15 evidence in the second 45-day period that is newly
16 discovered or responsive to new evidence submitted
17 by the student. That would I think hopefully
18 satisfy both of our concerns.

19 PARTICIPANT: Chris, Valerie.
20 Thoughts on that suggestion? And Abby, was your
21 proposal an or between newly discovered evidence
22 or information in response to?

23 MS. SHAFROTH: Just making sure that

1 the school does have -- if new evidence comes out
2 that is relevant sure, school can submit it.

3 Or if the school sees this evidence from
4 the borrower and says oh, now that I see you're
5 saying that I need to provide this evidence I now
6 understand is relevant that's fine with me.

7 PARTICIPANT: So it would be newly
8 discovered evidence or evidence in response. And
9 I just want to take this note to say thank you for
10 typing. I know that's an extremely difficult job.

11 PARTICIPANT: Any other comments or
12 suggestions, modifications? Aaron.

13 MR. LACEY: I mean I get it, just the
14 immediate issue that pops up is what if a borrower
15 with totally good intentions, no ill will, but if
16 they provide the additional information on day 44,
17 what is the time frame in which the school has to
18 respond. The problem is we're going to keep
19 getting into this back and forth and back and forth.

20 Abby, I totally get all your points.

21 I also get Chris's point. It cuts both ways.
22 Both parties could have the opportunity to sandbag.

23 You have this post decision process in

1 which the parties have the opportunity -- first
2 of all here's hoping they resolve it through
3 alternative dispute resolution.

4 But both of them have the opportunity
5 after the written decision to introduce or request
6 reconsideration.

7 I don't know that there's an answer to
8 this. I think my preference would still be that
9 we give both parties 45 days. They get to look
10 at the notification. Then both parties have a
11 45-day period to respond.

12 And if a school has sandbagged and wait
13 until the last minute if you have a bad actor I
14 appreciate it's not the best circumstance but
15 either way. If a borrower sandbagged and so the
16 school's response was not -- because what could
17 happen is theoretically a borrower could sandbag,
18 the school responds to one or two things, and then
19 on day 44 the borrower introduces a bunch of
20 additional stuff.

21 Same thing. A school could in its
22 response sandbag and then on day 44 of this mutual
23 period submit a bunch of additional stuff.

1 The risk is really the same. If we've
2 got bad actors in either one of those camps and
3 they want to take advantage of the system they can.

4 But the idea is if they do that in both
5 cases there should be an opportunity post written
6 decision to seek a reconsideration. In number 5.

7 And we should talk about whether or not
8 number 5, you're talking about newly discovered
9 or responsive evidence or something there should
10 be tweaked.

11 The problem I have here is we're going
12 to just keep adding time periods. So I would
13 advocate -- understanding all the issues, but
14 understanding both sides bear some risk here that
15 a bad actor could try to manipulate this setup I
16 still think it's probably to go you do 45 days,
17 you do 45 days and then you have the decision.

18 And if somebody took advantage then
19 that's dealt with post decision in the
20 reconsideration provision. That would be my
21 suggestion.

22 PARTICIPANT: Just a thought and a
23 question. Do all of these time periods have to

1 be 45 days? And are there any other examples that
2 you might look towards for -- there are other
3 processes like these out there. So I'm not sure
4 how much you've looked.

5 There might be something to do after
6 the end of the day in considering what you want
7 to propose.

8 PARTICIPANT: What is the department
9 for OHA the briefing schedules are what, 45, 45,
10 15?

11 MS. WEISMAN: I believe that's
12 correct.

13 PARTICIPANT: Yes, so if we're afraid
14 that this is taking too long we could shorten it
15 so the school has 45 days to submit a response.
16 After that time period the borrower say has 30 days
17 seeing what the school argues to consider if they
18 have any additional evidence they want to put
19 forward that they now realize is relevant to
20 rebutting the school's response.

21 And then the school could have maybe
22 15 days if the borrower does submit new evidence
23 or argument to try to rebut that. That would be

1 providing I think the school lots of opportunity
2 to defend themselves, probably more than is
3 standard in civil procedure but it would keep the
4 time frame short and it would satisfy my core
5 concern of making sure that the student doesn't
6 get sandbagged and has an opportunity to respond
7 to the school's story.

8 PARTICIPANT: I think those suggested
9 modifications were made. Thoughts from the group?
10 Something you all want to think about as homework
11 or would you like to move forward?

12 PARTICIPANT: Chris.

13 MR. DELUCA: In thinking through this
14 process and kind of the back and forth, and again
15 I went to the OHA process and thinking through the
16 briefing schedule. So the parties submit a brief,
17 there's a response and then there's a 15-day
18 response back.

19 But the challenge there is after that
20 there's an opportunity for a hearing. So there's
21 not a hearing process in here. So we've got this,
22 it's all based on documents going back and forth.

23 It certainly doesn't benefit anybody

1 to get into back and forth responses that take two
2 years because there's additional information all
3 there.

4 If the process is the borrower makes
5 a claim and submits all the evidence that they have.

6 And then the school has an opportunity to respond
7 with everything they've got in response to that.

8 And then if there's something with
9 that, sort of like a reply brief concept to say
10 limited to whatever's in there, but there's not
11 an opportunity to bring new claims, or new evidence.

12 The challenge is that there's a whole
13 body of law as far as what's relevant and how those
14 processes work. And we're trying to boil that all
15 down into three paragraphs.

16 It's something from a homework
17 standpoint I think it's absolutely worth thinking
18 about how to do that. But again I think it's a
19 challenge, particularly when we're trying to have
20 a streamlined process.

21 But there's significant consequences
22 for all the parties involved here and we want to
23 make sure we're doing it fair.

1 PARTICIPANT: So understanding that,
2 and I do see Alyssa, Bryan and Ashley have their
3 cards up. I'm just thinking for the sense of time
4 I'm not sensing disagreement in intent between the
5 negotiators that have made comments.

6 So I think if we could efficiently run
7 through the next three comments we'll continue to
8 move on. If anyone comes up with any ideas on this
9 we have the proposals recorded that we've
10 discussed. If anyone comes up with things feel
11 free to share them. But we'll continue moving
12 through issue paper two.

13 PARTICIPANT: So Alyssa, Ashley Reich
14 and then Bryan.

15 MS. DOBSON: So I'm definitely for
16 shortening subsequent time frames, but I would
17 caution against too short. I think 15 days is
18 reasonable for those of you who are going to work
19 on perhaps changing some of that.

20 And then I don't want to speak on behalf
21 of the department but it might help to ease some
22 people's hesitation. It would seem like it would
23 be pretty obvious to me and therefore to the

1 department if a school were quote unquote
2 "sandbagging" students in this process.

3 And wouldn't you take some other stern
4 language approach with those institutions. I just
5 don't think it would be a problem because you would
6 stop it. But I don't want to speak for you. That's
7 all. Maybe you could speak to that end.

8 MS. WEISMAN: So are you saying that
9 if we gave a time frame and we felt that people
10 were going, waiting until the end to comply or
11 holding things back in the first round.

12 I think that certainly if we saw a trend
13 or a pattern we could address certain conduct.
14 I don't know in particular what we might do in those
15 cases, but I think our ability to just -- sometimes
16 people seem to have the impression that the
17 department, anything they don't like they can just
18 fix it. Well, the department can just do
19 something.

20 And yes, we have various tools in the
21 toolbox as we like to say, but again I think we
22 do have to think about the idea that we can't send
23 everyone out for a program review every time we

1 see conduct we don't like.

