UNITED STATES DEPARTMENT OF EDUCATION

BORROWER DEFENSES AND FINANCIAL RESPONSIBILITY
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

SESSION 3

WEDNESDAY
FEBRUARY 14, 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 Rozmyn Miller, Facilitators, presiding.

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ROZMYN MILLER, Federal Mediation and Conciliation Service, Facilitator
ROBERT ANDERSON, President, State Higher Education Executive Officers Association
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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
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EVAN DANIELS, Assistant Attorney General,
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CHRIS DELUCA, Attorney at Law, DeLuca Law LLC
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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
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WANDA HALL, Senior Vice President and Chief
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ASHLEY HARRINGTON, Special Assistant to the
President and Counsel, Center for
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WILLIAM HUBBARD, Vice President of Government
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KELLI HUDSON PERRY, Assistant Vice President for
Finance and Controller, Rensselaer
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JEFFREY MECHANICK, Assistant Director-Nonpublic Entities, Financial Accounting Standards Board
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ANNMARIE WEISMAN, Federal Negotiator, Office of Postsecondary Education
MR. BANTLE: Good morning, everybody. It is 9:06, and we should probably get started. We do have a very busy schedule today. We are going to start off, as I mentioned yesterday, with Issue Paper 3. We have individuals from the subcommittee here to help us with that issue paper.

After that, we'll return to Issue Paper 2 to kind of run through any final concerns we have on 2. And then we have the intent and the goal to get through 4 through 8 as well today. So we could say tomorrow we'll come back, we'll revisit 1 and 2. So that is a lot to do today, I know.

Okay, so as I said, we're starting with Issue Paper 3, we'll circle back to finish up 2. And then we want to get through 4 through 8 as well today, so we can circle back to 1 and 2 tomorrow.

We have a hard stop at noon, just so the department can continue working on the suggestions you all had from Issue Paper 1 and 2. But without further ado, I will turn it over to Annmarie of
the department to take us through Issue Paper 3.

MS. WEISMAN: Good morning. Thank you again for being back with us for your two previous days of hard work and your anticipated hard work in the next two. I don't think we need those lights on. I heard several no's around the table. Thank you, Scott.

Okay, so are we all okay with the lights, the temperature, as best we can control it, and the sound? Okay. I got some thumbs up, so thank you.

We'd like to again, as Ted mentioned, get into Issue Paper 3. We do have members of the subcommittee here. So keep in mind, I am not only not an attorney, but I am also not an accountant.

So when the questions get super technical beyond where my reach is, I do have some help on the bench behind me.

Starting off at the top, we've added in some additional regulatory citations that we will now be impacting. That includes 34668.91, 668.94, as well as 668.172. Both, again, also including 668.171 and 668.175. This is financial
responsibility and administrative capability.

The new changes that we have here are to update the actions of the hearing official to identify actions or events that the secretary may consider when determining if an institution is financially responsible; providing that the secretary may accept other types of financial protection in addition to letters of credit; giving a four-year transition period for operation leases entered into before January 1, 2019.

Again, that one is very technical. This is related to the Financial Accounting Standard Board, or FASB changes that we tasked the subcommittee with looking at.

And also, this paper also will update the appendices to subpart L to account for changes in accounting standards and terminology. So again, related to the subcommittee's work.

So looking first at 668.91, Initial and Final Decisions. We turn over to page three. We've updated text in (iii), previously saying, "Surety in the amount specified by the secretary."

We now clarify that by saying a letter of credit
or other financial protection under 668.15, or 668.171.

If the hearing official finds that the amount of the letter of credit or other financial protection established by the secretary under 668.15 or 668.175 was appropriate, unless the institution can demonstrate the amount was not warranted.

Continuing on in (iv), talking about termination action. In a termination action taken against an institution or a third party servicer based on the grounds that the institution or servicer failed to submit a required audit by the deadlines established in 668.23, or otherwise failed to comply with the requirements of 668.23.

If the hearing official finds that the institution or servicer failed to meet those deadlines or requirements, the hearing official finds that the termination is warranted.

We've done some renumbering here in (v) because of the addition of (B). The addition of (B) reads, In the limitation or termination action against an institution on the grounds that the
institution is not financially responsible.

We then continue on to say upon proof of conditions in 668.174(a), the hearing officials finds that the limitation or termination is warranted, unless the institution demonstrates that all conditions in 668.174(f) have been met, or that the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all applicable conditions described in 668.174(b)(2) or 175(g) have been met.

So I'd like to stop there and take any comments or feedback on that text.

MR. BANTLE: So we are looking at 668.91 in its entirety.

PARTICIPANT: I know this is skipping around just a little bit, but I'd like it on the record that in November of last year there was a handful of members of the Senate that specifically called on the department to provide full relief, understanding the department's position is not to provide full relief as a presumption. But I just would like to flag that letter that was shared for
the record.

MR. BANTLE: And as noted, we will be returning to 1 and 2. But right now, can we focus on any comments or suggestions on 668.91. And just a facilitator’s note, because we do have a tight timeline today, we're going to hold you to suggested changes to the regulatory text, hold all negotiators pretty firm.

Can we presume from the silence that the group is comfortable with 668.91 as written? Show of thumbs? Okay, I see no thumbs down. We'll move on to the next section.

MS. WEISMAN: So moving on to 668.94, Limitation. As we noted earlier, those three asterisks that lead off this section show that the language leading up to that has not changed.

But just to give you some context, this is the section on limitation. And the stem that leads into that is, A limitation may include as appropriate to the title IV HEA program in question.

And then (h) becomes, "A change in the participation status of the institution from fully certified to participate, provisionally certified
to participate" under 668.13(c).

We then renumber, and I'd like to continue on to 668.171. We've clarified some wording here in (a)(2). Instead of saying, "Administer properly the title IV HEA programs in which it participates", because this is about financial responsibility, that belongs more in Administrative Capability, which is 668.16.

So we struck that text, and instead we've added in the text, "Meet all of its financial obligations." And then added in (3), "Provide the administrative resources necessary to comply with title IV HEA of program requirements."

And then (b), again, we're trying to conform with our renumbering. And we say, "Except as provided under paragraph (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that."

The next change comes down in (i), where we say the institution part of (4) is the institution is able to meet all of its financial obligations, including making refunds.
And then (i) becomes, Under its refund policy and the returning title IV HEA programs for which it is responsible under 668.22, which is the R2TIV, or return of title IV regulations, and provide the administrative resources necessary to comply with title IV HEA program requirements.

An institution may not be able to meet its financial or administrative obligations if it is subject to an action or event described in paragraph (c) of this section that has or is likely to have an adverse material effect on the institution's operations or ability to continue as a going concern.

And then we've also updated (5) on the top of page four, where we say, The institution or persons affiliated with the institution are not subject to a condition of past performance under 668.174(a) or (b).

And I'd like break it there.

MR. BANTLE: Comments on 668.94 and 668.171, up to and including number (5).

PARTICIPANT: I just have a question for the department. It's just to make sure I
understand. Could you just repeat, Annmarie, I'm sorry, but could you repeat the context of (h) on page two.

MS. WEISMAN: Sure. So (h) on page two is part of the limitation text. And so that text begins, A limitation may include, as appropriate to the title IV HEA program in question. And then that would be a change in the participation status of the institution from fully certified to participate as provisionally certified.

PARTICIPANT: I understand, thanks.

MR. BANTLE: Suggested edits or concerns?

PARTICIPANT: This is a follow-up question that I had asked last time, and it doesn't seem to have changed. So I just want to understand the context. In (4)(ii), and then it goes on in (c) and (d), we talk about debts and liabilities. And that's our liabilities.

So I don't know that we need the extra wording, unless they're meant to mean two different things. So I would propose striking debts, and --
MS. WEISMAN: I'm sorry, where are you?

PARTICIPANT: The top of page four. And there's nothing stricken there, there's nothing in red. But it goes on throughout the rest of the paper to talk about debt or liability, or debt and liability. And in my mind, it's the same thing. So, unless it --

MS. WEISMAN: In our mind it is not the same thing. Someone could owe funds from a fine action, and a fine action is actually something distinct from a liability. We categorize those separately, so we would expect to see both.

PARTICIPANT: I'm sorry, but how do you define a debt different from a liability? Because in my mind, they are the same.

MS. WEISMAN: When we talk at the department about liabilities, we're generally talking about something that is a payment of the result, for example, of a program review or an audit resolution.

So when you have a liability, it is specifically the amount where you were found to be at fault. So if you didn't pay your return of
title IV funds in the amount of $5,000, then you're assessed that $5,000 to repay back to the department.

Contrast that with if you did not file your iPads timely, we would issue a fine action. And that fine action might be $4,000. But we wouldn't categorize that the same. We would consider that to be a debt to the department.

PARTICIPANT: From the school's perspective, they're both liabilities, though.

MR. BANTLE: Any other negotiator comments on this, that question, debts versus liabilities?

MS. WEISMAN: I would just also note that it's existing text, that this is not text that we've changed here within the context of this rulemaking.

PARTICIPANT: Understood, but when we get into (c) and (d), I think it complicates it a little more. Because those, when you're talking about you're assessing something based on a borrower defense claim, that becomes a liability. It's not a debt, it's a liability for the school.
So, it's just, when you said you're not an accountant, for business officers reading this, this is confusing because it's the same, they're the same thing.

MR. BANTLE: Kelli, do you have a proposal of how that could be clarified incorporating the department's perspective that they are different?

Any additional comments on this section? Show of thumbs on 668.94 and 668.171, up to and including (5)? William.

MR. HUBBARD: On (c), I propose that there's a modification. Instead of saying --

MR. BANTLE: I think that's the next section, yup.

MR. HUBBARD: All right.

MR. BANTLE?: So let's get that show of thumbs, and then we can move on to William's card.

I see no thumbs down, so Annmarie, can you take us into the next section, and then we have William's comment on (c).

MS. WEISMAN: Picking up then on page
four, (c), other factors or events, The secretary may determine that an institution is not able to meet its financial or administrative obligations.

Under paragraph (b)(4) of this section, If after the end of the fiscal year for which the secretary has most recently calculated an institution's composite score, the institution incurs a debt or liability from borrower defense claims adjudicated by the secretary, and as a result of that debt or liability, the institution's recalculated composite score is less than 1.0 as determined by the secretary under paragraph (d) of the section.

(2) talks about the idea of a failing score from the result of the withdrawal of owner's equity. That would apply specifically just to for-profit institutions, again, because of the way their financials are structured.

Something I'd like to suggest, and it's not reflected in this issue paper, but I would want to move item (4) and replace that with (3), and just reverse those. Because they both apply to for-profit institutions, and so I'd like to group
them.

So I'd like to move (4) and make that the new (3), where it says, For its most recently completed fiscal year, a proprietary institution did not derive at least ten percent of its revenue from sources other than title VI HEA program funds, as provided under 668.28(c).

Then what I would propose would be the new (4) applies to publicly traded institutions, and that would be the US Securities and Exchange Commission, the SEC, notifies or warns the institution that it may suspend trading on the institution's stock, or suspends trading on its stock.

(ii) is that the institution failed to file a required annual or quarterly report with the SEC within the time period prescribed for the report, or by any extended due date under SEC regulations.

Then (iii) is that the exchange on which the institution's stock is traded notifies the institution that it's not in compliance with those exchange regulations, or its stock is delisted for
any reason. And I'd like to, because of the importance of this section, I'd like to keep it fairly narrow and just discuss those pieces right now.

    MR. BANTLE: William, then Aaron.

    MR. HUBBARD: Thanks. On (c) under (5), I propose that instead of a may, we modify the language to read, "When the Secretary determines that an institution." It may seem like a minor change, but I just really think that's an important one.

    MR. BANTLE: Comments on that, or Annmarie?

    MS. WEISMAN: So essentially what that does is requires the secretary to act, and it was very important to us here that we make these discretionary items. So I think the cadence of keeping that as a may is important to us.

    MR. BANTLE: Additional comments on the proposed edit?

    MR. LACEY: Yeah, I agree with the department. I mean, there are, these are indicators of potential financial stress, they're
not dispositive of financial stress.

There are lots of reasons that an institution, despite experiencing one of these items, could still be financially sound and in good shape. And the secretary needs the discretion to be able to dialog with the institution to determine whether or not this actually means that the institution is not financially responsible.

So I wholeheartedly support the department's position.

PARTICIPANT: Linda.

MS. RAWLES: I wholeheartedly support the department's position on that issue, and I have another language change when you're ready. Should I give it? First of all, I appreciate the changes that were made since the last session. Very appreciated that.

On (iii), where it reads, "The exchange in which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements, or its stock is delisted for any reason", I propose that instead of, "Or its stock is delisted for any reason", we say, "And
as a result its stock is delisted."

I'm not an SEC lawyer, but I'm told by many of them that your stock can be delisted for legitimate reasons. And I think if your stock is delisted for a legitimate reason, perhaps you're going private, this shouldn't kick in. So maybe the department has a valid reason for that, but I'm open to hearing it.

PARTICIPANT: Annmarie.

MS. WEISMAN: Sure, and I think that for that one, I can say that our reason is that we did make these discretionary, with the idea that we're taking a look. We're not making a final determination just because of this. But it, to us, signals that we want to take a look at it.

So we want to be clear that we're looking at any delisting for any reason.

PARTICIPANT: Linda, did you have a follow-up?

MS. RAWLES: Then I'm all right with that, as long as the language stays discretionary.

PARTICIPANT: Michael, and then Chris.

PARTICIPANT: On that same item, I do
think it's useful to include the language. Because you want to take a look when, not the legitimate claims, like we're going private, but it's that they've been notified that the institution's not in compliance with exchange requirements.

And as a result, its stock, and I would replace is with may be, because I think you want to be looking at it before the delisting occurs. So I would suggest that you consider the institution is not in compliance with exchange requirements, and as a result, its stock may be delisted.

MS. WEISMAN: So I agree with that, but I want to make sure that would still cover then is delisted. May be or is delisted?

PARTICIPANT: Okay, sure.

MS. WEISMAN: Something that would include both. And I'm not sure about the as a result, because I think we want to know that they're not in compliance with requirements, as well as the idea that it's been delisted or could be delisted. Yes, we are definitely looking for early
warning signs. But that's my concern with that text.

PARTICIPANT: Well, then, you could then keep -- Oh, I'm sorry. Sorry, Barbara, I didn't see you there.

MS. WEISMAN: Thank you for your patience. So the concern is that the delisting of stock, whether it's a may be or is, is not connected enough to the rest of (iii).

So we'd like to propose moving that to become a new (iv), so that (iii) would remain, "The exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements."

And then the new (iv) would say, and we may need to wordsmith this a little bit, but basically that the stock is delisted or may be delisted for any reason. So once we see that up on the screen, we can decide if that needs a little tweaking.

MR. BANTLE: So we have the cards noted, but comments on that suggested edit?

PARTICIPANT: So the challenge I have
with may is, as a practical matter, institutions would never know when the notice requirement was triggered. Because an institution's not going to know if its stock may be delisted, and I don't think that's a fair obligation to require of an institution to try to guess as to what the exchange may do.

So I would, you know, if you want to include is delisted, I don't have a strong opinion on that. As long as this remains discretionary, I think that makes sense. But I don't think may would work.

PARTICIPANT: Valerie, did you also have a comment on this language? Okay. Barkmak.

MR. NASSIRIAN: This is not a line edit, this is more of a substantive comment, on subsection 3.

I just want to bring to your attention the ridiculousness of if these are supposed to protect the taxpayers against possible collapse of a publicly traded entity to which the taxpayers are sending hundreds of millions of dollars of public money, (i) and (iii) are basically
meaningless.

Because that's an entity that is at this point going to crash. So (ii) is an administrative screw-up, if they didn't file their paperwork properly.

And the question I would encourage the department to contemplate is if you hired a plumbing company to come work on your house and it was a publicly traded entity, and you wanted to assure yourself that they do the job for the money you're giving them, would you be satisfied with any of these procedural safeguards?

Or would you ask other questions, like does the entity's capitalization give me any assurance that the amount of money I'm sending them is going to be properly used?

MS. WEISMAN: So I think we tried to find items that we were comfortable with. At this point, rather than stating that these items are ridiculous, I would challenge you to, or the rest of the table, to suggest other triggers that you might have in mind that you feel would do what we're trying to accomplish here that we have not already
considered in previous regulations.

Because as we stated, we have had some issues with ones that were used in the past. So we've already considered those. But if people have new ideas that we have not already entertained, this would be the time to bring those us.

MR. NASSIRIAN: Market cap in comparison to the cashflows that the entity derives from the Department of Education. That'd be a reasonable thing, right? If you have only ten cents on you, you probably shouldn't receive, you know, a million dollars of taxpayers' money.