2 Our ability to take action is limited
3 to what we have in the statute and in the
4 regulations. And while I will say that yes, there
5 is the potential for us to do something the idea
6 that we would notice the trend and be able to act
7 in each case may or may not occur.

8 MS. DOBSON: But I think just from an
9 institutional standpoint knowing that that ability
10 is there there's a disincentive right off the bat
11 to behave in that manner.

12 PARTICIPANT: Ashley Reich.

13 MS. REICH: Just in regards to the time
14 frames. I'm also in support of looking at
15 different time frames. However, I would caution
16 the group that if we go 45 days in one avenue, then
17 30 days, and then down to 15 it gets really confusing
18 not only for the borrower but also for the
19 department and the institution to understand where
20 am I at in this process and how many days do I have
21 and did the days already go by.

22 So I would be more in favor of trying
23 to keep it somewhat consistent if we can between

1 those time frames. Maybe something the department
2 like was suggested has already established 45, 45,
3 15, or whatever. Just so that it doesn't -- we
4 don't have three different time frames throughout
5 all of this. That's just my suggestion.

6 PARTICIPANT: Bryan.

7 MR. BLACK: Actually I understand what
8 Ashley is saying and that does make sense.
9 However, if the fear is gamesmanship that is going
10 to be played with the idea that this is a process
11 you can always put a provision in there. I
12 scribbled out a little note to myself that would
13 go along these lines, that both sides shall
14 initially exercise a good faith disclosure of all
15 pertinent information within the time frame
16 specified.

17 Nobody wants to come to the Department
18 of Education with the feeling that gamesmanship
19 has been played. So I would suggest we either do
20 a thumb check on the 45, 30, 15, or just put a
21 provision in there that's kind of a catch-all that
22 there's a good faith obligation to put forth your
23 best evidence and not play any gamesmanship. Just

1 an alternative.

2 PARTICIPANT: Mike Busada.

3 MR. BUSADA: Speaking of good faith,
4 maybe because it's late, maybe because it is Mardi
5 Gras, laissez les bon temps roulez everyone.

6 In the spirit of good faith and
7 compromise I appreciate the comments that Abby made
8 in support of mediation earlier and as a result
9 I want to move to the center.

10 I think that what she has proposed in
11 terms of the time periods and the 15 days to me,
12 that's something that I think is reasonable.

13 PARTICIPANT: So do we want to do a
14 temperature check on the time period as proposed?
15 Aaron.

16 MR. LACEY: And I'll just add one
17 comment to address Ashley.

18 Typically in any kind of proceeding
19 like this, certainly in court when the department
20 and OHA, at the beginning of the process you would
21 get in that notice something describing the timing.

22 The timetables would run from when each document
23 or whatever the prior filing was received. So

1 hopefully that would be fairly clear to the parties.

2 Although that's something that
3 certainly could be explained in further detail
4 during the alternative dispute resolution process.

5 PARTICIPANT: And I agree, I just --
6 I think I get concerned as we -- even though it
7 will be explained it's like we have 45 days for
8 this section. We have 30 days for this section.
9 We have 15 days for this section.

10 I think that can somewhat get confusing
11 even in current regulation. There are certain time
12 frames for gainful employment, for example. We've
13 got X amount of time for this and a totally different
14 time frame for this. So it can get very, very
15 confusing even though it is outlined fairly
16 clearly, the time frames that we have.

17 I just get concerned about just
18 multiple different time frames. That's all I'm
19 saying.

20 PARTICIPANT: Okay. So let me see a
21 show of thumbs for the time frames that are proposed
22 on this screen which I am reading as 45, 30, 15.
23 Is that correct? Kelli has a question.

1 MS. PERRY: Just one clarifying thing.

2 So the end with the 15 it says the school must
3 submit newly discovered evidence or evidence in
4 response to the borrower's additional relevant
5 evidence within 15 days.

6 I think we need to say within 15 days
7 of receipt of that evidence. Because the
8 department then has to provide that additional
9 evidence to the school. So if we can just clarify
10 that it's within receipt.

11 PARTICIPANT: I would suggest that the
12 thumb check just be on the time frames and not the
13 specific language. Because there's certainly some
14 tidying up I think that would need to happen.

15 PARTICIPANT: I was just on the time
16 frame piece of it. So 45, 30, 15. Show of thumbs.

17 No thumbs down. Okay. Does that mean that we're
18 ready to move on to the next section? AnnMarie.

19 MS. WEISMAN: So picking up on page 5
20 in the middle with number 4 written decision. The
21 Secretary issues a written decision. We changed
22 some language in (iii) where we've added -- we said
23 previously informing the borrower. We've now

1 added and the school of the relief, if any, that
2 the borrower will receive consistent with paragraph
3 D(6) of this section.

4 Keep in mind D(6) is over on the next
5 page on page 6.

6 Also in number 5 reconsideration of
7 denials. We have replaced some text here now
8 saying in (i) the borrower or the school may request
9 reconsideration from the Secretary by submitting
10 newly discovered evidence within 60 days of the
11 date of the written decision in paragraph D(4) of
12 this section which is located earlier in this page.

13 So the comment here was made about
14 reminding me about the change from school to
15 institution. We can certainly take a look at that,
16 but what I would caution you of is that we are in
17 the direct loan regulations as well as some other
18 regulations throughout this process.

19 And throughout our regulations we have
20 somewhat used those terms interchangeably. So
21 that even if we fix it in these sections and make
22 it consistent with everything we do here that will
23 leave some other places where some places it says

1 school, some places it says institution.

2 So we can certainly look at that for
3 these papers, but know that there will be other
4 places within the text of the larger regulations
5 that will not necessarily include that.

6 Picking up on the next page on page 6
7 we have collapsed some of our phrasing into one.

8 We previously talked about what the borrower would
9 do, what happened if the borrower requested
10 reconsideration, what happened if the school did.

11 We have collapsed that language into
12 one. And we just say now if -- well, what we have
13 up above in the renumbered I believe it's 2 if the
14 Secretary accepts request for reconsideration the
15 Secretary follows procedures in D(2).

16 We then move down to 3 with newly
17 discovered evidence. The only change there I
18 believe is to really make it more active voice.
19 The Secretary did not rely upon in determination
20 of a borrower defense.

21 Then looking at relief, number 6, we
22 added a statement that says in determining the
23 appropriate amount of relief to be provided by the

1 borrower the factors the Secretary will consider
2 in a practicable manner include but are not limited
3 to, and then we begin our list.

4 We begin with (a) which is the value
5 of the education that the borrower received from
6 the school, and (b) the borrower's earning
7 potential.

8 We then renumbered (ii) and then began
9 the list again with A, B and C which were existing
10 items from the last session.

11 I'd like to break it at that point.
12 So what we're talking about now would then include
13 items 4, 5 and 6 on pages 5 and 6.

14 PARTICIPANT: Abby. Oh, Juliana.

15 MS. FREDMAN: I had a process
16 clarification which is we were going to come back
17 to the first section with minimum thresholds once
18 you guys figure some stuff out. Okay, that's all.

19 PARTICIPANT: Ashley Reich.

20 MS. REICH: Okay. So my question is
21 again on another time frame. So now we have a
22 fourth time frame of evidence within 60 days of
23 the date.

1 I believe if I'm following correctly
2 we went back to 45 days. So is there interest from
3 the group to changing the 60 to 45 to be consistent
4 with that and not have a fourth time frame?

5 PARTICIPANT: Thoughts on that. So
6 Ashley Reich has expressed her concern about
7 multiple time frames so she was wondering and Ashley
8 you can say it.

9 MS. REICH: On page 5 number 5 the
10 reconsideration of denials. We now -- this is
11 basically if I'm understanding correctly this is
12 almost -- once a denial happens they have another
13 opportunity, the borrower or the school has another
14 opportunity.

15 So now we're saying that they have 60
16 days to provide newly discovered evidence. But
17 in the prior section we've updated it to be 45 days.

18 I don't know where the other -- I think
19 there's only one other reference to 60 days, but
20 I don't think it relates to that process. Unless
21 I'm not following. There's a lot of time frames.

22 I'm trying to make sure I understand where we're
23 at. That was my original point was we're now having

1 multiple time frames.

2 PARTICIPANT: So is your proposal to
3 make the 60 and 5 -- 45.

4 MS. REICH: I think to be consistent
5 based on what we just did, if this is just another
6 opportunity to submit newly discovered evidence
7 I think we changed it to 45 from the original.
8 Is that correct? Or added 45.

9 PARTICIPANT: Wanda.

10 MS. HALL: Can I just make a
11 suggestion? I'm thinking about the department and
12 here's all these circles are going around. Can
13 we just say 45 days and then 30, 30, 30 or something
14 like that?

15 I mean, I think about when we get a
16 program review letter we have 30 days to provide
17 a response from the date of the letter.

18 And there's inconsistency here because
19 in a lot of these we're saying from the date the
20 borrower or the school receives it, and then on
21 this one is days within 60 days of the written
22 decision which to me is the date that's on the
23 letter.

1 And so it's easier for you to determine
2 when something is due if it's based upon the date
3 you sent the date of the letter.

4 And if 45 days isn't that much because
5 you don't know how long it's going to take to get
6 in the mail then add 5 more days. I don't know.

7 It's just to go 60, 45, 30, 15, 45, it
8 just is crazy in my opinion.

9 MS. REICH: And I want to be fair to
10 allow both parties enough time. I don't want to
11 just shorten it to shorten it. I'm just trying
12 to be consistent based on some of the other edits
13 that we've done.

14 But I agree I think we need to find some
15 consistency there.

16 MS. HALL: And when you get here,
17 everyone's had how many bites of the apple to try
18 to provide stuff.

19 PARTICIPANT: So if I'm hearing this
20 discussion correctly there's two items, two
21 concerns. The days and consistency in mixing up
22 how many days, and also the start date, whether
23 it is the date on the letter or the date of receipt.

1 So I think we should probably approach those
2 individually.

3 MS. HALL: I would look for
4 consistency. I'm not the one processing it.

5 PARTICIPANT: I'm happy to speak to
6 both of those and then I have a separate.

7 Those are all great questions and
8 observations. I think just offering some thoughts
9 based on my experience that it is typical that --
10 and I don't know about we have this 45 and then
11 30.

12 Typically the reason you start to
13 winnow down those time frames is the idea, and it
14 sort of gets to the point Abby was making earlier
15 that folks have already had some opportunity to
16 provide information.

17 So it's pretty common when you have
18 briefing schedules and things like that that the
19 windows will be reduced as time goes by. So I think
20 that is pretty common and there is a public policy
21 reason for that.

22 But it's important that briefing
23 schedules and things be clear.

1 I think that in my experience when I
2 work with schools and they've received program
3 reviews or things from the department it is from
4 the date of receipt. And that is precisely to avoid
5 the issues that arise from delays in mail and things
6 like that.

7 It may be different but I was just
8 dealing with this recently. And actually where
9 this has become ambiguous is because the department
10 will email you something then also mail it to you.

11 And then the question becomes what is the date
12 of receipt. Side note.

13 But that's precisely why it's from the
14 date of receipt. I agree with consistency. I
15 would say date of receipt throughout. I think all
16 those time frames should be.

17 And it's -- the obligation is on the
18 parties then to be able to substantiate the day
19 they received thing. So keep your mail or
20 whatever, get it certified mail or what have you.

21 I agree with the idea of consistency
22 but I think it's more fair to both borrowers and
23 students to date it from the date of receipt so

1 that they're not penalized if something went wrong
2 with the mail.

3 The last question -- but those are all
4 up for discussion. The last question I have for
5 the department is so under this framework if someone
6 requests reconsideration within the applicable
7 time frame what happens next?

8 I don't see any process here for whether
9 that information is shared, whether there's a time
10 frame, if either party requests reconsideration
11 and provides new information is that provided to
12 the other party and do they have an opportunity
13 to respond.

14 There's no separate process and there's
15 no cross reference to a previous process. It looks
16 like it just stops. So you submit a request for
17 reconsideration.

18 You've got the deferral piece so it says
19 we follow the procedures in D(2) for forbearance
20 and suspending collection activity. And then it
21 says what newly discovered evidence is. But
22 there's no process after that for the parties.

23 So I think we need that. I think folks

1 need to know if the Secretary grants a request for
2 reconsideration what happens next.

3 PARTICIPANT: Wanda. Okay.
4 Joseline. I'm sorry? Okay.

5 PARTICIPANT: Sorry, I thought there
6 were more cards. So I had a clarifying question
7 on page 5 big letter A consider other relevant
8 information obtained by the Secretary.

9 What would happen in the scenario where
10 years later after the claim was let's say denied
11 and there's this huge investigation and the
12 Secretary gets relevant information that could have
13 possibly given the student relief years prior.

14 But because again that information was
15 not found until years later. Would those claims
16 that had been originally rejected be automatically
17 reconsidered?

18 And if not could the department archive
19 these old claims so that they are automatically
20 reconsidered in a situation like that.

21 MS. WEISMAN: I think we have to take
22 that back for discussion as well.

23 PARTICIPANT: I had another question.

1 For big B request addition of relevant information
2 from the borrower or the school since we were
3 talking about time frames, and this is just for
4 clarification, when that request is made would the
5 department give a time frame to the institution
6 and the student, and if for any reason they cannot
7 meet that time frame can they request for an
8 extension?

9 MS. WEISMAN: I'd like to also take
10 that item back for discussion as well. I think
11 that we may have the ability to do that. We did
12 not specifically build that in here. But since
13 we're taking back other items from this paper I
14 think that's one worth taking back as well.

15 PARTICIPANT: Thank you.

16 PARTICIPANT: Abby, your tag's up.

17 MS. SHAFROTH: Yes. So I had a similar
18 concern about newly discovered evidence that may
19 occur after 60 days.

20 The department clarified previously
21 that if a borrower doesn't satisfy the minimum
22 threshold for consideration they'll receive notice
23 that their claim is denied but that's basically

1 without prejudice to allow them to file again.

2 If a borrower goes through this full
3 process and they meet the minimum qualification
4 but the department ultimately denies their claim
5 and then sometime after 60 days there is newly
6 discovered evidence such as a state AG makes some
7 finding that really changes the game and makes clear
8 that the student would have a valid claim would
9 they be able to file a subsequent claim or somehow
10 have another opportunity to get relief after that
11 60-day reconsideration period has expired?

12 MS. WEISMAN: Because it's not
13 something we specifically listed here again I'm
14 going to need to take that back for discussion.
15 I think it closely aligns with Joseline's question
16 and I think that that's part of one discussion that
17 I'd like to have.

18 PARTICIPANT: Okay. With that can we
19 take a look through arabic 4 on page 5 through up
20 to but not including arabic 7 on page 6. Any
21 additional comments before we move on?