MS. WEISMAN: Can you suggest some text for us?

MR. NASSIRIAN: I shall.

PARTICIPANT: Thank you. Chris.

MR. DELUCA: Yeah. Just kind of getting back to the question of you know, again, just supporting that this is discretionary and not the change that was proposed to make this mandatory and the importance of that, and just recognizing and just reminding folks we haven't gotten there yet.
But you know, it tied in with (c) further on in Issue Paper 3, or in this section, there is a requirement for notice, so it all ties in together again. So that the school still has to provide a form of notice to the department for them to have the information then to make their discretionary determination.


MS. RAWLES: I just wanted to state I agree with Aaron's point, and it's not fair for, the school would never know if you have the word may when they would have to give notice. So I support the language that the department has, as long as it remains discretionary.

PARTICIPANT: Michael, and then Will.

PARTICIPANT: So I'm still going to advocate for the may, because I think that you can get to the notice issue by using the same route that you used in (iii), which is the exchange on which the institution's stock is traded notifies the institution that its stock may be delisted, or the stock is delisted for any reason.
Now, you could say may be delisted for the reasons identified in (iii) above. Or is delisted for any reason. I just think that you want to get to the, you might be kicked off of the exchange earlier than is.

MS. WEISMAN: That is what our goal was here, and I understand your position about the idea of may be, that it would be helpful for us to know if there was a thought from the SEC that they may be delisted.

So I guess then I would say does that satisfy those who had concerns that an institution wouldn't know? Because what we are saying is that, and again, I have to look at the language as we've tweaked it. But we'd want it to be that they've been notified that their stock is going to be. So maybe we can play with what's there to kind of bring us all together.

PARTICIPANT: So then, okay. So one other way would be to do it -- in (iii) you've got the notification, and you keep their, or its stock may be, and as a result its stock may be delisted.

And then keep (iv), The stock is delisted for any
reason.

So that way you're getting your may and you're getting your is. And the may is tied to the notification of noncompliance with the requirements.

MS. WEISMAN: For me, I think that accomplishes what the department's goal was.

MR. BANTLE: Comments on that edit?

PARTICIPANT: Aaron?

MR. LACEY: So I still have the concern, you know, as a result the stock may be delisted. I don't do SEC stuff, but I deal with regulators all the time. And it's just asking an institution to sort of speculate and notify. But I have an alternative language.

What if we said, and you know, the exchange on which the institution's stock is traded, notify them that you're not in compliance, and that the stock has been or will be delisted.

I mean, if the SEC notifies you that it will be delisted, maybe it hasn't happened yet, you know, that would at least give you some looking into the future, you don't have to wait until the
action's actually been taken.

But I just, I'm just telling you as a practical matter, if you tell schools you've got to speculate, you're going to have wild inconsistency.

MS. WEISMAN: So --

MR. LACEY: I'm not going to die on this.

MS. WEISMAN: I appreciate what you're saying.

MR. LACEY: I'm not an SEC attorney, but it's just a really hard thing.

MS. WEISMAN: No, I appreciate your comment. But what I'm looking for is as much of an early warning system as we can get. And what I'm saying is I'm not asking the institution to speculate. I'm saying if the SEC, let's assume you're a publicly traded institution.

The SEC tells you that it may suspend your stock or delist you. Then you know, you've heard from them, and I want you to report that to me. So if our language is not there yet, then I think we can get there, and I think we would both
be comfortable.

MR. BANTLE: And I'm just seeing some body language. Michael, do you have an idea of how to do that?

PARTICIPANT: No, I don't, no. But I do want to be mindful, I don't want that and to be conjunctive, to be both of those things need to be satisfied. So I got to think about that a little bit more.

It's not that, well, they notified me that we were out of compliance, but they didn't say they might delist us. Right? So I don't want those two things to have to be fulfilled. So I think you need to just --

MR. BANTLE: So maybe we've gotten a little too deep into the edits and we just need to kind of get back to the concept that there seems to be agreement on.

MS. WEISMAN: I think that's why I wanted to have the idea of may be delisted down with (iv) and is delisted. But I think we have to add in some notification requirement, that the institution is notified that it may be or is being
delisted. Again, we can play with that text a little, but that's where I'm thinking.

PARTICIPANT: Linda.

MS. RAWLES: I was just going to say, I could live with Annmarie's language, but I don't know if she remembers it now because we've come so far from. But what you said a few minutes ago was fine, but I didn't write it down, you didn't write it down.

PARTICIPANT: Any other suggestions for this language?

MR. BANTLE: Barmak, is this a suggestion on this language, or additional?

MR. NASSIRIAN: Yes.

PARTICIPANT: Okay.

MR. NASSIRIAN: I want to support Aaron's point, because it really does make a difference. Just as a matter of historical record, the New York Stock Exchange began proceedings to delist ITT on September 6, 2016. In other words, on the day that the school shut down.

MR. BANTLE: So Barmak, you're supporting the language as it is on the board right
now?

MR. NASSIRIAN: Is could be, at that point, you know, you've already hit the iceberg, it makes no difference.

PARTICIPANT: Any other comments on this language? Okay, Will, you're next.

MR. HUBBARD: So I have some additional proposed language. Is now a good time? Okay, great. So this is kind of lengthy, so if you want me to grab your email, I could send it on over.

But I propose an addition of a (5) to this list, which would read, Debts and borrower defense-related lawsuits. I've got a sub (a) and (b) to that, but I'll just stick with this for concept's sake for now.

As well as adding a (6) on, oh terrific, on cohort default rates, except as provided under paragraph (h)(3) of the section, An institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section, and the institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart (n) of this part.
Unless, and then there's some text under that -- I'm just doing the high level concept, and then I'll send this all to him.

MS. WEISMAN: Okay, but what I'm hearing are items that were in the 2016 reg. And so we have already considered those items at the department, and for various reasons we have ruled them out. So if they are from the 2016 reg and are not already up on the screen, we've already eliminated them from consideration.

MR. HUBBARD: Okay, I have (7) I believe is new as well.

MS. WEISMAN: So if you have ones that are new, I'd be happy to entertain them.

MR. HUBBARD: Okay. And then potentially fluctuations in title IV revenue beyond one standard deviation. I haven't, you know, completely refined that language, but I think the idea that if title IV funding is swinging wildly left and right up and down, that is definitely an indication of some potential concern. So we can maybe flesh that out a little bit.

PARTICIPANT: Any other comments on
this section? Abby?

MS. SHAFROTH: Yeah, I was hoping to hear more from the department about why those wouldn't be considered. Because I also was, I had also noted the lack of triggers for things like lawsuits that could form the basis for, lawsuits or even final judgments that would create a liability on the school under these proposed borrower defense regulations.

That seems like a really important early warning trigger, and that's the sort of thing I think that was highlighted in the Office of Inspector General's report last year as being an important improvement to the department's process for protecting taxpayers and students from the potential of schools not being able to make students or taxpayers whole.

So I hear you saying that the department's considered it and isn't willing to entertain discussion, but I was hoping you could give us a better understanding of why so that we could help come up with other alternatives.

PARTICIPANT: Annmarie.
MS. WEISMAN: So the concern is that there is not a close enough tie-in to borrower defense from some of them, such as cohort default rate.

Our feeling is that that is not necessarily connected in any way to borrower defense claims. Things like lawsuits, we've had numerous conversation about the idea of lawsuits or investigations that are pending. The feeling is that anyone can file a lawsuit at any time for almost any reason.

And they also may not be indicative of anything related to borrower defense or anything that would create borrower defense claims in the future. We did not feel that they were good predicative indicators of potential liabilities that were connected enough to this regulation.

PARTICIPANT: Valerie.

MS. SHARP: Yeah, that's okay. Okay, I do apologize, I know that we asked this question before. Just, it's still not clear in my mind.

So on (c)(1), or the number one right after (c) at the top of the page on four, where
you're talking about recalculating the composite score after it's been calculated if you incur a borrower defense debt or liability after that score has been calculated, are you going to be, is this just a recalculation kind of as a warning sign, or are you actually recalculating the composite score so that a school's composite score could then change, the official score, change midyear?

And so that if they dropped below the 1.0, any of the penalties or impacts of that would occur in the middle of a year?

MS. WEISMAN: So we're specifying here that it's at the end of the fiscal year for which we have the most recently calculated score. And we are going to go back and recalculate if we have claims, just to give us a sense of would you then, as a result of those claims, would your score then fail.

MS. SHARP: So let me just use a time frame then. So normally, we turn in our audit end of January. It's usually March/April, in that time frame, May, where we get our score from the department and we start conversations. It just
depends on the department, you know, where they're at on their time frames.

And then so the discussion starts on the scores, the school is notified. So as a part of that calculation in the spring after our audit is submitted, that's when you're also looking back to borrower defense to say does that, if we didn't have borrower defense, the score would be, the official score, would be this. But since we do, the official score is this.

It's not that you're going to send the school a letter in March and say this is your score, but then in May or June, you go back and say, oh, now in May, we had some claims. So that it's now in June, we're going to send them another letter and say, I'm sorry, your official score is now this.

And you now, if you've dropped below a 1.0, there's new impact and penalties.

I'm just trying to think from an operational standpoint how that would work in the timing if this scores changed. Because when you drop below the 1.0, you know, there are impacts as far as heightened cash monitoring or CERA.
Yeah, even if you don't.

So a school's score changing mid-, after you've gotten that official score could be quite a big switch that you operationally have to figure out how to handle.

PARTICIPANT: Annmarie.

MS. WEISMAN: So we believe the language is okay as it is. Our intention is that we can go in at any time. So once you have a composite score, if we've got a batch of claims, we would go in and use the result of that claim or those claims, look at the value of them, and recalculate a composite score. And then determine if there are consequences.

So in other words, if you fail as the result of $100,000 worth of claims, then we would assign to you whatever consequences we would typically assign.

If you have two claims and they're for $10,000 total, most likely it's not going to have an effect on the institution. But we want to take a look and say, once you have this liability to us, what will that do, and do we need to collect
other surety, for example, to protect us.

PARTICIPANT: Clarification. Would the claim be effective upon notification to the institution, or would it be effective at the beginning of the next fiscal year?

MS. WEISMAN: When you're talking about a claim, we're talking about claims that have been paid out that we've then come to the institution and said, You have a liability to pay this claim. So that could occur at any time.

We would look at it, my guess is once we had a batch of them. I don't think we're going to look after every claim. I think we would do it when we felt we had a concern that there was a large number.

PARTICIPANT: Other proposals or suggestions for this section? Do you have a question or?

MR. LACEY: Well, it's just a follow-up. Am I allowed to follow-up?

PARTICIPANT: Okay, briefly.

MR. LACEY: I'll just reinforce Valerie's point. The concern for me is not what
the department may do. The concern for me is that there are creditors and states and so many other entities that use the composite score for purposes of authorization and their own determinations.

So I'll give you a hypothetical. Lots of institutions in the country, many, many nonprofit traditional institutions participate in CERA. They offer online education, and the basis for their ability to offer online education to all of these students without having to have approval from all those individual states is the fact that they're CERA-authorized, right?

Part of being CERA-eligible is your composite score. So if you guys calculate an alternative composite score halfway through the year and the school has enrolled all of these individuals from 49 different states or around the country, and the composite score drops below the CERA threshold, suddenly they're not authorized to provide title IV to all those students potentially that are enrolled.

So I think there is real merit to considering whether or not -- you know, I'm not
trying to undermine the department's ability to
act on this composite score.

But characterizing it as an alternative composite score, you know, for the basis of actions in this are just some way so that an institution operationally isn't going to be hung out halfway through the year having enrolled a bunch -- and the students, by the way, also won't be hung out.

I mean, you could have who knows how many students have enrolled, and the school might say, well, look, we can't, we're no longer authorized to enroll students in your state because we lost the CERA authorization.

I just think this is a really important point that's being raised by Valerie, and it may be that it can be solved by the department by drawing a distinction between your official composite score you get based on your prior year financials, and an alternative composite score that is calculated for the purpose, you know, of dealing with these borrower defense claims that have arisen.

I don't know if the department's amendable to that, but Valerie's point is a very,
PARTICIPANT: Okay, so I think the department has heard that concern and point. Dan, do you have language or a proposal?

MR. MADZELAN: I have a follow-up concern. So you've said that, you know, you have this kind of interregnum calculation of the composite score. And if there's, your example, $100,000 of borrower defense claims, you want to take that in consideration.

Would you also take into consideration at that time if coincidentally there was a $100,000 unrestricted donation to the college?

So I'm also asking this in the context of the statutory provision that says, with respect to financial responsibility, that there shall be an audit of the institution's financial condition, of the institution in its entirety. And so I think that's what the ordinary composite score does, because you're using an audited financial statement. It's the entirety of the institution.

And now you're taking one element, one factor in that formula, and modifying it. And
it's, at that point in time, I don't see how you're looking at the institution, its financial condition in its entirety.

PARTICIPANT: Michael and then Walter. Okay. Walter, any proposals or suggestions for this section?

MR. OCHINKO: I had a question.

PARTICIPANT: Oh, your mic's not on, Walter. Oh, press and hold. There you go.

MR. OCHINKO: I had a question. I don't want to beat a dead horse, but I understood what you said, that you did not want to include anything that was in the 2016 regulation. But for example, Corinthian. Prior to its closure, the department fined it $30 million for falsifying job placement rates.

Would something like that be taken into consideration in the draft rules we have here?

MR. BANTLE: Walter, do you have a proposal on how that, how you think that could be quantified?

MR. OCHINKO: I mean, this is something beyond my, you know, ability to I think make a
specific suggestion. Basically we were told we can't suggest anything that's already been in the prior regulation. But I'm asking if maybe I'm missing something. Maybe in the way it's drafted already, there is something that would capture that?

PARTICIPANT: Okay, Michael.

PARTICIPANT: Can I wait to hear if Annmarie's going to respond to William's? Well, I've been kind of going back and forth as to whether or not that would be a useful element to consider when looking at financial responsibility. And that would be the institution incurs a liability from the department for noncompliance with HEA regulations.

And so then the questions becomes, well, if we want to do that, you know, I get program reviews that have a liability for $64, and you know, some for $30 million. So then you'd have to have some kind of quantitative trigger that would mean this is when it could be considered, when we want to look at it to be tied to financial responsibility.
Now, you may decide that doesn't really matter, because we can take other enforcement actions under other sections of the regulations. We don't need to tie it to financial responsibility.

We've determined that they're out of compliance with HEA in other areas, and we can, you know, take all kinds of other LS&T action. So it may not really be necessary here to tie it to financial responsibility, because we've already got a determination of noncompliance.

PARTICIPANT: The only point I would make about that is that back almost eight or nine months earlier, ten months earlier, when the department told Corinthian that because it was not sharing the job placement rates with it, the department said, Well, we're going to delay the release of title IV funds to you.

And Corinthian's response was, If you do that, we're going to go bankrupt. So the institution already was, you know, in dire straits.

So it seems to me that something is directly BD-related misrepresentation, which is what job
placement rates were about, deserves to be acknowledged somewhere in this document.

PARTICIPANT: Thank you. Ashley, Rich.

PARTICIPANT: I just, I have a question.

PARTICIPANT: Is this for (inaudible.)?

Ashley: Okay, it doesn't sound like it is. So going back to Valerie's point about the composite score, my question is could there be, if the calculation was recalculated, or the composite score was recalculated, you're almost making it seem as though that's an instantaneous thing, meaning you would, you know, go after institutions for, you know, they'd be put on heightened cash monitoring, whatever.

Could there be some sort of time period for, not necessarily resolution's probably not the right word. But for instances where we could lose eligibility for groups of students halfway through the year when it comes to a state authorization item.
You know, to serve the students better, could there be some sort of almost like resolution on the institution's side in a time period allotted to do that, so it wasn't just instantaneous, like we do with a teach-out plan, for example? Does that make sense?

That way, we would mitigate some harm to students without having to report, like, to our state agency saying we no longer meet these requirements, they would say, you know, well, we need to pull these students.

So I'm just wondering if there could be any language in there about, you know, we would follow through with regular teach-out plan or something like that. I don't know how to craft that just right, but I just wondered if there could be, instead of it just being so instantaneous, that there could be some sort of time period.

PARTICIPANT: Annmarie.

MS. WEISMAN: So I hear the concern from our perspective that we're talking about debt or liabilities that result from borrower defense claims.
So at that point, the institution has had some notice, is aware that they have these claims, has had a recovery you know, hearing and some back and forth as part of that process, and the ability to provide evidence at that time.

So I think from our perspective, you've had some notice along the way to what's coming, and you can kind of prepare for that. You would generally have a sense of whether this amount of claims is going to impact your financial score to the extent that it is.