22 PARTICIPANT: Aaron. And then --
23 they're still thinking so go ahead, Aaron.

1 MR. LACEY: We're on 6, that's right?

2 Can I speak to 6?

3 PARTICIPANT: Yes.

4 MR. LACEY: I just have very serious
5 concerns about 6(a). One of the concerns I
6 expressed at the outset of this whole process and
7 one of the reasons I argued for a single process
8 in front of an ALJ is I think it's dangerous to
9 expose this process to political winds with all
10 due respect to the department and its staff.

11 Things can change dramatically from one
12 administration to the next and the views as we have
13 seen. And one administration to the next can have
14 very different views regarding the value of
15 different kinds of education.

16 And I'm not just talking about
17 for-profit or non-profit. I mean, you can talk
18 about liberal arts, you can talk about technical
19 STEM, lots of different ways higher education can
20 be cut. It's extremely diverse.

21 And I have real concerns about somehow
22 trying to -- having a staffer at the department,
23 I'm not talking about an administrative law judge,

1 I'm talking about just a staffer at the department
2 making some sort of determination regarding the
3 value of the education that an institution has
4 offered.

5 Historically the department has not
6 gotten into the business of valuing education.
7 That's something that the accreditors do. I think
8 there's argument even that there are statutory
9 provisions that potentially limit the department
10 from getting into the area of making value
11 determinations on curriculum and the quality of
12 academic offerings, et cetera.

13 I just think that should be struck.
14 I think it's highly problematic for all parties.

15 I just think it's very problematic. So I would
16 recommend that that be struck.

17 PARTICIPANT: So you're talking about
18 6(a) the value of the education the borrower
19 received from the school should be struck.

20 MR. LACEY: Yes. And look, we've
21 still got a lead-in that says this is not an
22 exhaustive list. So there's still discretion on
23 the part of the Secretary and I get that that still

1 leaves a lot to political whim.

2 But it makes me very uncomfortable
3 specifying that the value of the education provided
4 is something that the U.S. Department of Education
5 and specifically the staff member evaluating this
6 claim is -- I mean this is signaling to that person,
7 whoever that may be, you get to make a call on the
8 value of this education.

9 I think it could also be highly
10 inconsistent from one staff member to the next even
11 in the same administration. I just don't think
12 it's, with respect, the business of the Department
13 of Education to make a call on the value of different
14 kinds of education. My opinion but I think that's
15 highly problematic and I would strike it.

16 Understanding that the Secretary still
17 has discretion to try to come up with some sort
18 of relief.

19 PARTICIPANT: Thank you. Any other
20 thoughts on this section? Abby.

21 MS. SHAFROTH: So coming at it also
22 from the other perspective, the perspective of
23 borrowers we're also concerned about -- not

1 specifically about (a) as opposed to (b) but just
2 about providing the Secretary with really expansive
3 discretion to decide to give the borrower only
4 partial relief and decide how much relief to give
5 the borrower.

6 It seems to me that if the borrower has
7 demonstrated that the evidence supports that the
8 school engaged in misrepresentation of material
9 facts that the borrower reasonably relied upon to
10 their financial harm that that should be enough
11 for the borrower to get relief, to get full relief,
12 and not to get some maybe relief, maybe relief left
13 to the discretion of the department.

14 I'm also concerned that this doesn't
15 make clear what relief the borrower would be
16 entitled to if they had a meritorious defense.

17 My suggestion has been that the
18 borrower would get full relief. A compromise
19 position would be a presumption of full relief and
20 the department would have to state clearly a basis
21 for why full relief isn't appropriate in a given
22 circumstance.

23 But the presumption should be I think

1 full relief.

2 PARTICIPANT: AnnMarie.

3 MS. WEISMAN: So I believe I stated in
4 the last session and I will restate again the
5 department comes from the position that we do not
6 presume full relief and have not at any time.

7 So I think we're pretty committed to
8 the idea that partial relief will exist. Right
9 now we have outlined here in (a) and (b) two items.
10 It is a list that says included but not limited
11 to, but we only have two. So if we don't like one
12 of them.

13 And you're already aware that we are
14 pretty committed to going in with partial relief.

15 It would behoove you to make some suggestions on
16 something that you do like. Otherwise we will.

17 PARTICIPANT: John, do you have a
18 suggestion? Okay, John.

19 PARTICIPANT: Just out of sheer need
20 to understand was the department's intention in
21 that language to allow a calculation to offset for
22 instance the damages based on the idea that some
23 benefit's been conferred on the department --

1 MS. WEISMAN: Yes.

2 PARTICIPANT: -- consistent with what
3 would normally happen in damages law?

4 MS. WEISMAN: Yes, that is correct.

5 PARTICIPANT: Other suggestions.
6 Walter.

7 MR. OCHINKO: This isn't so much a
8 suggestion as a comment on Aaron's suggestion that
9 we strike (a).

10 There's considerable research about a
11 graduate's ability to get a job and to actually
12 get a job interview.

13 A lot of that research suggests that
14 if you had attended a for-profit school, especially
15 one of the large publicly traded for-profit schools
16 that individuals often don't get a callback.

17 I've heard from numerous veterans that
18 they attended a school. They applied for multiple
19 jobs. This is particularly true with ITT and
20 Corinthian. And they occasionally will hear from
21 an employer oh, we never hire graduates from that
22 school. They're just not prepared.

23 So I think this is a relevant data point

1 and one in which there is information available.

2 And I think that it would be an opportunity for
3 a student to supply that kind of information to
4 the department.

5 PARTICIPANT: Valerie.

6 MS. SHARP: I have a question, Walter.

7 The value of the education is kind of really broad.

8 Is there some other language that would be more
9 specific to the outcomes, the employability,
10 whatever -- what terms that the students are looking
11 for that would set.

12 You know, value can be very subjective.

13 But there are very specific outcomes for graduates
14 that are more specific that are not as subjective
15 that are very -- you can't find employment.

16 So is there another -- is there
17 different terminology that could replace this that
18 isn't as ambiguous as just the general value
19 subjective call that's very specific as to the
20 outcomes from that education that created the value
21 or not that you could propose.

22 I'm just sitting here in my mind trying
23 to think is there a different way to say that that's

1 not so ambiguous. I haven't come up with a great
2 suggestion yet. But that's a valid point. There
3 has to be something that we could think of that
4 could be an option to replace it that's not.

5 MR. OCHINKO: One option would be to
6 leave the value of the education and then to provide
7 some examples, example, including ability to get
8 callbacks for job applications. I'm not sure if
9 there are others.

10 I hear your point value of the education
11 is pretty broad, but when I read this one of the
12 things that popped into my mind is that well, we've
13 certainly heard from a lot of veterans that have
14 attended publicly traded for-profit schools that
15 the employers do not value their education.

16 And it's not uncommon. If you go to
17 some of these schools' websites you'll see that
18 they have employer endorsements. We hire
19 graduates from this program because we really think
20 they have a great education.

21 It's easy for a school to say that, but
22 I think the reality may be different when someone
23 actually tries to use that degree to apply for a

1 job.

2 PARTICIPANT: So returning to
3 AnnMarie's suggestion of coming up with ideas and
4 I guess Valerie's question about other ways to maybe
5 reframe the ideas we have. Kelli, then Ashley.

6 MS. PERRY: This isn't going to address
7 the whole thing but maybe the value of the credits
8 transferred to another institution for the same
9 program, or the value of those credits that another
10 institution would not accept. Because I think that
11 kind of -- if somebody is earning credits at a school
12 and there's not another school that's willing to
13 accept those credits and the student can show that
14 then that's something that potentially would be
15 considered.

16 PARTICIPANT: The problem there is
17 going back to the comment Michale made earlier,
18 McComis. There are lots of credits at lots of
19 schools for non-nefarious reasons to use his I think
20 was the term that aren't transferable. They're
21 not designed to be transferable.

22 And so you don't want to penalize an
23 institution that has credits that aren't

1 transferable and may have disclosed look, you know,
2 you come get a welding credit at our school it's
3 not going to be accepted for transfer at most places
4 or what have you.

5 I just think it's problematic. It's
6 one thing if you're deceiving people about the
7 transferability of credits. That's not what I'm
8 talking about.

9 But penalizing a school because it
10 offers programming that is not easily transferable
11 or designed to be transferable. You understand
12 the dilemma.

13 MS. PERRY: I do, but those weren't the
14 credits I was talking about. That's what I meant
15 this is not all-inclusive, this comment. This is
16 one piece of maybe addressing this. And the fact
17 that there are certain credits that would transfer
18 to the same program at a different school
19 potentially.

20 PARTICIPANT: Am I actually in order
21 next? Well, I was actually going to offer
22 something along those lines.

23 The first thing I want to point out is

1 again these are just illustrative. These are
2 points that the Secretary can take into
3 consideration. They are not dispositive in any
4 way. The Secretary doesn't have to consider them,
5 et cetera.

6 But my concern is, and actually the idea
7 of employers assigning very different value to
8 different schools' credits I think illustrates my
9 concern and discomfort with value of the education
10 received.

11 You're right, different employers may
12 view credits from -- I mean in Louisiana credits
13 from the University of Alabama are not looked at
14 the same way as credits from Louisiana State
15 University. I'm a little silly.

16 But the point is different employers,
17 different states for lots of different reasons,
18 I think that's problematic. And now you've got
19 someone at the department.

20 What I was going to suggest was the
21 economic value of the credits conferred on the
22 borrower by the school.

23 Now, this is a data point so again I

1 want to emphasize because I understand I'm not
2 suggesting that that is the way that the damage
3 should be calculated.

4 I'm only suggesting that if we're going
5 to use a criteria it should be one that is somehow
6 tied to an economic amount.

7 My feeling is if credits were conferred
8 then there's economic value that can be quantified.

9 I mean you know exactly what that is or you should.

10 And so that should be the data point.

11 The Secretary may determine that that is not a
12 valuable data point, but it at least is a
13 quantifiable data point as opposed to the value
14 of the education which I think is vague.

15 And I just worry about the
16 transferability piece. So rather than linking it
17 to transferability I would just say look, this is
18 a commercial exchange at some level. What was the
19 value of the product received.

20 And the Secretary can still say I'm not
21 going to take that into consideration because I
22 have evidence that this particular product isn't
23 worth much, or whatever.

1 But if we're going to give some sort
2 of means of trying to quantify things I would do
3 it with something that's quantifiable.

4 PARTICIPANT: AnnMarie.

5 MS. WEISMAN: Can I just hear a little
6 more about then how you would quantify that? How
7 do you determine -- you're saying you feel that
8 it is something you can quantify. How would you
9 quantify the idea of market value?

10 PARTICIPANT: I'd look at the
11 commercial exchange. If a student paid \$80,000
12 for 32 credits and graduated and got all 32 credits
13 then they received -- you talk about the value of
14 the credits conferred.

15 Because the loan has been acquired to
16 finance that acquisition of that product. So I
17 think that when you're trying to quantify what the
18 student got it's a commercial exchange.

19 You're saying well how much of the
20 product did the student receive.

21 People can argue whether or not they
22 think those credits and that education was actually
23 -- the Secretary could elect not to take that into

1 account. But my point is the value of education
2 is a nebulous concept. That could be anything.
3 Someone could just say it's zero. At least here
4 you have some sort of economic amount that you're
5 talking about.

6 So the student graduated completely.

7 It was \$80,000 to graduate from the school. All
8 32 credits were conferred on the student and that
9 by their agreement is an \$80,000 product that they
10 received. Take that into consideration.

11 But again I'm happy to cut that
12 altogether and just leave it to the Secretary's
13 discretion.

14 What I'm not comfortable with is
15 signaling that the Secretary can just value of
16 education is just something you're pulling out of
17 thin air. I mean it's not tied to any kind of
18 economic concept at all. And that's problematic
19 for me.

20 I'm happy for that not to be accepted,
21 but I'm just trying to offer -- the request was
22 made for ways you can quantify. This is a
23 commercial exchange. You've got a product, you've

1 got an amount paid and you've got an amount that
2 financed it.

3 PARTICIPANT: Ashley Reich.

4 MS. REICH: Okay. I have a possible
5 suggestion. I hate to go back to issue paper one.
6 However.

7 So we've got a listing here on page 6
8 in issue paper two, we've got the value of education
9 and the borrower's earning potential. And I know
10 this is not -- it's including but not limited to.

11 But on page 5 of issue paper one we talk
12 about financial harm that's been given to the
13 borrower and we list a lot of what's being
14 discussed.

15 We've got Walter talking about securing
16 employment, we've got people talking about
17 borrower's earnings, there's a calculation already
18 provided there that would somehow provide some
19 clarity maybe on the education provided to the
20 borrower.

21 My question is I feel like in this issue
22 paper two we've now added another layer that the
23 department is considering that's not addressed in

1 the financial harm category.

2 So my suggestion is could we just not
3 reference the fact that in determining the
4 appropriate amount of relief to be provided some
5 sort of financial harm had to come to the borrower
6 which we've listed there.

7 I don't know if I'm just mixing the
8 issues or if that would help. I'm just confused
9 as to why we're adding another layer here and then
10 we somehow allude to the fact that we're talking
11 about the borrower's earning potential but not some
12 of the other items that we've already talked about.

13 I don't know if that's clear or not.

14 PARTICIPANT: So your suggestion is to
15 at least reference back or take the elements from
16 issue paper one that we outlined or will potentially
17 outline for financial harm and use those as a
18 replacement for (a) and (b)?

19 MS. REICH: Yes, I think so. If I'm
20 understanding the way this is supposed to work.
21 I just don't -- we just don't reference the value
22 of education in the financial harm necessarily when
23 we talk about when something has happened to the

1 borrower.

2 And so I don't know -- this is almost
3 like adding another item to that.

4 MS. WEISMAN: So I think this is meant
5 to almost be the flip of it, the reverse of it.
6 So you had the financial harm over in the standards
7 piece and now this is kind of what's left. Is there
8 a difference between what you paid, what you spent
9 on your loan, take out the financial harm, is there
10 a piece that's left over and that's the piece that
11 we would say you're not getting relief for.

12 MS. REICH: Then why are we addressing
13 earnings potential again? Because I feel like
14 that's already addressed in the financial harm
15 category.

16 If that's the goal I feel like we're
17 being redundant because that piece -- that wouldn't
18 be what's left. We've already talked about that.

19 Does that make sense?

20 So I think that's what I'm trying to
21 get at is I feel like it's just two random pieces
22 and one's addressed but another one's not.

23 So I was trying to get at a list of items.

1 I don't know if we can. Those just seem strange
2 to me.

3 PARTICIPANT: Will.

4 MR. HUBBARD: Thank you. I like the
5 fact that Aaron is trying to go for the economic
6 piece. I think that makes sense. Quantify it I
7 think makes sense.

8 I would go perhaps in consideration for
9 maybe saying return on investment as being a little
10 bit more specific than just economic value is kind
11 of broad.

12 Return on investment I think there's
13 some potential to demonstrate a clear and accepted
14 algorithm that I think that Aaron was kind of
15 alluding to.