This is, remember, it's discretionary and we expect that you know, schools that have a claim or two would not have a problem. That a claim or two is mostly likely not going to impact a financial score of an institution.

And if it does, then perhaps it should, you know. Is a $10,000 claim going to impact the score of most schools? I would argue no. And that if the impact is so significant that it does impact the score, that I think the idea that a school cannot continue to enroll new students, for example, might be warranted.
PARTICIPANT: Right, I don't disagree with that. I just, I'm concerned that it's instantaneous. And I'm not going to necessarily know when you're going to be recalculating that score to assume should I stop enrolling students now, or. Like, I don't know necessarily when you have a group of claims that you decide, I'm going to go ahead and recalculate.

MS. WEISMAN: But you know that we've gone to you for recovery of those funds. So it's not just we have claims. These are claims that we have adjudicated, we've told the institution, You owe us money for these claims.

So, you know when they've totaled such an amount that they're starting to impact your score.

PARTICIPANT: Okay, other proposals or questions, or I'm sorry, or concerns for this section. Abby, you have tent has been up. Abby, do you have proposed language or a suggestion?

MS. SHAFROTH: I'm hoping to see if there's some room for compromise on the sort of, this idea that a, you know, discretionary trigger
could be something related to a borrower defense judgment, you know. Something that happens before the final adjudication of the claim by the secretary, but that would I think reasonably make us think that there is liability related to borrower defense-type claims at issue.

And that would, I think if we're looking for early warning signs and the department wants to have some of the discretionary at least authority to consider this.

So would something like, if the institution is required to pay any debt or incur any liability arising from a final judgment, sort of as with a cross reference to the final judgment standard from Issue Paper 1, in a judicial proceeding or administrative proceeding or arbitral proceeding that relates to the, on claims relating to the making of a direct loan for enrollment at the school or the provision of educational services.

That seems pretty discrete, pretty clearly related both to borrower defense and to liability of the school, and strikes me as if there
is that sort of judgment, and we know that's a, sort of, per se basis for borrower defense relief, why not authorize the department to look at that and consider that an early warning sign.

PARTICIPANT: Any other proposals or suggestions? Aaron.

MR. LACEY: This is very specific to Ashley and Annmarie's conversation. So I, and I think maybe this would solve the issue, and also address a concern I had.

So you all, and I appreciate the department, and I'm going to skip ahead to number three on page five, built in an opportunity for institutions when they provide notice of one of these events, to provide information, quote, "About the conditions or circumstances that precipitated the action," etc.

The challenge is the way this language is written, it only, it contemplates that an institution has an opportunity to communicate to the department about extenuating circumstances, etc., either when it provides notice, or in response to a determination by the secretary that the
institution is not financially responsible.

Now, here's the concern. With regard to borrower defense liabilities, right, you don't provide notice. So the institution will not have submitted a notice to the department. Which means the first opportunity it has to communicate to the department would be after the composite score has been recalculated and there's been a determination.

I know there's been lots of back and forth in the recovery action, but my concern is the one that Dan brought up, right. So let's say the institution has some sort of windfall with regard to its financial position, right.

So I'm an institution and I've gone this borrower defense claim process, and I've got $100,000, right, in borrower defense liability. But I don't think there's going to be a basis to recalculate my composite score, because I just got a gift for a million dollars. But the department doesn't know that. Because you got last year's financials, and all you have is the information on the liability from the borrower defense proceeding.
And under this provision, there's no opportunity for me, before you recalculate the deposit score and reach a determination, to provide you with information. Because I don't give you notice about borrower defense actions, you've already got that.

So what I would suggest, in the way of very specific language, is to say in number three, it should read, and I'm going to go all the way down. I'm here in its notice to the secretary, I'm skipping all the way down to the third line. Under paragraph (c) of this section, or I'll just read the whole thing, make more sense.

In its notice to the secretary under this paragraph, or in response to a determination by the secretary that the institution is not financially responsible because of an action or event under paragraph (c) of this section, but before the secretary takes action, the institution will be afforded an opportunity to.

And then you get down to (iii). Which means in a borrower defense circumstance, if you all determine to do a recalculation of the composite
score, but before you would act on that recalculated composite score, there is a guarantee that the institution will at least be afforded an opportunity to provide additional information to the department.

Which could be, as Dan pointed out, any host of information that you don't have available regarding finances or changes that may have occurred since the last financial audits were submitted.

For me, it is also important, I think that helps resolve Ashley's concern. But it also is important because I want to make sure that institutions -- I know the department needs to act quickly, I'm not suggesting a particular time frame.

But I think institutions should at least have a change in every circumstance to provide, if there is relevant information regarding their financial circumstances, to provide that before the department acts on its recalculated composite score or what have you.

MR. BANTLE: Okay, I see Chris and
Michael have cards up. Are they proposals on (c) one through four? Okay.

PARTICIPANT: Chris.

MR. DELUCA: So my proposal is for some clarification. And I think it gets back to the point that Valerie and Ashley were making as well. But it's really important to know whether or not this recalculated composite score is an official composite score.

And the concern that I've got, particularly for small institutions, is you may have a situation where, so for example, massage therapy school, five students in a class. They've got a borrower defense claim because of a rogue administrator, rogue admissions director or something. Okay, the school corrects it, but they've got a BDR claim, it could be $50,000.

For a small school, that may move their composite score. Now, it may not move it from, and the issues is it may not even move it down to 1.0, right. So it could move it from a 1.6 to a 1.4. For you, for the department, there's no, okay, that's fine, because you've got that cushion
there, as long as it doesn't go below a 1.0.

But if it's an official composite score and now it's been recalculated. And again, not to put you on the spot, Michael, but I'd love to get your thoughts on this. Now does the school have, you know, some accreditors have an obligations to report to, require that their schools report to them if there is a, you know, material finding or change of position or, and notification from the Department of Education.

Well now do they, are the accreditors going to get notice of this recalculated composite score? Or does the school have an, the school may have an affirmative obligation to do that?

Now is the school, even though the department doesn't say they're not financially responsible, but they technically haven't, now they've got a 1.4 instead of a 1.6. And does that mean that, okay, they're fine for the feds, but now they've got an issue with their accreditor?

So I think, you know, that this is, you know, it becomes important in how this is classified. Again, if it's just, if the language
here is that for purposes of this section, we calculate the composite score to see if there's an issue, but it's not, you know, but it's not restating the school's official composite score for fiscal year 2017, that's one thing.

Versus saying, Oh, we're going to update your official composite score for fiscal year 2017. And now, you know, instead of a 1.6, you're a 1.4, and even with, so with the Department of Education, the department says, We're not going to take any further action. But now the school has other repercussions because of that.

PARTICIPANT: Michael.

PARTICIPANT: Well, frankly, I think that a recalculated composite score is the least of the school's worries at that point. They've been found to have misrepresented. As an accrediting agency, we want to know that. Now, whether, you know, it triggers -- you know, our agency would not be interested only because it triggered a different composite score trip.

I mean, we would be interested to know that a claim was being adjudicated by the
department, and that the institution was found to have misrepresented to the student. That's, as an initial matter, that's going to initiate our review, regardless of, you know, the financials is another piece of it, another consideration as to whether or not.

But our concern is at that point we'll be, okay, well, can they can continue to operate. So I'm not concerned about whether or not, you know, it trips, or it. Because we're already initiating a process at this point for review. And financials is going to be part of that, and financial reporting's going to be part of that.

We're going to ask, what is the financial impact of the department's action. Give us all the information about it, explain, you know, what the misrepresentation was and so, you know. I just, I'm not persuaded that that is an issue for accreditors. And in fact, to the contrary.

You know, we're going to want as much of that information as we can. And I don't want to do, you know, put into place things that would restrict our ability to get that information. But
how we use the composite score I think is not really material.

PARTICIPANT: Okay, so the time is now 10:17, and we still have to get to the subcommittee meetings, or their report-out. So unless this is a proposed language to correct your concerns, I'm going to open it back up to Annmarie. Michael.

PARTICIPANT: So, yeah, to go to what Aaron, Ashley, and Valerie were saying, maybe, to go back to Issue Paper 2, it fits, and I know, I'm sorry.

But under number nine, under recovery from the school, when it talks about the secretary may initiate a proceeding, to Aaron's question or point about notification and having the opportunity, I'm sorry that I don't have the specific language that would be helpful, because it just popped in my head. But maybe that's where we can give some notice and opportunity for the institution to provide, you know.

Because, again, what we're trying to get to is, you know, the early warning. And remember that this is only when they incur a
liability, not when they may incur a liability.

This means that it's already happened.

So again, I'm not as concerned about, you know, what the impact will be because you might take it. You've already taken an action, you've already initiated a proceeding, you've already issued a requirement for them to repay at that point. They've incurred the liability, and now you're going to recalculate.

So we're pretty far down the road. The institution had plenty of notice and opportunity probably up to this point, but if we wanted to make sure, then it could go under recovery from the school and a little bit of language about notice being provided there.

PARTICIPANT: Okay. Annmarie, do you want to open up the paper to other suggestions, or (Simultaneous speaking.).

MS. WEISMAN: I'd actually like a moment to confer with staff first, and then we can continue on.

PARTICIPANT: Okay, thank you.

MR. BANTLE: Annmarie, it is 10:15.
Should we just take the 15-minute morning break?
    Perfect.

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

MR. BANTLE: Okay, I would like to just remind everyone, well, first, thank you all for the discussion. It has been a good discussion. It has been necessary discussion.

But I would like to remind you, we also do have a lot to get through today, so as facilitators, we will be jumping in to kind of hone points and understand concerns, and to try and move the conversation along. So you will all probably be frustrated with us in due time here. We apologize in advance.

I want to turn it over to the Department, as they had kind of requested some time there to discuss.

PARTICIPANT: So I think we've gotten some good feedback on some of the paper, as we've gotten so far. We left off at D, at the bottom of page 4. Are we ready to pick up there, or do we have other—

PARTICIPANT: Suzanne?

MS. MARTINDALE: Just a very quick suggestion before we move on to D, understanding the concern that the Department has about, you know, anyone can bring a lawsuit for any reason, so that may not be connected to financial
responsibility. However, could we consider language that captures, you know, attorney general investigations, enforcement actions, as a compromise position, a multi-state attorney general enforcement action, because those are typically brought after years of investigation, evidence gathering and are not based on nothing, and if they're connected to borrower defense, I think that is a very, very relevant early trigger.

PARTICIPANT: Thank you. Annmarie? Or Juliana, did you also have a point on that?

M.S. FREDMAN: I was going to make a similar point about attorney general actual filed lawsuits, as opposed to investigations, not being something that gets filed willy-nilly. And I also wanted to echo what Michael was saying about a fully adjudicated borrower defense claim being a potential non-mandatory trigger.

Given what we've heard here from some of the smaller schools saying that even a single borrower defense claim filed could destroy their business, I think one that's been through the full adjudication process would at least be something the Department might want to look at in some circumstances, if it really is going to impact the business that much, in terms of financial responsibility and diligence for the taxpayers.

PARTICIPANT: Any last comments before we
move on?

Will? Make it a good one.

MR. HUBBARD: Oh, this will be a great one.

So I think in a similar vein, understanding that the Department doesn't necessarily have a palette for some of the previous stuff, I think to the point that's been made, multi-state actions, in terms of settlements, so any settlements that go across state lines I think would be relevant in this case. This indicates a larger action versus a one-off settlement with a single student, which I could understand the relevant concerns with some schools on that, but I think larger settlements that do cross state lines, I think would indicate an issue that would be worth looking into as it relates to BD.

PARTICIPANT: Just a correction on what's up there. It would be state attorney general, like, complaints filed, or lawsuits, as opposed to bare investigations. So we've heard the concerns of the AGs about investigations.

PARTICIPANT: Thank you. Annmarie?

MS. WEISMAN: So I just want to thank people for coming up with additional suggestions. I feel like I asked, and you delivered, so I do want to thank you for that.

These are all items that I'd like to take back for consideration, so if we can kind of move on from here, but
knowing that we will revisit this, I've been — I think, pretty firm
with our facilitators that we've got to get through these papers
today, so we have time to come back to one and two tomorrow,
so being mindful of time, I don't want to deviate from that too far,
but I do think that we will end up revisiting some of these
suggestions tomorrow again.

PARTICIPANT: I know Evan — quick, very quick,
okay, just because I think it will probably be in relation to —

MR. DANIELS: Yes, it is. So appreciate what
some have suggested about state attorney general actions.
There's probably going to be some differences in position from
the state attorney generals on this, as it concerns my office,
anyway, we have publicly filed a comment as it related to the last
rulemaking, we would be opposed to the use of an attorney
general individual state or multistate investigation, or even the
filing of a lawsuit, for the reasons already stated. Those things
are uncertain. The results are uncertain, and that's why we
would oppose it.

However, I think we would support the idea that a
final judgment, or some final resolution, as the basis for looking
at these things more closely.

PARTICIPANT: So could you — just to impose
on you just for a minute, could you help us to amend the
language up there to something that might help you to be more
comfortable, that you think would be more applicable, generally?

MR. DANIELS: Yes, I think we would oppose the
complaints filed, and we would support a final judgment or final
resolution. But anything regarding just complaints filed, or
investigations, you know, initiated, we would oppose that. Does
that help?

PARTICIPANT: So I think what he was saying
was to strike 11, but can you undo that and go back? I think you
struck 11 and 12, and I want to see 12 again.

So then the question I would have for our — I
believe you were referred to yesterday as our AG friends, the
question I would have for our AG friends is, would we be aware
of the settlements, or would they be private?

MR. DANIELS: Generally, at least the practice of
my office is that settlements like this come in the form of consent
judgments, which have to be approved by a court, and they are
publicly announced.

PARTICIPANT: Juliana, did you have a question
or a comment to that point?

MS. FREDMAN: Just a brief one. I understand
that the AG’s wouldn’t want investigations or even complaints
filed to serve as a basis for a borrower defense. I understand
the reasoning behind that.

But these are early trigger warnings, which the Department can, at their discretion, take a closer look. So I think that our position would be that a complaint filed, that's gone through the vetting process to be filed in a court, would be an appropriate potential trigger to investigate, to look at the issue further, if the department thought that that was warranted, as opposed to being something more — some sort of more concrete action.

MR. DANIELS: And I understand that. And ultimately, the issue we have with that is given that some kind of trigger could result — not an action against an institution, but a concrete result that does have effects on the ability of an institution and how they operate, we just—we have due process concerns about the filing — the mere filing of a complaint or presence of an investigation as a trigger, if you will.

PARTICIPANT: Okay. Just, Chris, is it another suggestion, or—

MR. DELUCA: So I think the numbering might be off. I think the numbering is — I think that those are all subs under what was then 3 — or now 4, those are all numbers under publicly-traded institutions, right?

So aren't we talking about adding like 5, 6, 7, 8?
Aren’t we looking—I mean, as far as I’m not saying that I agree with everything on there. I’m just saying, as far as understanding it, these are other facts—these are starting at—whatever, 5, sub 5, Romanette 5, right. Those are all—or is that marking tabulations public—

PARTICIPANT: So Romanette 5 I believe should be numeral 5.

PARTICIPANT: Well market cap, and compared to cash flow, market cap—that would—no, that would be for publicly traded, right?

PARTICIPANT: Yes, Romanette 6.

PARTICIPANT: Market cap? Yes, Romanette 6 should be—

PARTICIPANT: Numeral 5, yes.

PARTICIPANT: Okay.

PARTICIPANT: Okay. So I think we have some food for thought for the Department there, and let’s move on to D.

And we’ll let Annm give us the guide of how much the Department would like to consider at this time.

PARTICIPANT: So we’re picking up at the bottom of page 4, with D, recalculating the composite score. The Secretary recognizes the actual amount of the debt or liability incurred by an institution for borrower defense claims.
under paragraph C (1) of this section as an expense, and it accounts for that expense by — and the new text that was inserted here, at 1, 2, and 3; 1, for the primary reserve ratio, increasing expenses and decreasing adjusted equity by that amount; 2, for the equity ratio, decreasing modified by that amount; and 3, for the net income ratio, decreasing income before taxes in the net income ratio by that amount.

Our next change occurs on page 5, with number 3. In its Notice to the Secretary under this paragraph, or in response to a demonstration by the Secretary, that the institution is not financially responsible because of an action or an event under paragraph C of this section, the institution may demonstrate that the reported withdrawal of owner’s equity under paragraph C (2) was used exclusively to meet tax liabilities of the institution or its owners for income derived by the institution; show the action or event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the debts and liabilities that arise from borrower defense claims under paragraph C (1); or explain or provide information about the conditions or circumstances that precipitated that action or event that demonstrates that the action or event has not or will not have a material adverse affect on the institution.

So I think that those three conditions under 3, on
page 5, may address some of the concerns that Dan and Aaron
and possibly Chris had raised earlier.

PARTICIPANT: The screen doesn’t match. Scroll down a little.

PARTICIPANT: I apologize. I’m just not sure what function the screen is playing right now, whether these are things we’re considering, or this is just stuff that—you know, but I just want to make sure — okay. Okay, well, that reflects my earlier comment.

PARTICIPANT: Are we breaking there, Annmarie, or are you opening it up to questions?

Okay, Kelli and then Chris.

MS. HUDSON PERRY: Okay. In D, on the bottom of page 4, I’m not going to beat a dead horse, but I still think that it should be liability, even based on the Department’s description of what a debtor liability is. But saying that, in your—in the 1, 2, and 3, where you talk about the ratios, these ratio calculations are only listing the ones for for-profit entities, and I believe that this applies to both for-profit and not-for-profit.

And so in one, it needs to be changed, increasing expenses or decrease in adjusted equity amount for for-profit institutions, or expendable net assets for not-for-profit institutions.

In the second one—
PARTICIPANT: I'm not sure that our editor has caught all that.

MS. HUDSON PERRY: Okay. I can go slower. Sorry.

PARTICIPANT: Thank you.

MS. HUDSON PERRY: Decrease in adjusted equity for for-profit institutions, or expendable net assets for not-for-profit institutions.

In number 2, for the equity ratio, decreasing modified — I believe you're missing a word there, that should say modified equity, for for-profit institutions, and modified net assets for not-for-profit institutions.

And then in the third one, decreasing income before taxes in the net income ratio for for-profit institutions, and changes in assets without donor restrictions for not-for-profit institutions.

PARTICIPANT: Excuse me, Kelli, let me clarify. Should it be net assets, or assets, in the last one?

MS. HUDSON PERRY: Sorry, changes in net assets.

PARTICIPANT: Thank you.

MS. HUDSON PERRY: Yes. It's without donor restrictions.
PARTICIPANT: Oh, sorry.

PARTICIPANT: Okay. Chris?

MR. DELUCA: Under D(2), the equity ratio for for-profit institutions, and again, the catch as far as you know, modified equity, but I think it should also be a decrease in both modified equity and modified assets for for-profit institutions, because what we're saying here is based on the BDR claim, we're going to reduce the amount of equity by $10,000. But then also, if we're going to do that, the denominator should be decreased as well, because they're saying, okay, if we're going to go back and re-state where the school was, then they had $10,000 fewer of assets as well, so I think it should be an adjustment in both the numerator and the denominator to make the math consistent.

PARTICIPANT: Chris, how does that affect the assets?

MR. DELUCA: Because if the school is saying, oh, we've got — well, it seems like there should be a similar adjustment. If we're saying that a school—

PARTICIPANT: The ratio that this really has an effect on is actually the equity ratio. In the primary reserve ratio, it's affecting the numerator and the denominator. So the equity ratio is where it's actually going to have an effect in that
calculation, because you're going to be increasing your — sorry, decreasing your equity, but your assets aren't going to change.

Because the concept of this is that the Department is saying, okay, you owe us money, so an institution is going to an expense and a liability on their books until they actually pay it. So because of the fact that they haven't paid it yet, they're not affecting their assets.

PARTICIPANT: Other proposed language or comments on this section?

(Pause.)

Annmarie, has the Department heard enough on this section? Can we open up to the next section? So are we at F, public institutions?

PARTICIPANT: We do not have any new changes in that section that I can see. We don't have anything shaded with new information. So if people want to just take a quick glance at that, I think that — yes.

PARTICIPANT: So any — take a quick glance. We're looking at F all the way down to where 668.172 would begin on the next page, on six. Is that correct?

PARTICIPANT: I'd like to pick up with 668.172, with financial ratios.

PARTICIPANT: Any comments prior to 668.172?
Okay.

PARTICIPANT: Annmarie?

MS. WEISMAN: So this is where the work of our subcommittee comes in, and we'll have them at the table for questions related to this, where applicable. We've inserted new text, which is 668.172D, about the transition period that we mentioned related to leases.

"D(1) states, as a result of changes to the accounting for leases, required by FASB, for an institution's four consecutive fiscal years beginning on or after July 1, 2019, for which the Secretary calculates the institution's composite score, the Secretary also calculates a transition score by excluding from the calculation operating leases that the institution entered into before July 1, 2019, provided that those leases are properly disclosed in the supplemental schedule required under Appendix A or B of the subpart.

"For each year of the transition period, the Secretary uses the higher of the composite or transition score in determining, in part, whether the institution is financially responsible."

We then continue at the top of page 7, "For the transition period described in paragraph D(1), the Secretary suspends the conditions in section 668.175D (1), Romanette 1 & 8);
and two, under which an institution continues to qualify for the zone alternative.

"For any fiscal year following the transition period, the institution's transition period scores have no bearing on whether the institution qualifies under an alternative standard in 668.779.175 C, D, or F."

And because of the significant discussion we had last time about this section, I'd like to close that off there, and just have the discussion about this section on the transition period for leases.

PARTICIPANT: Opening it up to the committee? Chris?

MR. DELUCA: So at our last meetings, there were some questions and requests for some additional information, and perhaps some additional proposals with respect to both the transition period, as well as perhaps even looking at are there other ways to look at accounting for the affects of the lease changes under the FASB rule changes.

And so one of the things that I had mentioned at the last meeting was that there are schools that signed leases before the FASB rules were published. Those leases will extend beyond the transition period. And so seeking additional transition period for those, with respect to those leases, and
again, under just a fairness idea of that, schools making financial
decisions, i.e., entering into a lease under a current set of rules in
2014, that they should not have an adverse impact — have
something that was going to adversely affect their composite
score in 2022 or 2023 when they're still under that lease.

So I want to stop there, and just understand—and
well, follow up with that, some of the information that was
requested by the subcommittee that we provided. We've got
information from nearly 200 schools that indicated about 15
percent of those schools responded back to us saying, oh, we
have leases that fall within that frame. So 15 percent of a
sample size of about 200 schools.

So wanting to know, just kind of the thought
process of why that request was not granted, or what the thought
process is for not extending a transition period for schools with
leases in that circumstance.

PARTICIPANT: So I'm going to ask one of the
staff members from the Department, Chris Vierling, to come to
the table to address that issue. He worked more specifically
with the subcommittee, and can better respond to that.

MR. VIERLING: This is Chris Vierling. I hope I
can give a good explanation. There was a lot of discussion on
the subcommittee concerning the transition period, and one of
the aspects of what will happen in the transition period is that a school will be identifying all of the leases that exist at the beginning of the transition period.

And as the transition period is moving along, the balance of those leases is going to go down. And as those leases go down, the impact of the business decisions that the institution is entering into, after—I mean, while the transition period is occurring, will be reflected in the composite score.

So the thought was, that we've got the four-year transition period, and then an institution would hopefully be in at least the zone at the end of the transition period with the leases, and that we are basically giving a waiver to the zone requirement for an additional three years. So that if an institution is in the zone for the entire transition period, they've still got an additional three years after the transition period to remain in the zone.

And I can say that the members of the subcommittee actually thought that that was a pretty good idea that we had all come up with.

PARTICIPANT: So my concern is that there—so even if a school is in the zone at the end of the transition period, and recognizing that the way the math works, that the accounting works, is that the value of the lease, liability, and assets is going to go down as you get further in the lease.
Now we haven't talked about options. So if we've got a school that has signed a ten-year lease, and it's got a five-year option under the terms of that lease, there's a whole other issue that the school has to determine of whether or not they get the benefit or if there's an impact for the fact that they negotiated for favorable terms under an option. But that's a whole other issue.

But even with that, in the transition period, and this gets back into an issue raised earlier, is that I work with schools that are in the zone for Department of Education purposes, but that puts them into financial monitoring under their accrediting standards. And so it may not be an issue with the U.S. Department of Education for that extra three years, but it can be a very material issue for them in connection with their accreditor.

And as I said, I work with schools that have a 1.2, and that's an issue for them with their accreditor. So there's still an issue with a negative impact on them for a business decision they made under a set of rules that — they're being judged on rules that didn't exist at the time they made their business decision.

I understand going forward, these are the new rules, but you know, in 2014, these weren't the rules.
PARTICIPANT: Other comments or concerns on this section?

Abby?

MS. SHAFROTH: I was just wondering if you could talk us through sort of how you came up with four years, and four years from the effective date of this regulation. Presumably schools already know about the change and the accounting standards now, and so operating leases — if they entered into operating leases between now and July 2019, they would be doing so with sort of awareness of those consequences. So I wondered whether in light of that, it would be — make sense to have a slightly shorter transition period, like three years.

PARTICIPANT: Well, in actually, because this applies to the world, the world has known that this accounting standard was going to be coming into effect since 2016. We did some research as a subcommittee, and what we determined was that it was about an eight-year period, that that was on the outside, was eight years.

And so we boked and we said, okay, you’ve got—what is it, the three years — well, I guess at this point, it’s two years — from 2016, and then you’ve got the four-year transition period. And then because we do want schools to be able to
continue to participate, we said, okay, well, we'll do the zone for an additional three years.

So it was very reasoned to try to allow as many schools to remain participating in the title IV programs as we could.

PARTICIPANT: Chris DeLuca?

MR. DELUCA: So the second issue I wanted to discuss was there was another proposal that we had put—we, at the bequest of members of the subcommittee, to think about other ways to approach the lease amortization issue, and the change in at least accounting issues is that we submitted a proposal, the idea being, that under these rules, under the new FASB rules, when you sign a lease, a ten-year lease, you're going to have a very large asset at the beginning of the ten-year lease period. You're going to have a very small asset at the end of the lease period. And so it's a self-amortizing number. Each year that number goes down.

And so the negative impact of the lease on a school's composite score calculation is going to be reduced, if nothing else changes, just by fact that you've gone further into the lease. If all the numbers stay the same, your composite score's going to gradually get better.

So we had put a proposal to say that what if we
looked at it a different way and used an averaging of that, so that we're not overstating the impact of the lease up front, we're not understating the impact of the lease on the back end, but to try to come up with, if it's a ten-year lease for $100,000 a year, the average lease payment is $500,000. So for purposes of the composite score calculation, can we value the asset and the liability at $500,000, for each of the years under the lease, so that it's not fluctuating so wildly between the front of the lease and the end of the lease.

So that's not — again, that was submitted to the committee at the request of proposing different ideas. I see that that idea is not included in the proposal, and so I just want to understand the reasoning why behind that.

PARTICIPANT: Well, one of the primary objections to the proposal was that it was proposing to not follow GAAP for the composite score going forward. And for the composite score, we follow GAAP.

And as a result of that, if it had been something involving transition period, but the way that the proposal came to us was that it was going to be going forward, that we would be using the averages — that that would be the regulation, and that we would never be actually implementing the accounting standard and taking it into consideration.
PARTICIPANT: Aaron?

MR. LACEY: Can I just ask? I mean, I understand the — how you all came up with the four years as the transition period. What I don’t understand is what is the harm to the Department to extend that transition period further in an effort to try to keep those institutions that might have just signed ten-year leases, or might not be as sophisticated, smaller schools that may not be as up-to-date on the accounting changes, from being unintentionally caught?

I mean, I just — what I don’t understand why you got the four, you know, this sort of trying to shoot the middle here. But what I don’t understand is the risk to the Department or the downside to the Department to allowing a longer transition period.

Because the harm is clear. But what is the downside to extending?

MR. FENLEY: So this is Steve Fenley from the Counsel’s Office. Transition periods, as we view them, at least, are of limited duration. And some of the proposals for treating the operating leases differently were to either go on in perpetuity, or for longer periods.

And what we think is a reasonable proposal to combine a break on being in the zone, after the end of the
transition period, with a transition period that's already coming after, as Chris mentioned, after a period where there's been pretty broad notice to everyone that this change was coming.

And also as Chris noticed, the regulations themselves are contemplated on having the financial statements be evaluated in accordance with GAAP. And GAAP is changing, and people should be planning to be evaluated under those change standards going forward.

PARTICIPANT: Can I just — I understand that. But I mean, we're not taking about perpetuity. We're taking about the difference between four and eight, or four and six. Because folks who have just signed a ten-year lease, I mean, there comes a point where that's no longer an issue.

So I totally appreciate that there has to come a point where folks need to be in compliance with GAAP, and that we don't want to give them forever, although, this is a completely separate concept that is an invention of the Department, in a sense. But I guess again, my question, and I'll put a finerpoint on it, what's — we know that there is potential harm to institutions. Maybe they should have known better, right? We're taking about a marginal group of schools, probably the smallest and least sophisticated, right?

But we know that there's a potential harm there for
those folks. And it's possible that it's really just due to the fact that they're not as sophisticated or well resourced, and had the bad luck to just sign a lease. But I think we have to allow there's some potential harm.

What is the harm to the Department or the taxpayer if we go from four to eight?

PARTICIPANT: I think you're looking at their proposal on the table, and that's the — I've tried to answer the question you asked. Right? What would be the harm if I went on in perpetuity, or for 20 years, or for 10 years?

We know that schools may have the opportunity in some circumstances, especially with related parties, to have incredibly long leases, right? The period you see in front of you is what we think is the reasonable recommendation based on the discussions with the subcommittee.

PARTICIPANT: Are there proposals for modifications to 668.172?

PARTICIPANT: Okay, Aaron, and then Chris, do you have a proposal? Okay, so we'll go down the line, Aaron, Chris, and then Linda.

(Pause.)

Shall we go to Linda? Linda.

MS. RAWLES: Well, I just want to share the
concerns that Aaron had, because even though I'm here representing the large for-profits, as an attorney, I have some small schools who, as much as you think they should know this, they are relatively small and unsophisticated. They were taken by surprise.

And I know at least one that its score would change by .9. So I just want to add my concern to Aaron and Chris, and suggest that we have a longer time period of transition.

PARTICIPANT: Do you have a suggestion on that time period?

MS. RAWLES: I'd like to hear what Aaron and Chris say, but maybe eight.

PARTICIPANT: Chris?

MR. DELUCA: My proposal on extending the transition period is not for every school. So I'm not looking at it wasn't going from four to eight for everybody, and delaying it. But looking at that, I mean, it's a relatively small group, again, based on an informal survey, but still of a substantial number of approximately 200 schools, 15 percent of the schools that fall into that circumstance.

And so again, looking at not changing what's here, but adding an additional period for those schools that fall into that
circumstance. I mean, again, I respect where the Department's coming from. Again, I thought the proposal for averaging the leases, I still like that, but I'm not going to die on that hill for today.

But I do think that for schools — again, for that subset of schools, that signed a lease before February of 2016, and at least extends beyond the transition period, they should be able to use — they should account for those leases through the end of their lease. Now, if we need to put a qualifier on there, that it can be a related party lease, I mean, I'm not trying to provide protection or create loopholes for people to abuse the system.

I mean, I'm looking at clients of mine who are family-owned, trade and career schools, who signed a lease in 2014, who are going to have a negative impact on this when they do their composite scores for 2023 and 2024 and 2025.

PARTICIPANT: Aaron?

MR. LACEY: And look, I support that proposal. And the reason is because I understand the rationale and the thinking that schools need to get into gear here. Again, I'm not suggesting that we should let this go into perpetuity. But if there's no harm to the Department and the taxpayer that we can identify, I cannot understand the public policy reason for
penalizing a small percentage of schools when it is easy to accommodate them.

And we’re still talking about a fixed period of time, when we’re going to be calculating an alternative score. They are still subject to the composite score. I mean, we’re talking about a very specific accommodation for a limited period of time to avoid an identified harm, when there is no harm identified.

PARTICIPANT: Aaron, do you have a proposal that differs from Chris’s?

MR. LACEY: No, I’m just expressing my support for Chris’s proposal.

PARTICIPANT: Okay, so Kelli’s name is tentis up. And can you turn those towards — it’s Chris and Mike Busada.

So before we move on, I just want to say that the time is 11:20. There is a hard lunch break at 12:00, and we still have to get to the report out from the subcommittee. So we have to finish this section, because we’re still in 668.172.

So Kelli?

MS. HUDSON PERRY: So mine is actually a question for Chris, and I’m trying to maybe help with this a little bit. So in those schools’ instances, that have these long term operating leases, what will be their plan when those leases are done, right?
Because ideally, they’re still going to need that same space, or whatever they’re leasing, right? And so if they have to buy it, they in essence are then going to have to put an asset on the books, and potentially a debt on the books. So what’s their plan past this transition period, I guess?

MR. DELUCA: Well, the plan past the transition period is that they have the transition period to figure it out. These schools don’t have the resources to buy a building. They don’t have — and nor would they necessarily need to. But again, it’s going to be looking at, are there going to be options for them to get — will they have to do five-year instead of ten-year leases? How much can they invest for their schools if they can only commit to five years rather than ten?