16 I have a challenge in the fact that
17 saying economic value per the degree or the credits
18 were granted that inherently establishes some value
19 of those credits.

20 I'm not saying any of these schools are
21 not valued, but in our economy of the four or five
22 thousand universities and colleges out there there
23 are some that are just not valued, period.

1 And so I think to ascribe the fact that
2 money was spent on a thing inherently makes it worth
3 something is not true. I could offer up \$10 million
4 for my water bottle. Doesn't mean it's worth \$10
5 million.

6 And so I think there's some potential
7 concern with that.

8 If we were to go with a return on
9 investment type approach it might say something
10 like return on investment of a related program
11 including the default rate, initial earnings, or
12 potential employability. There's probably a
13 little bit more needed to refine that, but that
14 might be at least a start to that.

15 And I think Ashley's point about
16 including some of the other items that are listed
17 out initially, financial harm, et cetera. I think
18 there's value in that as well to bring that into
19 the category as well.

20 PARTICIPANT: Jay.

21 MS. O'CONNELL: So this isn't an area
22 of expertise for me but just wondering if there
23 are metrics, a college score card, graduation

1 rates, continuation rates. There's a lot of data
2 out there and could you derive a return on
3 investment.

4 Some mathematical calculation looking
5 at kind of the key metrics for a school. And I
6 would not be the person to do that for you, but
7 perhaps.

8 We have a lot of information about our
9 schools that we could rely on.

10 PARTICIPANT: Ashley Harrington.
11 Suzanne.

12 MS. MARTINDALE: I think my brain made
13 the same journey that Ashley's did while Aaron was
14 talking.

15 A little bit confusing because the
16 borrower has to demonstrate financial harm. We
17 already had that discussion about how that's
18 established.

19 And then now we're adding in
20 determining the amount of relief that there would
21 be potentially an evaluation of the value of an
22 education.

23 And with all due respect to folks who

1 are in good faith trying to suggest language and
2 metrics that are quantifiable I've never heard a
3 student talk about getting an education as a product
4 for purchase, they're seeking return on their
5 investment.

6 I think people are seeking to get an
7 education to better their lives and they're going
8 into debt to do it. And as has been previously
9 pointed out going into debt, spending time at a
10 school, there are costs already involved in that.

11 There's already a built-in financial
12 harm for a student who is now seeking relief.

13 And also I'll add that part of why I
14 find this confusing as well is the language that
15 excludes discussions around the quality of
16 education. So quality of education versus the
17 value of an education.

18 This section just feels really
19 problematic and unnecessary to me.

20 PARTICIPANT: Michale.

21 MR. MCCOMIS: So to Ashley's point
22 issue paper one uses the phrase with regard to
23 financial harm as demonstrated by evidence before

1 the Secretary. I don't remember if we kept that
2 in there or not, but that's what was in the issue
3 paper.

4 And so I'm wondering if as a solution
5 or maybe a way to make it a little more simple is
6 to just don't recreate that list, just reference
7 that.

8 So in determining the appropriate
9 amount of relief to be provided to the borrower
10 the factors the Secretary will consider -- or take
11 out the factors. The Secretary will consider the
12 financial harm demonstrated in the borrower defense
13 claim.

14 PARTICIPANT: Alyssa.

15 MS. DOBSON: I just think it may be
16 problematic to tie things such as a cohort default
17 rate or retention rate to an individual's amount
18 of loan forgiveness.

19 These are very large aggregate figures
20 that represent an entire institution whereas an
21 individual's claim is probably only going to be
22 for one, maybe two programs that can look very
23 different.

1 And additionally those measurements
2 can sometimes reflect the virtue of the student
3 that the institution is serving and not necessarily
4 reflect the quality of the institution as a whole.

5
6 So I would have concerns using those
7 measures to evaluate individual quality.

8 PARTICIPANT: Can we go back up to
9 Michale's comment there? I think the word
10 determine, the second determine should be consider.

11 The end of that first line. Michale, can you
12 confirm that?

13 MR. MCCOMIS: Yes, I think that's
14 right.

15 PARTICIPANT: Can we have some
16 thoughts from the group on the Michale/Ashley sort
17 of combination.

18 PARTICIPANT: That is exactly what I
19 was hoping that we would do is that we would
20 reference that. So thank you for wordsmithing that
21 better than I could.

22 PARTICIPANT: Kelli.

23 MS. PERRY: I agree with Michale's

1 comment. If you think about this in general a
2 student who is trying to get relief for something,
3 they either have credits that they're going to use
4 someplace else, or they have credits that are
5 worthless, or they have a job because that's the
6 outcome that they're looking for. And it's either
7 a job that is comparable to what they should be
8 earning from credits with another institution or
9 it's a job that's not.

10 So I'm not sure that either one of those
11 -- with the exception of the credits that are
12 actually transferred to another institution and
13 are used in the same program of study the rest of
14 that is not really quantifiable very easily.

15 So I support what Michale just said.

16 PARTICIPANT: So just a facilitator
17 check-in. Is this conversation kind of centering
18 on, and correct me if I'm wrong, eliminating the
19 other options and just keeping the reference back
20 to financial harm?

21 Okay, could we just make maybe a quick
22 strikethrough. The department is going to confer.

23 And think if you have concerns with that, comments

1 you need to make while they're conferring.

2 PARTICIPANT: Aaron.

3 MR. LACEY: What I would suggest is in
4 determining the appropriate amount of relief to
5 provide to the borrower I would just say the
6 Secretary will consider the amount of financial
7 harm demonstrated in the borrower defense claim.

8 So I would cut out factors and just say that's
9 what will be considered.

10 PARTICIPANT: AnnMarie.

11 MS. WEISMAN: So I know we're getting
12 tight on time, but I think the point that I was
13 trying to make earlier is that while I think that's
14 helpful and I appreciate the work that people are
15 doing to come up with other ideas we need to have
16 something that somewhat reflects the flip side.

17 As I mentioned we're here to consider
18 the interest of the taxpayers in addition to the
19 borrowers and the institutions and so we have to
20 have some way of coming up with if we were to use
21 partial relief what would that look like.

22 And so if you have something on this
23 side that you say gave you harm what I'm trying

1 to find is a way to quantify that piece of what
2 I'll call the leftover.

3 If there is some benefit received we're
4 trying to place a value on that. And I'm not sure
5 that the way this is phrased right now gets us to
6 exactly where we need to be.

7 PARTICIPANT: Michale.

8 PARTICIPANT: Can I just ask a question
9 to the department? So this is -- we're referencing
10 back and we're saying this is -- maybe it was taken
11 out, included but not limited to.

12 I guess I'm confused as to what is left
13 over. Like what would you be looking for that would
14 be left over.

15 MS. WEISMAN: So we'll look at (a) as
16 an example which I realize people weren't in favor
17 of. But the value of the education that the
18 borrower received from the school.

19 So the borrower gets a degree, or a
20 diploma, or a certificate. They get some
21 credential. For whatever reason we've determined
22 that they are going to get a partial borrower
23 defense claim and they will get partial relief.

1 So if we're going to go with the concept
2 of partial relief how do you determine what the
3 portion is. What factors are you going to look
4 at to make that determination.

5 And yes, while we're going to look at
6 the same ones as harm are there any other factors
7 that we might use to say how do you put a value
8 on the good part.

9 PARTICIPANT: Michale.

10 MR. MCCOMIS: Subtract the bad part.

11 I don't know how -- you just have to look at kind
12 of the inverse and try to come up with an algorithm
13 or some kind of calculus that says okay, to your
14 example in (a).

15 There's a significant difference
16 between my actual earnings after completing the
17 program and what they told me. And so you can
18 quantify that and you can figure out what the
19 difference is between those two things and
20 extrapolate that to not only the harm but also the
21 benefit that they received.

22 I believe when Under Secretary Manning
23 was here I think he talked about that as being part

1 -- I'm not suggesting whether that was right or
2 wrong, I'm just suggesting that he seemed to
3 describe that calculus that was being used in that
4 particular way in the current BD claims that the
5 department was processing.

6 And so it seems to me that that kind
7 of calculus has already at least been discussed
8 within the department and maybe used in some way.

9 MS. WEISMAN: It has. As I mentioned
10 after Mr. Manning spoke though we had information
11 on those claims that we wouldn't necessarily have
12 available to us at all times.

13 So I think we were looking at other
14 ideas of going forward as people from a budgetary
15 standpoint look at this and try to score, for
16 example, how much the regulation will cost.

17 They're going to want details of how
18 will you calculate this. And to just say the
19 absence of those factors, my concern is they're
20 going to come back and say well, that's not enough,
21 we need more because we aren't always going to have
22 that same information available to us.

23 So I was trying to get at if there are

1 any other pieces of information that people could
2 think of that we might have that we could include
3 them in this list. Again knowing it's not an
4 exhaustive list that we may not have everything
5 at every time, but that if we had items we could
6 add that we wanted to get them on the list.

7 PARTICIPANT: Caroline. But before
8 Caroline speaks I do want to say that it is 4:40
9 and we need to stop at 4:50 for public comment.

10 MS. HONG: I think I just want to
11 piggyback off what AnnMarie and what Michale was
12 just saying regarding what Acting Under Secretary
13 Manning was saying.

14 The concept in here about the value of
15 education, I think we're concerned that the
16 language that's being proposed is going away from
17 the idea that the -- going away from the
18 department's current approach which we're trying
19 to make more concrete and also just solicit more
20 information and suggestions from people here.

21 If there's something that's more
22 preferable. It's to think that yes, there is
23 financial harm, but there's possible that there's

1 a benefit that was also received and whether or
2 not that offsets the amount of relief that needs
3 to be going to the borrower for the financial harm
4 that they received because they did get a benefit.

5 And so I think obviously we struggled.

6 This is a two-item list so obviously we struggled
7 with how to get at benefit.

8 And the parts that Under Secretary
9 Manning mentioned was about earnings. We have that
10 here. So if you guys have better ideas that would
11 be great. Thanks.

12 PARTICIPANT: Kelli, did you have a
13 question?

14 MS. PERRY: Just with the two that
15 you've listed how did you think you were going to
16 interpret them, or how were you going to actually
17 evaluate the ones that you have listed here?

18 PARTICIPANT: Valerie.

19 MS. SHARP: So I kind of when I put my
20 card up was thinking along the same lines as Michale
21 because you are going to be using the financial
22 harm to determine what the inverse side is of what
23 they might have gained. So that will be a part

1 of your consideration.

2 So I don't know if we add, and I can't
3 think of good language for it off the top of my
4 head, but if you say you're going to consider the
5 amount of financial harm demonstrated versus any
6 benefit the borrower received from the education.

7 I don't know what the right word is or
8 how to put that in there, but you are going to be
9 basing it on the financial harm to the borrower,
10 but then you're also looking at did they gain
11 anything from the education. Was there any
12 benefit.

13 I know that Will used the wording return
14 on investment and that's probably not also the best
15 wording in this context, but that's really what
16 you're trying to gain from your decision.

17 So is there wording that we could add
18 that's different, better than benefit, better than
19 return on investment that shows that difference
20 that you're looking for but is not like this list.

21 It still gives you that ability to make that
22 calculation that you need to make.

23 I don't know if any of the other

1 committee members have a suggested word or words
2 that might better fulfill that to satisfy your
3 concerns about the language that's been proposed.

4 PARTICIPANT: Caroline. Joseline.

5 MS. GARCIA: Thank you. So I just have
6 a quick comment. I wanted to echo something that
7 Abby mentioned earlier in regards to partial versus
8 full relief.

9 And throughout this conversation I've
10 been hearing us talk about the value of education
11 and how to determine how much relief is given to
12 a student.

13 And I think it's important that I just
14 emphasize that partial relief is not enough to give
15 students the resources and give them a place in
16 society where they can get themselves back on their
17 feet.

18 So I heard what the department had to
19 say, but again I really want to echo full relief
20 is what I'm in favor of and I think we need to
21 continue pushing for that.

22 I'll read something that a student sent
23 me so you all can think of the position that students

1 find themselves in. So I quote.

2 "Do me a favor and let me know how your
3 health fares by hanging a bowling ball a few feet
4 above your head and know that if you ever miss a
5 payment that thing will stave in your skull.
6 That's what it feels like every hour of every day
7 of every year for the past 10 years."

8 Like can you imagine what it feels to
9 live like that? It's horrendous. So again, I
10 don't think partial relief is enough and I'm going
11 to keep pushing for full relief throughout this
12 process and even after.

13 PARTICIPANT: So final comments from
14 Will and Michale and then we're going to -- how
15 many do we have for public comment at this time?

16 Can I see a show of hands for public comment?
17 Okay. So we have Michale, Will, Ashley, Abby and
18 then Walter. So you all have less than a minute
19 each. So, Michale.

20 MR. MCCOMIS: I get what the difficulty
21 is. Trying to as you say come at it from an angle
22 of full relief not in every single case. In some
23 cases full relief will be an easy determinant to

1 make. In other cases not so much.

2 So I don't know if this is in any way
3 helpful, probably not because it's really just more
4 words, but it would be the Secretary -- and let
5 me just say up front I'm good with that by itself.

6 But you're asking for more.

7 The financial harm less any benefit
8 received. Caroline asked for the inverse in
9 looking at that language. That's the best I can
10 come up with in terms of -- if you're looking to
11 say here the presumption is not full relief in all
12 cases then you're going to take out the benefit.

13 That's what you're going to consider and that's
14 really what you're talking about.

15 PARTICIPANT: Will.

16 MR. HUBBARD: I feel compelled to also
17 just highlight that on January 4 the military
18 connected negotiator submitted a data request.
19 Obviously noting the department shared early as
20 we started this session that no additional data
21 was available.

22 But I think certainly in the context
23 of the discussions regarding partial relief it

1 would be particularly pertinent to have some of
2 these data points at our disposal.

3 So in the absence of these data points
4 obviously we're having this discussion nonetheless
5 but just want to reemphasize that having that data
6 available as soon as possible would be tremendously
7 appreciated.

8 PARTICIPANT: Ashley Harrington.

9 MS. HARRINGTON: I just want to say it
10 seems -- I understand the department's position
11 is that they want a process for partial relief.
12 But you have a whole bunch of smart people at this
13 table who can't tell you how to quantify partial
14 relief in a way that makes sense.

15 So that seems like it leads you to think
16 that you should have presumptive relief.

17 And if part of the process is also to
18 deter bad actors, if they know that only certain
19 relief will be gained if the misrepresentation is
20 so egregious and the program is that bad or
21 something this serious has happened then the person
22 can still get partial relief how does that deter
23 bad actors.

1 How does that protect students. How
2 does that protect taxpayers because that means the
3 schools will continue to function and we'll
4 continue like we are.

5 It just seems impractical. And you
6 can't even tell us right now how you would have
7 done it with the two things that you had in the
8 list.