What conditions are landlords going to put on them, if they can only get a five-year lease, or a ten-year lease, because a five-year lease, they may have to pay more than they might have had to pay if they could get a ten-year lease. There’s going to be substantial issues with that. But that’s going to be part of what these schools, over the transition period, will have to figure out. Okay, under the new reality, what they can afford to do.

But again, I think that at least for the period of the base that they’ve already signed for these schools, that they
should not be penalized under their current base.

MS. HUDSON PERRY: So I think—and this kind of came up in some conversations, this change in accounting, for those of you that aren’t accountants around the room, which is most, is a really big deal. It’s been something that FASB has been working on for years and years and years. And when the financial responsibility composite score was developed, this wasn’t a concept, right?

So outside of the term of this regulation, there’s the concept of, does that calculation need to be re-baked at, right? Do those weights still have the same concept, with the fact that this accounting pronouncement now exists? Because it changes the landscape for some schools.

For some, it doesn’t affect enough that it’s going to change their score. But is it something that those weights in the composite score potentially need to be baked at.

So I think the idea was that with the adoption of this accounting pronouncement, nobody really knows what’s going to happen to the scores. Nobody knows at the end of the four year transition period, how many schools are still going to be affected by that.

So it can’t be done within this rule making. But does it give the Department the potential to say, you know,
there's a number of schools that are being affected by this, and we're going to get to year four, and there's still a number of schools that are being affected by this. Do our composite weights then need to change? And potentially look at it years down the road, once there's some data available, as opposed to making that determination right now.

PARTICIPANT: And that's something that I agree with, and I think that that's something there's — as far as looking at the composite score in general and recognizing that you know, again, I assume that when the composite scores were calculated, that the folks that did it knew how to account for leases, and knew what lease liabilities were, and they chose not to make any adjustment to the composite score calculation for leases. I mean, that was part of the landscape at the time.

Again, we've got this new accounting lease, and it's my understanding, we're not getting into the particulars of the actual composite score and the rates here. But that's certainly, I think, you know, open for further discussion.

One of the things I'd even like to propose as a modification to my proposal here, from an administrative standpoint, is that recognizing the point that as we get to the end of a lease, the impact on the composite score is going to decrease, because the value of the asset is going to decrease.
And so you know, even among these 15 percent of schools that I'm taking about, they may all pass under the new GAAP rules. It may not be an issue. So even if it's just an option for the school, so it's not like they're mandatorily doing multiple composite scores, and the Department's doing multiple composite scores, but a school, if they're in that circumstance, we've got — we're creating a situation right now during the transition period where there's a mechanism to report this information. So for a school that has a pre-February 2016 base, that if they choose to do so, that they can submit an alternate composite score calculation.

So again, from an administrative standpoint, there's even fewer schools that would fall into this gap, and again, looking to reduce the burden on the Department as far as how many alternate calculations they'd have to look at.

PARTICIPANT: Okay, I see Danny's tag up, and Mike's tag up. Are these additional proposals?

Yes?

Okay. Danny, and then Mike, and then, I think, just for the sake of time, I think we need to move onto the next section.

MR. MADZELAN: I just want to address something that Chris said. And Aaron. They talked about a
small number of schools that would be really impacted by this lease, and the ratios that we would derive thereof.

There are many schools out there, some large, medium, small, sophisticated, unsophisticated, that signed leases prior to June 2016. And some of those leases are for $25 million and $30 million, and they go on for like 20 years. So my only proposal is that if this committee sees some benefit in extending the transition period, it is not for select member schools, it is for all schools.

PARTICIPANT: Proposal, Mike?

MR. BUSADA: Just to really kind of piggyback off of that, I just want to make sure that as we discuss this, we keep saying, it is the school. You know, will this harm the school? If the school has to close because of this, will it harm the school?

At the end of the day, it is not about the school. It is about those students. And a lot of schools, they’re the only providers of a lot of in-demand and things, like welding, truck driving, pharmacy technicians. It is — I mean, this is not about the school. It is about the students. And when a school closes, every single student that graduated from that school is affected.

So you know, I appreciate everybody caring about us and the schools. I want to care about the students, because
when a school closes, it hurts the students, and we need to — if there's no downside, if there's no harm to the Department or the taxpayer, then we need to protect the students and make sure that we don't have schools in rural areas closing where there's no other providers.

PARTICIPANT: Thank you. I think now we're ready to move on. So can we open up the next section?

PARTICIPANT: So at this point, I'd like to bring the subcommittee up, if we're ready for that, instead of continuing on in this paper.

PARTICIPANT: Well, and that's — my question is I've got a significant procedural issue, as well as just a substantive issue, but with Appendix A, the ratio methodology for proprietary institutions that is referenced in 668.172. So I'm not sure if the subcommittee is going to be addressing that, and if that's the proper time for me to raise these issues, or if we need to raise these now.

PARTICIPANT: The subcommittee is going to walk through the appendices.

MR. VIERLING: Okay, let me say, I'm Chris Vierling.

MS. PEFFER: I'm Rhonda Peffer.

MS. MENDITTO: Sue Menditto.
PARTICIPANT: And all of us were working on the subcommittee, and Sue was one of the non-federal participants, and Rhonda and I were both federal participants. So we'd like to start with Appendix A.

What you see shaded is all of the changes that have been made from the original regulation, not from what was presented at the committee the last time. So what we're going to go over is only going to be those aspects that were changed from when we previously reported to you.

And Rhonda is going to start that.

MS. PEFFER: One of the areas that we did additional work on was the financial responsibility supplement schedule requirement, and the example with that. We actually put a definition in on what the sample schedule would require. However, in the handout that you guys got, it was not included, so we will be getting you a new handout that shows what that text would be.

But the text actually says, "A supplemental schedule must be submitted as part of the required audited financial statement submission. The supplemental schedule contains all the financial elements required to compute the composite score. Each element in the supplemental schedule must have a reference to the financial statements, or the notes
for those." And it’s worded just a little bit different, but if you’re a proprietary school or a non-profit, to actually match up, and we state the actual statements there.

And then the amounts in the supplemental schedule will be directly back to one of those. And then they will actually state when the amount is zero, they will enter an N/A on this schedule, as in not applicable. And the auditor’s opinion letter must contain a paragraph that references the additional analysis that was done on the financial responsibility statements.

In the sample that we’ll be giving you, it will have the exact texts of what statements and the different options, and how that can be put into play with that.

In addition to that, we clarified on the non-profit side, we had just total expenses. There’s always been some confusion there. We went ahead and defined total expenses and loss. Sue may want to add something to that, if she wants, on the expenses and losses section on that.

Is there anything you want to add on that?

MS. MENDITTO: We just made the definition more comparable between non-profits and for-profits. And so that was a slight change from what we reviewed a couple of months ago, or a month ago, time flies.

And losses on endowment investments and
defined benefit pension plans, other post-employment plans, and the like, would not be included, because those are prone to market fluctuations and bear no—have nothing to do and are not a proxy for the operating size of an institution, which is what we’re trying to measure.

PARTICIPANT: An additional area that we looked at was the long-term debt for long-term purposes. We had discussions there, and kind of redefined that, and made clarifications on that, from when we were here in the last. That is the information that we handed out, how that would be looked at now, so we wanted to make sure that everyone was aware that that was a change.

Most of the other changes was in the last supplement. We’re happy to go over those, if you want us to, but they’re really not any different from what we had when we were here before. But we would be happy to go over them, if you want us to.

MR. DELUCA: So I have significant procedural concerns with this committee and the changes that were made to the definition of long-term debt. And again, as a preface, again, some of you have heard me say this, but for the record, I’m going to say this again, I’m on this committee because I was nominated by the American Association of Cosmetology Schools.
My constituency schools, the vast majority of them, are accredited by the National Accrediting Commission of Career Arts and Sciences. I have been at a number of presentations from the executive director of NACCAS, where he has said to his member schools that most schools, the trouble they get into with NACCAS, the predominant reason, is because of financial responsibility. Not from an operations standpoint, but from financial responsibility.

There’s also a statement in the Government Accounting, the GAO report, there’s a GAO report from August 2017 about education oversight and gaps in monitoring the financial conditions of schools. There’s a statement in that report from the GAO that says, we previously found that accreditors most frequently sanction schools for failure to meet standards on financial capability, rather than standards on academic quality or administrative capability.

I say this as a preface to underscore how important it is that any issues that affect the composite score and that affect the calculation of financial responsibility for schools are properly vetted and we understand the impacts of that.

And I applaud the committee, the subcommittee, for the work that they’ve done on the leases. We’ve had a lot of discussion on the leases. We’ve gone back and forth, subm
proposals. You were very kind enough to answer my questions and concerns and consider things that we proposed, and understand the reasons why in response to that.

And it was my understanding that the subcommittee was created for purposes of addressing changed FASB changes that might impact the composite score, and how the U.S. Department of Education would factor those FASB changes and incorporate those into the composite score.

This change in the definition of long-term debt has nothing to do with recent changes from FASB. This change was not brought up in the issue papers. It was not brought up as an issue when we discussed—when we met in November. We met and had additional information, we had actual issue papers that we negotiated for four days in January. This issue was not brought up.

Now, as a member of this committee, I'm invited to participate in the financial subcommittee meetings. And the third subcommittee meeting that was scheduled for the end of January was cancelled, in lieu of—and replaced by a conference call that we were invited to.

But it's my understanding, from folks who participated in that subcommittee call, that this change on the definition of net income—of long-term
debt, was not discussed on the meeting that I was invited to. And now, when we get the issue papers, a week before we come here, there's a substantial change in the definition of what is long-term debt that's going to have — that may or may not, I don't know, but may or may not have a material impact on the calculations of the composite scores, for schools that participate in Title IV.

And I'm not here to provide cover for schools that are looking for ways to abuse the system. I don't know if there is a legitimate reason for why this change was made, if there was a legitimate, you know, concern or manipulation. I think that's subject to a further discussion.

But it seems to me that at this late hour, without us having to — had an opportunity to review this, one, I think it's a violation of the protocols. I certainly think it's not in the spirit of open negotiation to have such a material change thrown on us at the last minute. And certainly, I'm not in a position where I could ever agree to making this change in a regulation without having had a full opportunity to vet this, understand the impact, go back to my constituency group, and understand what affect this is going to have.

PARTICIPANT: Chris, understanding — or understanding your procedural concerns, could you point the
group towards the substantive aspects that you are discussing?

M.R. DELUCA: What I'm talking about is at the bottom of that — the bottom of draft appendix A, ratio methodology for proprietary institutions. So at the bottom, there's the three asterisks, and it's where the last — so after the first sentence, all of that additional information, "So if an institution wishes to include debt obtained through long-term lines of credit, etcetera, etcetera, through that.

So I think that should be stricken.

PARTICIPANT: I'll just add that — I mean, I'm not an accountant, but it appears to me there's a conforming change in Appendix B, for non-profit institutions. And I will also add that I have worked very hard throughout this process to get my constituency involved and engaged and try to get feedback. And with some success. I got calls about this provision from for profits and non-profits alike, so this got a lot of attention.

It's clearly again, and I'm not an accountant. This isn't something I do, but it is clearly something that is concerning to schools that it has shown up at this point in time. So you know, if it is accurate to say that this is not a change that is being made to conform to FASB changes, it does strike me that that is outside of the scope of what we were told the subcommittee was created to do and that that would be in addition that would
require consensus by the committee to add for consideration which I don’t think has happened.

MR. BANTLE: Comment from the subcommittee and then Linda.

PARTICIPANT: I certainly, as a member of the subcommittee understand the concerns being raised this afternoon. So let me try to provide some background into the subcommittee’s thinking.

We were addressing components of the ratio holistically that touched some of the FASB changes. So because we were revisiting long-term liabilities, long-term debt because of the leasing standard, we booked a long-term debt holistically.

The first presentation we gave to you all, I don’t know, a month ago where we had handouts, the long-term line of credit issue was noted on the supplemental schedule and I realize that it is probably difficult for everyone around this table other than maybe Kell, who I know is an accountant, and Danny, to kind of go through those schedules. We did enumerate it on the supplemental schedule. So I just wanted to say in the interest of transparency, we weren’t really trying to hide it and that was our thinking that long-term liabilities were part of the discussion because leases and the right-of-use asset in the lease
liability is a type of long-term liability.

We were asked to look at it because and this happens in both the non-profit and the for-profit sectors. There are institutions that take out lines of credit and I think this was discussed in our issues paper as well with some potential solutions that we talked about. There are institutions that take out a long-term line of credit that draw on their long-term line of credit facility before their financial statements are issued, before the fiscal yearends or the calendar yearends.

After their audited financial statements are issued, they then pay back the line of credit. Because you can deduct all debt, long-term debt up to the amount of property, plants, and equipment, it can cause your composite score to go up. So we were looking at possible manipulations to composite score.

I’m not insensitive as a subcommittee member to what you are all saying. I just wanted you to understand that we didn’t hide it. It was addressed in the issues paper. It was addressed on the supplementalschedule earlier and I did touch holistically this notion of long-term debt and liabilities which we were looking at as a result of the lease standard.

MR. BANTLE: Linda’s card — Chris, I just wanted to come back to you because an edit was made on the screen. Is that in line with your proposal? Okay.
Linda.

MS. RAWLES: Now I'm not an accountant. And I've tried really hard to understand this. I was on the one call that was referenced and I do not recall this being discussed. Now it could be because I don't understand it. But the bottom line is that I didn't understand what the subcommittee was doing on this until Friday before we came because I think it was very low keyed. I'm not saying it was deliberately low keyed. It was low keyed. So I understood the impact of this to my constituencies Friday.

I haven't had time to talk to anyone to see what the effect is. I understand from learning as much as I can about it since Friday when I finally understood that I don't think most people on this committee and it's no offense, people have said they're not accountants. I think all of us on this committee really don't know what we're doing here and for us to vote for this when we don't even know what the impact is. We don't understand it. Just found out Friday it hasn't been emphasized, would be very irresponsible and wrong and so I support Chris' change wholeheartedly.

MR. BANTLE: Chris, then Kelli.

MR. DELUCA: So the element of the composite score that long-term debt can affect is the primary reserve ratio,
right? That’s the ratio we’re taking about so that’s where — so if it’s an issue of to the point that was made that there was concern that schools borrow on a line of credit, then they have their at the end of the year and then they pay it back at the front of the year, that that can increase their composite score. But it’s through the primary reserve ratio, right? You’re nodding your heads right. Yes, okay.

So the primary reserve ratio, as I understand it, and as it was explained in the August 2017 GAO report that I referenced, the primary reserve ratio is does the school have sufficient resources to cover its expenses. Is that a fair characterization as what the primary reserve ratio? That’s in the GAO report, so I just want to make sure that we’re — that we, as for talking points, recognize that that’s what that ratio is looking at is does the school have sufficient resources to cover its expenses?

MR. BANTLE: Yes.

MR. DELUCA: Okay, so this gets into the question why again I think it’s open to debate. There’s been a characterization that a school drawing on a line of credit is somehow manipulating the composite score. And maybe there are abuses out there that I’m not aware of, okay? But I think it’s at least open to debate to discuss if a school has a line of credit
that is access to cash. That is a benefit to the school and that seems to me that that could at least arguably be included in a conversation of does the school have sufficient resources to cover its expenses.

So without further discussion, research, debate, I can’t sign off on the concept that using a line of credit or the fact that you’ve drawn out a line of credit is somehow a manipulation. Again, that would take much further discussion and much further debate because again I look at it and I think that a line of credit—that is a resource that the school can use to cover its expenses.

M.R. BANTLE: Then Kelli, William, and Michael and I’m not hearing additional proposals other than Chris’s, so let’s keep the tags to those that are up and evaluate after those tags.

PARTICIPANT: That GAO report cited this very issue and went and spoke with schools about what they were doing with lines of credit. And they had a whole series of schools say that the entire reason that they took out these lines of credit was in order to manipulate their composite score. And the GAO told the Department of Education that I needed to do more about eliminating that type of manipulation of the composite score.

We also an Office of Inspector General report which cited us for not doing enough to try to eliminate the
manipulation of the composite score.

Rhonda, who has worked in this for years, has seen that this is not a small issue with the Department of Education.

PARTICIPANT: Steve, was your tag up? Did you want to say more to that?

PARTICIPANT: Yes, I just want to point out to the — I understand what you were saying about they may not have been aware that this was an issue that was being considered by the subcommittee, but it certainly — the treatment of long-term debt and the primary reserve ratio was explicitly mentioned in the Federal Register notice about the kind of things that would be discussed there. So I mean there is a foundation for it to be there and in the overall presentation from the committee, the goal here is that these documents are going to simplify and provide much more consistency in how these items are boked at for all the institutions.

And long-term debt is an issue where when the Department is looking at this issue in detail with the school, there’s a lot of work papers that are requested, underlying documents, and that kind of process would be, we think, greatly simplified by these clarifications that are in the appendix.

PARTICIPANT: Kelli.
M.S. HUDSON PERRY: Two things. I want to try to help a little bit with how this actually, what this means. And then I do have some changes to the other appendix.

So this concept of this debt, the lines of credit, they're already in the financial statement. They already exist. So they're already being considered by the Department when the calculations are happening. The idea behind this added text here is that if a school chooses to use a line of credit for long-term purposes, that they simply disclose what those long-term purposes are. It's not changing financial statements. It's just adding more context around what those letters of credit are for. Because what's happening, as Steve just said, is that the Department is evaluating that long-term debt whether it be issued — stated as long-term debt or stated as lines of credit in the financial statements. And they're going back and forth with schools to try to say okay, what are those lines of credit for?

So the idea behind this isn't really changing anything, it's just trying to provide clarity as to what schools are using that debt for.

In Appendix B, I just have a couple of potential changes. In the definition of total revenue with donor restriction and gains without donor restriction, the first one there where it says equals total revenue including amounts released from
restriction plus total gains, I think the parentheses should start with investment returns because that language is trying to explain investment returns as it relates to total gains. It's not part of the definition, so if you start the parentheses there for the rest of what's included there.

At the bottom of this page where it talks about unsecured related party receivable as required by 34 CFR, one of the things that Annmarie said that if it's important enough to be in a preamble or something, it's important enough to be in the regulation. And I really think that there should be a definition of what unsecured related party receivables are. The subcommittee did provide something that explained this because there are some inconsistency with pledges as it relates to board members and whether or not those constitute unsecured related party receivables, so I think it's important that that definition be here.

And then on the actual supplemental schedule as it relates to Appendix B, in the category of total expenses and losses, one of the losses that's actually excluded here is supposed to be the concept of annuities which would be change of value of split interest agreements would be considered annuities. So that should be listed as a separate line item on the supplemental schedule.
And then lastly, we talk in instructions here that if something is zero it should be noted as N/A, so I think in your example on the supplemental schedule where you're showing zeros, you might want to say N/A as opposed to saying it's zero. So for example, where we say in the first section expendable net assets, it says related party contributions receivable net, we have a zero listed. Maybe that should show as N/A because that's what the definition is asking to do.

PARTICIPANT: Yes, Rhonda.

MS. MENDITTO: Kelli, to your point on the changes in value and split interest agreements, we do agree we are changing that in the additional supplemental schedule that we hand out and we can change that to N/A for that part, too.

MR. BANTLE: Okay, noting our hard stop in eight minutes, there are a number of tags up. Do we have — and noting the procedural concerns that have been raised, do we have proposals to change Issue Paper 3 or the related documents from those that have their cards up?

PARTICIPANT: In addition to the proposals that have been made.

MR. BANTLE: Correct, in addition to the proposals that have been made.

No additional proposals? Okay. Well, I think
your card was up next. And again, we have about eight minutes until the stop for lunch.

MR. HUBBARD: I’ll keep it very brief. Kelli, thank you for your explanation and description. I thought that was tremendously helpful and certainly providing, I think, some level of clarity and transparency. This process is important.

I also want to thank the members of the subcommittee for your many hours of service on this. It’s tremendously appreciated. Doesn’t sound necessarily like, you know, maybe that’s coming through, but I just want to share that specifically.

Additionally, I think this might be an opportunity to perhaps bifurcate this issue from the current context. It sounds like there is a bottom study that’s needed, so I would perhaps offer that as a proposal to consider.

MR. BANTLE: Linda.

MS. RAWLES: I guess I understand more than I thought because I’m not sure I agree with the explanation of it that was given because I do think it’s directing schools how they can use their lines of credit, but they must use it for capital expenditure. So I think it’s more than a clarification. It’s a directive. But that illustrates my point which is none of us—I have not had time to consider this, talk to people about it. I think it’s
outside the scope of this committee. I think if the Department wants to revisit the composite score, we should have a separate committee do that. And I really think this is an inappropriate discussion to even be having under the directive of this committee and the subcommittee.

PARTICIPANT: So Mike Busada and then Abby.

MR. BUSADA: And I want to say as well and as we’ve all been akin to say, and I am not an accountant. I couldn’t tell you what a lot of this means. I do want to say thank you because I know that this is not an easy thing and you all put a lot of time in it.

As an LSU grad, I would rather cheer for the University of Alabama than be on this committee and have to learn some of this stuff that you all have had to dig through. It’s phenomenal. So I appreciate it tremendously.

I cannot in good conscience, I can’t support including this because I feel like I have a moral obligation to the people I represent to at least understand what I’m voting on. So all that’s to say this may be a very good idea. But I think that it would be better if we took this out. Let’s move this. Let’s consider everything else and then let’s
find a procedure that we can get full buy in from where we can
discuss this that may be absolutely necessary and important.

M R. BANTLE: Thank you. And finally, Abby. And we have like four minutes.

M S. SHAFROTH: I hear people's procedural concerns. Those are frankly similar to concerns I've had about agreeing with much of what was put into Issue Paper 1 this round, but I'm not clear on how those things would impact the constituencies that I'm supposed to represent, so I have those very same sorts of concerns. So I hear you.

I did, however, want to voice some support for that language, based upon the explanation of the members of the committee that it sounds like they feel that this would be closing a loophole that has been identified by the Department over the years as being a major area of manipulation by certain schools that needs closure and to the extent this committee was convened in part to address the financial responsibility standards.

This seems to be part and parcel with that, so I'm afraid that if we kick the can down the road too much that we're not going to do what is needed in order to really ensure that we have good standards that protect the taxpayers and protect students. And that makes sense.

So I don't know procedurally what the next step is,
but I don’t want to just take this language completely off the table.

PARTICIPANT: So it’s 11:57. Are there any more comments from the subcommittee? Why don’t we break for lunch now and let’s be back at 1:10. Thank you all.

MR. BANTLE: And just to note, as we’ve said many times today, we have a significant amount of work to do in the afternoon. If you get back a minute or two early, please look at the rest of Issue Paper 3 and Issue Paper 4 and have your concerns ready to go. And as Rozmyn, Moira, and I have said, we are going to hold you to proposals, language edits.

(whereupon, the above-entitled matter went off the record at 11:57 a.m. and resumed at 1:10 p.m.)

MS. WEISMAN: All right. I’m going to play Ted and me. So, we are ready to get started again on Issue Paper 3. We will be picking up shortly with page seven of that issue paper.

But before we continue, I would like to report out that we actually have some results from our lunch meeting.

There was a proposal on the table to delete text from Appendix A on the ratio methodology for proprietary institutions. And someone enlighten me. I thought that we were talking about
that also being in B. But I could be wrong. Where?

PARTICIPANT: On the back.

MS. WEISMAN: Ah, the back side.

Okay. So, the proposal was to delete the section on the first appendix, on Appendix A, begins with, if an institution wishes to include. Aaron, can you bring that text up.

It's on the way.

And then the similar language in Appendix B as well on the reverse side of that document. The Department agrees to withdraw that language in the interests of meeting consensus.

As I mentioned before, we have a significant interest in meeting consensus. And we are trying to work toward that goal. That said, this is being done for the purposes of this session, meaning, not too subtly, that if we do not meet consensus we certainly reserve the right to put it back in.

Additionally, we talked before the break about the idea of leases. And what we heard was that people were not satisfied with the idea of the four-year transition period with the
addition of the three-year zone alternative proposal that we had put out on the table.

So, what the Department would like to propose now is to have a six-year transition period with no zone alternative option available, so we've moved from four to six years.

MR. BANTLE: Okay, not seeing any action at the table, a show of thumbs on 668.172 with those changes.

(Show of thumbs.)

MR. BANTLE: I see no thumbs down.

Take us into the next section.

MS. WEISMAN: In the next section we are on page 7, again, of Issue Paper 3, looking in Section 668.175, alternative standards and requirements.

The only change that we made on page seven here is within (c). And we just provided a clarification, as we had been requested to do that basically makes it clear that the letter of credit provision does not apply to public institutions.

Moving on to page eight, under the zone
alternative we talk about the Secretary basically instituting some reporting requirements for various events that we have already talked about. These are items that we would not necessarily know about but feel we have a need to know about or, again, have talked about within other regulations. So we've added (A), (C), and (D). And then I believe we, because we struck (E), we would need to renumber the current, currently listed item that's listed as (F) we would need to renumber as (E).

So, what we have added would be basically notifying the Department of these various financial events, which would include any adverse action, including a probation or similar action from an accrediting agency; a violation by the institution of any institution of any loan agreement; a failure of an institution to make payment in accordance with its debt obligations that would result in a creditor filing suit to recover funds under those obligations; and also the need to report, again, what would become the new (E).
(E) would be any extraordinary losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update. And we've then added those numbers.

So, I have been informed that (A), (C), and (D) are not new items, that they were shaded incorrectly, that they are currently in existing language. So disregard that shading.

So the update here then would be on what is the new (E) and updating the standard number.

And then picking up on page two.

MR. BANTLE: Nine.

MS. WEISMAN: I'm sorry, nine, yes. On page nine. We are making better progress than that.

Let's hold it right there. Let's go to that point.

MR. BANTLE: So, I believe we are going up to and including (f) on page eight; is that correct?

Thank you. So, 668.175 up to and including (f) on page eight. Proposals for
modifications? Aaron?

MR. LACEY: I have a question for the Department because I'm not sure I understand something.

So this language has been added in the middle of nine, two-thirds of the way down that it says if you've got an institution some provisional certification it says under two -- we're there; right? I didn't skip ahead, we're on provisional certification?

MS. WEISMAN: You skipped ahead a little.

MR. LACEY: I thought you said through (f). Okay, I'll stop.

MR. BANTLE: Oh yeah, sorry, there's two F's.

MR. LACEY: Oh.

MR. BANTLE: Sorry. My apologies.

So (F), (F) on page 8. Any questions or proposed modifications?

(No audible response.)

MR. BANTLE: Seeing no action, a show of thumbs.
(Show of thumbs.)

MR. BANTLE: And I see no thumbs down. And that is just to confirm going up to and including (F) on page eight, which is where we are starting from right now.

MS. WEISMAN: F on page nine.

MR. BANTLE: Okay, that was not my understanding.

MS. WEISMAN: Okay. There's, I mean there's no changes through that section, so.

MR. BANTLE: Okay. We're good. Let's allow Aaron to talk then. My apologies.

MS. WEISMAN: Aaron's comment goes, I believe, to below (f). But if I'm wrong, that's fine. I thought he was looking at two.

Let's let Aaron go ahead and we'll go with it wherever it is.

MR. LACEY: Okay. I have a question, so here it is.

So, for an institution that's provisionally certified we say pursuant to Arabic two under (f). Under this alternative, the
institution must. And then we've added, then we've added under Roman numeral at (iii), comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

And back in the prior section one of the things that's in gray, but I know has been there before, is that you have to report if you have a violation of a loan agreement.

My concern is it is not atypical for institutions, particularly those that may be experiencing some level of distress, but even those simply that aren't, to have covenants in loan and debt agreements that may relate to performance in other things. And that, and sometimes those agreements were struck two or three years ahead; right?

And so, you can have a situation where an institution might not hit a performance metric or something that they had agreed to with a lender, and so they would violate, technically speaking, the loan agreement.

My concern would be if what we were
saying is a provisionally -- what I don't understand is if that happens, if I've got an institution that's provisionally certified and it has a some item or metric in its loan agreement or a loan agreement that it doesn't satisfy, so it's technically in default, it now has an obligation not only to report that but it looks -- what I don't understand is what's the outcome, because this says, under this alternative, the institution must.

And we've added these three criteria.

So, if it has a breach of a covenant there doesn't seem to be anything contemplated that will allow the school to say that's not material, or we cured it, or the lender has allowed us to cure it. I just need to understand what the mechanics is to make sure that we're not suggesting that if that happened you're done, for example.

MS. WEISMAN: Well, any time there's a letter of credit the institution can certainly go back to the Department and request that they review it. So that wouldn't necessarily change here.

MR. LACEY: My, I guess my concern is
how does this play into their eligibility? Because they're eligible by virtue of being on provisional. And this makes it sound like if you are on provisional, a criteria or a requirement of being on provisional is that you comply in theory at all times with Roman numerette (i), (ii), and (iii). And (ii) and (iii) are new.

And (iii) ties into all of the alternative requirements.

So if I'm reporting that I've violated the debt agreement, am I automatically in violation of my provisional participation agreement or is there some sort of dialog now with the Department? I'm just unclear on the mechanics.

MS. WEISMAN: Okay. So, I have confirmed that if there is a waiver from your creditor, that we do have that back and forth. So, if there is some condition that you can explain, that you go ahead and explain that and you remain provisionally certified.

MR. LACEY: What I would love to see would be something that would say if at any time an institution is not satisfied to (i) through
(iii), you know, then the Secretary may request information or take further action, or whatever.

But my challenge is there's nothing here that suggests if you are not complying with (i) through (iii) what happens next.

And I think it would be a meaningful addition here to clarify if you, for some reason, aren't able to satisfy one of these three Roman numerettes what happens next. Because I read (iii) to talk about the end of the period. So there's really nothing that says in real time if you report non-compliance, what happens.

MS. WEISMAN: So, I think let's work up some language.

MR. LACEY: Okay.

MS. WEISMAN: So, in terms of placement?

MR. LACEY: I would probably put it between where -- because (iii) seems to speak again to the, you know, the end of the period. So I would think after (ii), before (iii) you'd probably have a new Arabic. And it would say something like, you know, if an institution is or reports to the
Secretary, you know, that it is, you know, unable
to satisfy the criterion or criteria -- somebody
can help me with that -- in Section (2), you know, (i) through (iii), then the Secretary, you know, -- I don't know -- you know, may take action is probably too vague. But the Secretary, you know, may or will evaluate whether the institution is financially responsible or remains financially responsible.

I'm clearly spitting balling, but you get the idea.

MS. WEISMAN: Yeah, I do. But I think what we're looking for is not so much to say that you're financially responsible, because I think that's a -- that's quite a cliff for you. I think what you're really looking to say is that you've resolved the issue.

MR. LACEY: Well, yeah. I mean, I would like to build in -- fair enough. I mean, I think it would be very positive to have a back and forth, you know.

The Secretary may request further information regarding the institution's financial
responsibility.

MR. BANTLE: So we'll look at getting something back specifically on that.

But I will say in general when this comes up and we've seen a violation of a loan covenant, during the fiscal year covered by the audit the question I'm going to ask when I'm working with the reviewers is whether that breach was cured during the period covered by the audit. Because a lot of times these audits come in, as you know, six months after the end of the fiscal year.

PARTICIPANT: Yeah.

MR. BANTLE: And anything that happens after the fiscal year in some sense is too late to address if that institution was at risk of a debt being accelerated based on a breach in the covenant, or some other action during that period.

So we look at information from an institution that comes in along with the audit or to supplement the audit showing that a possible triggering event mentioned in the audit has already been resolved satisfactorily. We're going to be looking to see if it happened during the fiscal
year.

MR. LACEY: So, and here's a question for you. So my understanding is if you're in the zone alternative or provisional, now you have to report this within ten days of the event occurring. So you might be outside the cycle of the review of previously-submitted audited financials.

So I guess that's really and what I'm conceiving of as a situation where, you know, maybe you've reviewed the last round of audited financials. We, you know, an institution reports that something has occurred so they're in violation of a debt covenant. And just to ensure that in that instance there's some mechanism to say, okay, if that happens and you report it and you're provisionally certified, you know, there would be a dialog that would occur.

MR. BANTLE: You know, I think that sounds -- I think that's a reasonable suggestion that the institution, when it's bringing this to the Department's mind, you know, attention timely, is also bringing into the discussion the steps it's taking to resolve any concerns about it.
MR. LACEY: I would certainly agree that would behoove the institution.

MR. BANTLE: Ashley.

MS. HARRINGTON: I have a question going back to page seven. It would be under 668.175 little (d).

So, I believe when we first started you said the Department took away the zone alternative for what we talked about in 668.172 for financial ratios. But we're still referencing the zone alternative for that section which, I believe if I'm understanding correctly, no longer exists.

MS. WEISMAN: Yeah, we still need to do new cleanup.

MS. HARRINGTON: Okay.

MS. WEISMAN: We're going to be presenting you a new Issue Paper 1 and 2 for tomorrow morning. And that will reflect any of those changes that are associated with those changes.

MR. BANTLE: Okay. Any additional comments on 668.175? We're looking at pages seven, eight, and nine.