9 PARTICIPANT: Abby.

10 MS. SHAFROTH: I share Ashley's
11 concern. I also wanted to comment that I don't
12 think the math would necessarily be financial harm
13 less any benefit received because I think the
14 financial harm already takes into account within
15 the concept of financial harm is -- the benefit
16 received is already considered. So I think we're
17 sort of double counting any benefit if we structured
18 the equation that way.

19 There was also, I wanted to reference
20 this Brookings Institute study report came out just
21 yesterday saying that on average for-profit
22 certificate students do not generate enough
23 earnings gains to offset the debt they incur.

1 So that suggests that -- that's another
2 reason that I would think it's appropriate to have
3 a presumption of full relief and to have -- require
4 there to be some reasons for giving less than full
5 relief.

6 Because we see in so many of these cases
7 in the types of programs that have been the subject
8 of borrower defense claims that they're not
9 generating any value for their students.

10 Economists have looked at that and
11 determined that.

12 And then I just wanted to put a quick
13 flag that I assume we're going to have to move on
14 to issue paper three at some point but we haven't
15 today I don't think discussed the availability of
16 some group discharge process which is something
17 I've raised in the past two sessions and that
18 remains an issue of significant importance to the
19 constituency that I represent.

20 PARTICIPANT: Okay. So at this time
21 it is now 4:51. We're going to open the floor up
22 to public comment. So public comment. Joseline.

23 MS. GARCIA: Thank you. So I'm going

1 to read a statement from a student that was sent
2 over to me.

3 My name is Jonna and I've been waiting
4 for my defense to repayment to be processed for
5 over two years now.

6 Also I'd appreciate if all the
7 negotiators pay attention.

8 I enrolled into the Art Institute of
9 California San Francisco with the promise of a
10 better future fueled by the lies and promises of
11 the recruiters of the college.

12 They lied about job placement rates.

13 They lied about the quality of the education that
14 provided. They didn't even review portfolios
15 before allowing students to enroll and attend which
16 is absolutely horrible for an art college.

17 And they lied about being able to
18 prepare students for the industry to which they
19 supposedly had expertise in.

20 Essentially I graduated with a mountain
21 of debt, no job prospects, no job skills that
22 related to the industry that I had hoped to enter,
23 and no idea about the reality of the actual industry

1 in which I was supposed to have been trained to
2 enter.

3 I got a worthless piece of paper. The
4 Art Institute of California San Francisco did
5 everything in their power to get me enrolled into
6 the school, having me signed up the very day I went
7 in for a portfolio review.

8 They pressured my mother and me to
9 enroll as I was already a very dedicated individual.

10 By that time I had attended the California State
11 summer school for the arts two years in a row and
12 I had taken college classes while in high school
13 and taken AP classes while in high school.

14 They told me I was a perfect candidate
15 for their program and had my mother cosign my
16 promissory notes as at the time I was too young
17 to have a credit history. I was fresh out of high
18 school.

19 The recruiters used high pressure sales
20 tactics on myself and my mother, saying that I'd
21 easily be able to pay off my loans with five or
22 so years that I'd be making a great amount of money
23 directly out of college.

1 Looking back now I realize that alarm
2 bells should have been ringing in my skull as the
3 Art Institute basically took anyone and everyone
4 off the streets they could find regardless of talent
5 or skill.

6 I know now that the Art Institute's
7 primary income comes from loans made with the
8 federal government and that their primary spending
9 is not on the student and improving the quality
10 of education but on enrollment and advertising to
11 lure hopeful art students into a lifetime of debt
12 or the CEOs taking large sums of money for
13 themselves as bonuses.

14 This has shown in attachment titled
15 education management corporation which was an
16 investigation done by the United States Senate
17 committee.

18 What bothers me is that the school
19 claims to prepare you for the industry and that
20 is what I find to be the biggest lie.

21 The courses offered by the Art
22 Institute of California San Francisco don't prepare
23 you for that. It's too short and too costly.

1 The industry can't sustain having
2 students churned out by Expressions Art College,
3 the Academy of Art University, California College
4 of the Arts and the Art Institute of California
5 San Francisco all within less than a 20 mile radius
6 from each other.

7 Only one student out of every hundred
8 that graduate are going to have enough skill to
9 get into the industry if that. Jobs are cyclical
10 in our industry. It's based on the needs of the
11 project.

12 Think about how many students right now
13 are graduating without any prospects.

14 And the reason I know this is because
15 I'm the one that would be hiring them. Part of
16 my job as art manager is to review the portfolios
17 of these students for current openings at our art
18 studio and their prospects are bleak not only
19 because they weren't trained properly but because
20 industry jobs are scarce.

21 When there are jobs they are filled by
22 those who are either already professionals with
23 many years of experience, or they are filled by

1 someone with true talent.

2 It honestly doesn't matter if they have
3 a bachelor's degree or not.

4 I remember having to wait in the
5 stairwell of the school to get the classes I needed
6 for the next quarter during registration. I got
7 up around 5:30 a.m. so I get into the city and wait
8 in line. If I had not done that I ran a serious
9 risk of not getting the classes I needed and that
10 was dangerous as some class prereq would only be
11 taught every six months or so.

12 If I couldn't get the class I needed
13 I'd have been forced to drop school for half a year
14 because I'd been blocked. Luckily it never
15 happened to me but it did happen to students.

16 The department head struggled to get
17 students the classes they needed in the right order
18 and sometimes they'd bump students ahead and it
19 created all sorts of problems, the root being that
20 the classes weren't offered every quarter and some
21 only offered one or two times a year supposedly
22 because they didn't have either the faculty or
23 enough students to reach a critical threshold to

1 run the class.

2 I understand all is a business, but if
3 that's the case then they're going to be held
4 accountable for their actions like every other
5 business.

6 When I looked into the accreditation
7 in 2010 the federal government made a standard of
8 60 to 75 percent student retention rate from the
9 first year to the second mandatory for
10 accreditation specifically for SCICS.

11 All (phonetic) currently has 55 percent
12 with WASC. Before that SCICS they had 43 percent.

13 At columns (phonetic) you get the figure. In
14 point of fact the requirements for schools to become
15 accredited is laughable.

16 In 2007 when I graduated with my
17 undergrad 43 percent retention rate for an
18 accredited school was acceptable. That school
19 spent more money on painting the walls and buying
20 new monitors to show off to prospective new students
21 than it did for new computers and machines for its
22 current students.

23 They count working on FedEx Kinko's as

1 an actual job placement. In fine print they
2 consider it to be an industry related job because
3 having knowledge of jpeg, bitmap, and png formats
4 is clearly something you need a bachelor's degree
5 for.

6 And with no real hope of paying off a
7 \$120,000 debt with 6 to 8 percent interest at --

8 PARTICIPANT: One minute.

9 MS. GARCIA: -- 12 bucks an hour. In
10 short the damage has been done and no restitution
11 has been made to the defrauded.

12 I can assure you that you need to act
13 and act now. Waiting till 2019 to start
14 discharging fraudulent debt is unacceptable
15 especially considering the Department of Education
16 completely stepping outside the bounds of its
17 mission statement which is the very reason for its
18 existence.

19 You have a responsibility to all
20 students and you have better follow through. The
21 department's position that no actual damage is
22 being done to students is so far from reality that
23 I question your ability to do your jobs.

1 Sincerely angry, Jonna. Thank you.

2 PARTICIPANT: Thank you. Okay at this
3 time I think it's 4:57 so we'll conclude for today.

4 We will start tomorrow with issue paper three.

5 And please campsite rules, take your
6 trash with you on your way out. We'll see you
7 tomorrow. Thank you.

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

10

11

12

13

14

15

16