MS. WEISMAN: I think I can also then
add on page 10, since it's only one minor change.

    MR. BANTLE: Yes.

    MS. WEISMAN: When we had talked about the idea of doing offset as an alternative form of providing surety to the Department in lieu of a letter of credit, we talked about doing an offset that would be completed or satisfied at the end of a 10-month period.

    So we've moved that language from 10 months, what we had talked about at the last session as the idea of doing a range, so, to give some flexibility and to allow for the consideration of the vast differences in what we see in the amount of aid being disbursed at institutions. We have changed that to now reflect a six- to 12-month period.

    So that is the only change that is contained that's different from the last session on page 10.

    MR. BANTLE: Okay. Seeing no tags going up, can we see the show of thumbs on 668.172 -- or 175. I apologize. Page seven through the end, which is on 10, noting Ashley's cleanup change
and Aaron's proposal in concept that I think I would suggest still needs some words missing, but in context.

Show of thumbs.

(Show of thumbs.)

MR. BANTLE: Okay. I see no thumbs down.

Okay, that takes us to the end of Issue Paper 3.

As discussed before, we are going back to Issue Paper 2 to wrap up Issue Paper 2 now. And then we will go to four through eight today so we can get back to the changes on one and two tomorrow. We have a lot to do but and so please pull out Issue Paper 2.

And if anyone can remind the group where we left off, I think I have us on page seven. Is that correct? And I'm open to being corrected.

PARTICIPANT: I think we stopped before cooperation by the borrower. Is that right? Yes.

MS. WEISMAN: That was my understanding. So we, I believe, left off after the end of six, Romanette (iii)(C), right before
cooperation of the borrower, which is number seven.

MR. BANTLE: Yeah, we were on Arabic seven at the bottom of page six.

MS. WEISMAN: Correct. And that's where we'll pick up.

PARTICIPANT: We had proposed or offered up some draft language for the voluntary claim resolution. And I didn't know if that's for tomorrow or today or what you all wanted to do.

MS. WEISMAN: That process will be covered in the edits that we provide you with tomorrow.

PARTICIPANT: Got it.

MS. WEISMAN: So, anything up to this point? It's not that we are ignoring you. That is coming soon to a location near you.

So, picking up on seven cooperation by the borrower, we have just changed some text in there to reflect our referencing. So we're saying now that the Secretary may revoke any relief granted to a borrower who fails to cooperate with the Secretary in any proceeding under paragraph, we now have (d)(9) of this section or under subpart
G, which is referencing the hearing locations of our regulations. Such cooperation includes, but is not limited to providing testimony regarding any representation made by the borrower to support a successful borrower defense claim.

So we've changed that from request for discharge, noting that we would only request that for a successful claim, which would be when we would be collecting from an institution.

Moving over to page seven under recovery from the school, we've inserted under (9) we now have Romanette (i), changing the text a little bit here, now saying the Secretary may initiate an appropriate proceeding to require the school whose misrepresentation -- changing that from omission, or after omission, now to say a misrepresentation resulted in the borrower's successful borrower defense claim with respect to a Direct Loan to pay the Secretary the amount of the loan to which the defense applies, in accordance with 34 CFR 668 Subpart G.

We then continue on with additional new text about full recovery. The Secretary initiates
a recovery action against the school no later than three years after the date of the final determination of the borrower's defense to repayment claim.

The school must repay the Secretary for the amount of the loan which has been discharged and amounts refunded to a borrower for payments made by the borrower to the Secretary unless the school demonstrates that the Secretary's decision to approve the borrower defense claim was clearly erroneous.

And then closing out that section we've added the school may present relevant evidence in the recovery proceeding.

And I think we can break there.

MR. BANTLE: Okay. Linda, I see your card up. Do you have a proposal for changes?

MS. RAWLES: Quick background. In Issue Paper 1, the, I call them affirmative defenses, but the evidence that a school could present to mitigate against a claim were removed.

That was on page six, number (4), Romanette (i) through Romanette (iv).
And I believe that they -- and I understand the reasoning for removing them because some of them had to do with, say, a potential rogue employee. And there was some thought that if the standard remained intent for the schools, that that would be intent for the school and not intent for the rogue employee.

But I think that is so unsettled at this point as to how that's going to come out or if the Department would actually not consider intent of a rogue employee as intent for the school, that I would like to propose we return four Romanette (i) through (iv) into this section where the school may present relevant evidence in the recovery proceeding.

Do I need to say all that again?

MR. BANTLE: That would probably be helpful.

MS. RAWLES: I know we're all tired. And going back to one, I apologize for that. But if you have Issue Paper 1 with you, and look at page 6. And these were a list of the types of evidence that the school could provide to the
Department. For instance, to correct a misrepresentation prior to the borrower enrolling. These were all -- at first we thought they were moved. But they were not moved, they were removed.

Right?

And I'm not sure everyone here understood that, that they weren't moved. Because we were going to find them again in Issue Paper 2. But then when we went to Issue Paper 2 we realized they had not been moved, they had been removed.

And because I still think they are very important pieces of evidence that a school can use to give to the Department more information, I propose that they be added back in this section where the school is presenting relevant evidence in the recovery proceeding.

MS. WEISMAN: So I think I can respond to that. Our feeling was that by listing out in the standard the idea of reckless disregard, it would negate any of these items, that they just wouldn't apply.

MS. RAWLES: I'm not sure we can -- this
is one of these problems where we're taking things in isolation. And they all work together. So we don't know how that standard is going to come out.

But even if we -- as my preference would be -- to keep intent and reckless disregard, I thought -- and correct me if I'm wrong, Annmarie -- but I thought that the rationale for taking them out was that we would not hold a school accountable for the intent of, say, a rogue admissions officer.

I'm not sure I can count on that interpretation in the future. So I still think it's important that the school be allowed the opportunity to mitigate some of these things. And that would be: do you show whether there was reckless disregard or not?

But I can't, I can't know we're going to end up with reckless disregard.

MS. WEISMAN: So I think then let's just put that on hold until tomorrow when we have the new proposed language for both one and two.

MS. RAWLES: Okay. I'm willing to hold, yeah.

MR. BANTLE: Okay.
MS. RAWLES: I just don't want it to drop.

MR. BANTLE: Okay. I have William and then Michael.

MR. HUBBARD: Thanks a lot.

In Romanette (iii) at the end where it says unless the school demonstrates that the Secretary's decision to approve the borrower defense claim is clearly erroneous, I propose striking that language. I think by this point if the Department has approved a borrower defense claim, sufficient evidence or substantial weight of the evidence, or evidence write large has been presented at this point.

And this strikes me as kind of a gotcha moment that would potentially present a claw-back to a student who's already had their claim approved.

So it's unclear. And maybe I'm not clear on this. So perhaps some clarity would be appreciated.

PARTICIPANT: I'm sorry. Well, I'm just, like, reading the entire and I'm just, like, that's not right.
So, well, I think I don't quite understand how you're reading the language. So I guess I'll say here we are saying that, so, the school must repay the amount of the loan unless the school demonstrates the decision to approve the borrower defense claim is clearly erroneous.

So it already presumes that the Department in the borrower defense claim already had -- I mean, we'll see, we'll talk more about the changes to Issue Paper 1 and Issue Paper 2 tomorrow. But the language as drafted in this issue paper before you all today envisions having evidence from the school and from the borrower. And the decision here to recover will only occur if the borrower defense claim is approved. So, the decision about the approval then would be upheld by the -- in the recovery action, that those findings would then lead to the recovery action against a school only, and it will be upheld unless the hearing official then finds that decision clearly erroneous.

So, I feel like it's a little different from what you're getting at. But let me know if
I'm wrong.

MR. HUBBARD: That makes more sense. I mean, as I read it, though, it just strikes me that if potentially the claim has been already approved and then evidence is presented, it would pull it back.

If I'm not reading that right, that's fine as well.

PARTICIPANT: We're not talking here about a claw-back from the student or from the borrower. We're just talking about is the school obligated to pay? And if by some chance the school can at this point show that the claim is erroneous, then we're going to give them that opportunity that they wouldn't need to pay for it. But we're not saying then we would go back to the borrower and take the money back.

PARTICIPANT: And just, just to clarify, in the written decision section of this issue paper we do note that the decision in the initial claims process, that passes the initial determination bar. And then it goes on to determination, the final decision. So that would
be the final decision from the borrower's perspective.

MR. BANTLE: Does that address your concern, Will?

MR. HUBBARD: It does.

MR. BANTLE: Okay. Michael, then Kelli.

MR. BOTTRILL: So, in reading this and listening to Caroline's comments, it feels like there may be some process and some steps that are involved in this recovery action. So, as I'm looking at Romanettes (i) through (iv), they don't really describe this as a process whereby there is written notice that's given to the institution that the Secretary will initiate the proceeding.

And the word proceedings itself, the word proceeding itself indicates to me there's a process.

That the school is going to have an opportunity to demonstrate either -- well, to demonstrate that the Secretary's decision was erroneous. Or that the school will have an opportunity to present relevant evidence.
So I just think sequencing here is more along the lines of the Secretary may initiate. If it does, then the school, the Secretary will provide its decision to do so in writing and the school will have an opportunity to submit its response or any evidence that it believes supports any claim that the Secretary's decision was erroneous. And that that claim, that recovery action has to be done within three years.

So I'm just suggesting that in the sequencing there maybe it can put forward what steps of a process you're envisioning. Is that --

PARTICIPANT: So, I think much of that is what we reference with 668, within Subpart G. So the idea of a hearing, for example, is outlined in 668.89. I think our goal here was not to repeat all of those steps that would be afforded to an institution that are already outlined elsewhere in regulation.

PARTICIPANT: And just to follow up on that. In January of last year we published a procedural rule that modified Subpart G to accommodate borrower defense provisions. And
because that was purely a process issue, that didn't
go through. It was in the Federal Register but
it didn't have to go through negotiated rulemaking
like what we've got here.

And certainly, depending upon what is
the outcome of these proceedings and the
regulations that result, modifications to that
process could, could be made. But there, but we
do have a reference for the Subpart G, and that,
that was intended to sort of reference those
changes. And those changes did go into effect,
I think, January 19, 2017. So they are, they are
there.

MR. BOTTRILL: Right. So, next time
just stop me and tell me that I'm rambling on
inappropriately and that I haven't fully done all
my homework.

PARTICIPANT: Mike, you're rambling.
(Laughter.)

MR. BOTTRILL: Thank you.
MR. BANTLE: Was that --
MR. BOTTRILL: How do I get called out
for that, given what we've experienced over the
last three weeks?

(Laughter.)

MR. BANTLE: Because you just set yourself up for it.

Okay, Kelli and then Abby.

MS. HUDSON PERRY: Roman number (ii) up at the top of page seven, there's a reference to any sworn statement. Is that different, is that a different sworn statement based on this section, or does that relate to the application? Because I feel like we've changed the terminology throughout the rest of the papers.

PARTICIPANT: I think that is really us saying the application, but also any other sworn statements. So it's kind of conserving the option.

If someone, for example, can't appear at a hearing and they make a sworn statement, then we would include that information as well.

MR. BANTLE: Abby.

MS. SHAFROTH: All right. Number seven on the bottom of page six, cooperation by the borrower, I have I think, hopefully, sort of a small technical sort of suggestion to make here.
If you're saying that the Secretary may revoke relief granted to the borrower if the borrower fails to cooperate with the Secretary in the subsequent recoupment proceeding, just because we're talking about the Department may do this subsequent proceeding within three years after, after the decision, I just want to make sure that this language wouldn't, wouldn't allow, wouldn't set off revocation of the borrower's relief if, you know, the borrower moves during that time frame and the Department isn't able to get in touch with them.

And I don't think that's the intent here. But just to clarify it in the language, if we changed it to something like a borrower who refuses to cooperate with the Secretary, I think that would satisfy the concern.

MS. WEISMAN: Thank you. I appreciate that edit.

And just to clarify, no, we were certainly not intending to go back to borrowers that we couldn't reach, that type of thing. There may be reasons that for some reason they cannot
cooperate with the borrower. There could be extenuating circumstances.

So I think a refusal to cooperate we could probably work with that language. You know, there could be a reason to refuse. But I think it still covers what we're looking for.

MR. BANTLE: Chris.

MR. DELUCA: So I recall we've had the conversation about this in connection with other sections here. But when we get to page 9 -- or page seven, I'm sorry, page seven, section nine, recovery from the school, about instituting a proceeding in accordance with Subpart G, the issue came up regarding how does this affect schools under a provisional certification? Do they get the full protections of a Subpart G proceeding?

I mean, has that been answered? Have we already answered that or is that still --

PARTICIPANT: We believe that certainly they do. We did not feel that the language was necessary but we did have it in the issue paper in another location. You will see it presented when you see a new issue paper tomorrow.
But our, our belief is that even without the language, even without specifying, that provisionally certified schools do have an opportunity here under Subpart G for the hearing.

MR. BANTLE: Aaron.

MR. LACEY: So, we have a clearly erroneous standard. What is the standard for other Subpart G proceedings: fine, limitation, suspension, termination proceedings? Is it clearly erroneous?

PARTICIPANT: So, counsel has advised me that in other Subpart G hearings we don't have a prior proceeding. So this wouldn't apply.

MR. LACEY: Well, what is the evidentiary standard? I mean, what's the standard in those other Subpart G proceedings where an institution is appealing a prior determination? Or, I don't know, where an institution has the burden of proving its case.

PARTICIPANT: So, under Subpart -- So, in Subpart G we have the burden of proof, the Department, in proving the limitation, suspension, or fine.
MR. LACEY: Can I just ask why the Department put this in Subpart G and not, not H, what the thinking was there?

PARTICIPANT: Let me address this. Subpart G, in Subpart G the school is almost -- well, Subpart G provides the opportunity for oral argument -- I mean oral presentation of evidence. Generally, this would, because this involves money, most of our -- this would normally under Subpart H, which is a paper hearing in most circumstances.

In this case there is the possibility that in the case of misrepresentation where you have the need for oral testimony from the students and from representatives of the school, so we put it in Subpart G which has that opportunity.

However, like in Subpart H, in a Subpart H proceeding the burden is on the school to counter what the Department has done because we've set out everything in a final program review determination letter that says this is how much the school owes, and we basically already presented our case.

This, as a procedural matter, the
borrower defense process is similar to that because we will have already had a proceeding beforehand involving where the student and the school are already involved. We've presented a decision. So we're putting it in Subpart G so that there's the opportunity for oral testimony, if appropriate, but we're using a burden of proof that's similar to what would apply in Subpart H because we have this prior proceeding. So it's kind of a mix.

MR. LACEY: And that was exactly my next question is, well, what is the standard in Subpart H? Is it clearly earnings?

PARTICIPANT: It's --

PARTICIPANT: Can you pull the mike closer, please.

MR. LACEY: So my next question was, so my next question was what, then what is the standard used in Subpart H?

PARTICIPANT: In Subpart H it's really we don't specify a standard of evidence, a standard of evidence. The burden of proof --

MR. LACEY: Or review. I'm sorry. Standard of review I should say.
PARTICIPANT: Right. The burden of proof is on the school to disprove what, what's in the final program review determination to the satisfaction of the hearing official. So it's not clearly erroneous or anything like that, it's, it's what satisfies the hearing official.

PARTICIPANT: Follow-up. Would that not be appropriate in this context as well if it works in Subpart H?

PARTICIPANT: In this circumstance we believe because of the more complete opportunity in a Subpart, in a Subpart H proceeding, it's you, you haven't had the back and forth with a third party that you do here. So we, we believed that the clearly erroneous standard was appropriate.

MS. WEISMAN: And just a reminder, this is not new from the last session to this one. So, if possible, I'd like to move on.

MR. BANTLE: Can we just get a show of thumbs? I believe this is Section 685.206, starting with Arabic seven on page six, and going through Romanette (iv) on page seven, at the end of the page, with Abby's refusal substitution.
Do you have another proposal, Abby?

MS. SHAFROTH: In Roman numerette (iv) at the end of this section that we're looking at, it says, the school may present relevant evidence in the recovery proceeding.

Is this additional evidence that the school didn't present in the underlying proceeding? And, if so, should we put limits on that? Should it be newly discovered evidence or otherwise the school getting, like, sort of another, another shot to put new evidence into the -- or to put additional evidence in the record that wasn't there before to sort of a second appeal that the borrower doesn't get?

MS. WEISMAN: At this point the borrower has already received this discharge. So this is just looking at whether the school should pay the Secretary. And so our feeling is that we are requesting recovery from the institution. If they have evidence that counters the claim that we're making, that they be afforded the opportunity to present that.

MS. WEISMAN: Final comment from Linda.
MS. RAWLES: Without commenting on it substantively, I think the change from fails to cooperate to refuses is not -- that's adjusting language that's not new from the last time; correct?

It's not in gray, so I don't know why Aaron can't finish his point about the clearly erroneous.

MR. BANTLE: Aaron, did you have any more?

MS. RAWLES: I just want to make sure he has full opportunity to talk about it.

MR. LACEY: I appreciate that, Linda. I don't have anything else to add, other than my mind is not made up on this yet. Subpart G is very complicated.

You know, I'm processing what Bryan was kind enough to share, which I appreciate, which is why this is put in G and that there's no standard in H. But, you know, I don't want to hold things up, but we haven't voted on anything and I'm still processing it.

PARTICIPANT: And just a reminder, our votes today, you know, we do not have consensus until we have final consensus on everything.
So, Valerie?

MS. SHARP: I just wanted to ask, you mentioned that you were considering changing the wording in the other place that I requested on Subpart G for provisionally certified. And I had requested it also be considered on Number 9. So, just a point, if they're bringing back a revised copy tomorrow that they would be consistent.

Thank you.

PARTICIPANT: And I think we are.

MS. WEISMAN: So, can you clarify? We have somebody making edits who wants to make sure he reflects exactly what you're requesting.

MS. SHARP: Yes. Oh, sorry. I, yesterday you were going to go back and discuss what wording you wanted to add there. And we had discussed some text in the prior section. And you mentioned that you didn't think it was necessary, but you were considering adding it.

I requested that also that same text that was added, where we talk about Subpart G at the beginning of this section, that it also be added at nine, at the end of nine, just matching text.
MS. WEISMAN: So, Aaron, maybe you could just highlight that for right now. You don't necessarily have to add the text in.

MS. SHARP: Yeah.

MS. WEISMAN: But just a note that we want to be parallel in that section as well.

MS. SHARP: And my feeling is probably you've adjusted the text.

MS. FREDMAN: I'm just wondering, like, in this proceeding do you envision a cooperating student to be, like, compelled to testify and be cross-examined by the school's attorney in that situation about the prior testimony? So I'm trying to understand, you know, what you'd be looking for in terms of additional sworn statements or testimony.

PARTICIPANT: Juliana, thank you so much for your question. And I think that really is like a case-by-case analysis. But it was our thought that given due process requirements, and here we're talking about recovery from a school of funds that they have, so their property, that under due process we may need to -- if the
circumstances warrant, and certainly we'll have to think about this very carefully given the concerns that you are raising, whether or not there is a need for cross-examination of an adverse witness if issues of credibility or veracity are at issue.

MS. FREDMAN: Because it does then sort of seem like we're talking about two sort of separate proceedings to establish almost the same borrower defense. You know, presumably the Department got all the evidence from both sides and made a determination about the student's credibility prior. And then that's all going to happen again at any point in the new three years.

I understand that might not eradicate the initial final determination, but it is a little troubling to think it could be that open-ended and that the finality isn't really final.

PARTICIPANT: So, I just want to understand your concern a little bit more. So it's the claim process is final as to the borrower. Your concern is about whether the process, like when the finality for the school occurs?
MS. FREDMAN: Well, the school if --
I guess, I mean, I haven't totally thought this completely through, but I think that you get to some point two or three years out and you have a full hearing where there's a cross-examination and maybe somebody doesn't -- you know, is unrepresented, doesn't maybe remember what, what they wrote in their application form because it was a couple years ago. You know, I can just envision stuff that would be a little problematic from the borrower perspective in that situation.

I don't know exactly how it would play out, but.

PARTICIPANT: So, just to clarify, we use this language in our other discharges as well. So this is something that we, again, have the right to do. I don't think it's something that we commonly do. But, but we want to preserve our rights to have the borrower give us information that we may need at that hearing.

MS. FREDMAN: Yeah, absolutely. And I'm very familiar with the discharge applications, and I know that the borrower -- I always explain
that to people that they, you know, might have to provide additional information. It's more that adversarial process that concerns me than the Department asking the student for additional information. Just to clarify.

PARTICIPANT: I don't think we see it as adversarial. I mean, the borrower isn't being put up against the school in the way that maybe it seems because the decision for the borrower has already been made and is final.

MR. BANTLE: Okay. Can we see a show of thumbs on this, this item, starting with Arabic 7 on page 6, and going through Romanette (iv) on page 7, with the refusal substitution that Abby suggested and -- Okay.

Show of thumbs.

(Show of thumbs.)

MR. BANTLE: Okay. Seeing no thumbs down, 685.212.

MS. WEISMAN: So then looking at 685.212, we pick up on page eight. The new text is in Romanette (ii) in about the middle of the page.
The text now reads, if the borrower defense claim is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan and affords the borrower further relief, as applicable, in accordance with 685.206(c)(2) or 685.206(d)(6)(ii).

So that is basically, just to kind of clarify, that is when a borrower has used a consolidation loan as a vehicle for getting relief.

So, for example, if they have a FFEL loan that they would like to file a claim on, the way we can get them into the direct loan program is through consolidation. So then we're clarifying what that process would look like.

Moving on to 685.300, we moved this item from the standard paper Number 1 into process, and we have adjusted the language slightly so that Number 11 now reads, Accept responsibility for financial liability stemming from losses incurred by the Secretary for repayment of amounts discharged by the Secretary pursuant to sections 685.206, 685.214, 685.215, 216, and 222, and for which the institution has been determined to be
liable as described in Subpart G.

So this is basically putting this into the agreement between the institution and the Secretary in terms of what it takes to participate in the Direct Loan Program.

And those are the only changes left that are new to this section.

MR. BANTLE: So, comments from 212 to the end of the document? Abby.

MS. SHAFROTH: This is, this is sort of a question, I raised this in Session 2, and I don't, I don't think it was fully resolved.

For borrowers who have a Direct Consolidation Loan, if, if they took out a direct loan prior to the effective date of the regulation and they consolidate that into a Direct Consolidation Loan after July 2019, is that borrower's claim subject to the old standard, the state law standard, or is it subject to the new standard?

And as a wrinkle on that, just to make sure I fully understand, if the borrower had a combination of direct and FFEL loans prior, that
they took out prior to July 2019 to attend a program, and then they consolidate into, all of those into a Direct Consolidation Loan after July 2019, is part of their claim subject to the old standard and part subject to the new standard, which strikes me as pretty confusing to the borrower?

PARTICIPANT: So I think the text that you're looking for is on page eight in (2)(i)(A) and (B) to talk about what standard applies. So we said basically it would be the standard in the underlying loan.

        If you want to propose a change, then this would be the place to make an adjustment.

PARTICIPANT: I just have a clarifying question. Isn't the Direct Consolidation Loan a new loan? Because we talked about that last time that I, we were under the impression that when that consolidation loan is made, regardless of what's folded in there, that was a new loan and that creation of that new loan was based on, like, it would follow whatever time period. If it was before, it was under this. If it was after, it was under the new.
That's what we were told last time. So, is that not accurate?

PARTICIPANT: So I think, first of all, we have some missing text that we need to address first. So, we talk about -- and I think what I'm saying is I believe we need a (C) to clarify, first of all.

So, we have an (A), whether the omission of the school with regard to the loan described in paragraph (k)(2) of this section, other than a Direct Subsidized, Unsubsidized, or PLUS Loan, establishes a borrower defense under 685.206(c) for a Direct Consolidation Loan made before July 2, 2019, or under the standard set forth in 685.222, for a Consolidation Loan made on or after July 2, 2019.

So, there we've addressed the before as well as the on or after. But then when we get down to (B) we only address the on or after. And so I, I just want to clarify that I think that we're missing a piece in there.

PARTICIPANT: And just to sort of build on that. So, (A) talks about basically anything
that's not a direct loan that can be consolidated. (B) talks about direct loans made after the new standard goes into effect, which is exactly what Abby's question is. So I think we're missing a (C) here, as Annmarie was saying, about what happened, which is Abby's question.

MS. WEISMAN: So this is something that I -- you definitely raised it, Abby. You know, I wasn't here. I read the transcript. I saw that you had raised it. But something that we really need more discussion of.

So if people here have thoughts about that, we'd like to hear it.

MR. BANTLE: Abby.

MS. SHAFROTH: So, I mean I'm a bit of two minds. And to the extent that, to the extent that I don't like the new standard that is created I like to preserve the opportunity to borrowers who have taken out direct loans prior to July 2019 to continue to rely on the existing state law standard.

You know, at the same I am in favor of clarity for borrowers. And I am concerned about,
particularly in an instance where a borrower has some Direct Loans and some FFEL loans taken out prior to July 2019, they consolidate them afterwards as part of their claim, has to be subject to a state law standard and part of their claim has to be subject to a new fraudulent misrepresentation standard, then that's probably pretty confusing for an unrepresented borrower. And I think there is some value to their being clarity for the borrower going into their application to know which standard they're going to be held to.

So that doesn't -- that's not a proposal, that's just a few things that I'm thinking about, you know, things that I just suggest that the Department give attention to. And if you come back with language, then I'm happy to consider it more.

PARTICIPANT: And just for the table, just to provide some context here, you know, as we're all aware, borrower defense is something that's authorized for the Department to do under the Direct Loan Regulations. However, that does
not exist in quite the same way -- and notice I said "the same way" -- with other loans that may be consolidated.

So when the borrower consolidates the loan, then it's a direct loan that's authorized under the program. And so then the question arises of which standard applies and how it applies. And that's, that's really where this comes to.

Whereas, if they have a direct loan that's been consolidated they have a standard applied to it under originally.

So we'll take it back.

MR. BANTLE: Jaye?

MS. WEISMAN: Okay. So I want to go back to Issue Paper 1 and the change that you made under (A)(1). I thought, and maybe I didn't understand it, but you struck or the Department struck (A)(2) which I thought was trying to get at the consolidation of non-DL loans. And you added language about where the making of a loan, the making of a loan debt was repaid by a Direct Consolidation Loan.

So I guess I was, my interpretation of
that was, and the process that we've talked about for FFEL is that there would be this preview or preevaluation of the FFEL loan. And if it was approved, then the Department would instruct the borrower to consolidate.

And so if those were loans, and they would have to be pre-July 1, 2019--we're not making any more FFEL loans, so. So anyway, I think what you're saying is you want something, you're going to consider whether there's more explicit language about that in this section to kind of clarify the change you made in (A)(1)?

PARTICIPANT: Right. I mean, so FFEL is slightly different because the direct loan authority, I mean the statutory authority is in the Direct Loan Program statute. So the FFEL, so the FFEL statute doesn't reference borrower defense.

So, if a FFEL, if a FFEL loan gets borrower defense relief through this process, the Direct Loan borrower defense process, then they basically need to become a Direct Loan through consolidation. So that's why the standard would
matter for that.

But for a Direct Loan that gets consolidated or was consolidated prior to someone knowing about our end process, then that remains sort of the question we need to take back.

MR. BANTLE: So, are there any proposals on this new 8 from the table? Abby?

MS. SHAFROTH: So, this isn't specific language. But I would just ask the Department to consider whether, whether you think you would have the authority to establish a rule that the standard that applied is based on the date of the original underlying loans, whether they be direct or not direct prior to consolidation so that, you know, all the loans that were Direct or FFEL that have already been originated prior to the effective date of this regulation are subject to the old standard, even if they are later consolidated into a Direct Consolidation Loan.

And all the loans that originated after the effective date are subject to the new standard.

And, so making it based on the date of the original, of the loan origination rather than the date of
the consolidation I think would be clearer to borrowers and would be more equitable in treating borrowers who originally took out Direct versus FFEL loans and who didn't, you know, choose whether they took Direct versus FFEL loans. So we'd be treating those borrowers, borrowers who borrowed at the same time, the same way.

MR. BANTLE: Jaye, is that a new tag or a left up?

Okay, Ashley and then Wanda.

MS. HARRINGTON: Just a question on the process though. A loan can be originated but never disbursed; correct?

MS. WEISMAN: Yes. A loan can be originated and never disbursed.

MS. HARRINGTON: So why would we, why would we not just use when the loan was disbursed then? Okay, I just wanted to make sure I understood that it -- I was under the impression it could be originated and never disbursed, and those dates could be vastly different, so.

MR. BANTLE: So the modification would be the date of disbursement rather than
origination. Okay.

Wanda?

MS. HALL: I thought I understood how many categories of borrowers and loans that we had.

So, we have FFEL loans today are based on state rules. Then in order for them to be able to have the borrower defense discharge they need to be consolidated into the Direct Loan Program.

There could be -- I don't think there are any today -- but there could be some FFEL that get consolidated into DL before 7/1/19. So those would fall under one set of rules because of the date it was made, originated, or whatever. Right?

And then you could have some FFEL that get consolidated after 7/1/19. So that's another group.

You have DL plus Stafford and in consolidation that were originated. I always thought in DL it was always just originated and we didn't use the word "disbursed," that it was originated. So DL plus Stafford in consol made, originated prior to 7/1/19.

Then you have DL plus Stafford consol
made, originated after 7/1/19.

So, we really kind of have four groups.

For FFEL, the only way they can get borrower discharge is if they -- borrower defenses, if they go into the DL consolidation. And then it's only for the amount that's outstanding at the time that they consolidate. That's the discharge amount; right? Or is that changed? That's what we had talked about last year. And I don't know that we've talked about that this year. Maybe I just missed it.

You can back that wrinkle out and just go with the categories if you want to.

MS. WEISMAN: I think we need to add to what we have here and bring you back new language.

MR. BANTLE: Any final thoughts on this, this section that we've discussed closing out Issue Paper 2?

(No response.)

MR. BANTLE: Okay. So I think we're going to get other additional modifications to Issue Paper 2. So let's close out this discussion.

And tomorrow, when we bring back that, we can look
at the issue paper in its entirety.


MS. WEISMAN: So, for Issue Paper 4, in the summary of changes -- this was, again, on pre-dispute arbitration agreements, class action waivers, and internal dispute processes -- we talked about in the last session changing "counseling borrowers" to include a requirement that schools would provide information about pre-dispute arbitration.

And so now we've clarified that to say that it would be schools that use pre-dispute arbitration agreements and/or class action waivers would review with borrowers the information about the availability of an internal dispute resolution process.

So that way it relieves the burden of providing that information. Schools who do not use that would not have to discuss that within their counseling.

So, moving over to page 2 under (h), part of the "enrolled students, prospective students, and the public" disclosure section. We
state that an institution has to make available to enrolled students, prospective students, and the public easily accessible information regarding any class action waiver or pre-dispute arbitration agreement that is included in any agreements between the institution and students receiving Title IV federal student aid.

So, it's just rewording what was in the next sentence and I think trying to rewrite it for some clarity.

We also on page 3, under Romanette (ii), we took out the word "lawsuit" from the end, so that we're now just talking about an individual participating in a class action. So that's part of the definition of what a class action waiver means.

In 684.304, under "counseling borrowers" in two locations we've removed the language that said "from that school." What we were proposing the last time was that institutions would be repeating the entrance counseling any time a new borrower came to their institution. So what we're doing here is reverting back to what currently
exists, basically saying that a borrower would complete entrance counseling one time, that they would not be repeating it at each institution that they attend.

Going down to the bottom of page 3, in (B), we are specifying here who they are providing information to by inserting the words "to the borrower." So if an electronic tool was available to provide entrance counseling, the school must provide to the borrower any elements of the required information that are not addressed through the electronic tool.

Moving over to page 4, we had been asked about the idea of what it means to provide something in writing. The Department's practice has been that that could include information that is given electronically. But we were asked for clarity. And so here we've added the words "or electronic."

So, it now reads, "On a separate written or electronic form provided to the borrower signs and returns to the school." So, again, it's an electronic version as one option for you.

I think let's break it up there to get
some feedback.

MR. BANTLE:  Wanda, is your tag new or?

Okay, we'll go John, William, Chris.

PARTICIPANT:  So let me start by saying what I'm not saying in this comment.  We are in Washington after all.

So, my comment, before anyone reacts, it doesn't go to the wisdom or advisability of regulating the use of pre-dispute arbitration agreements.  Various attorneys general have different views on that.  Various of them have discussed that with policy makers on Capitol Hill many times.

But in the past I've flagged my concern that what the Department is doing here is regulating in an area where it doesn't have authority to regulate.  The behavior that's being regulated here is not really the provision of educational services or the provision of loans.  What's being regulated here is the use of pre-dispute arbitration agreements.

Congress has expressed a policy in that area.  It's gone so far as to preempt most of state
law in regulating the use of binding pre-dispute arbitration agreements. And I don't recall -- the Department is more than welcome to correct me if I'm wrong -- I don't recall the Department being given any rulemaking authority under the Federal Arbitration Act.

That act went into effect in 1925. It's been amended by Congress since that time. Congress has shown that it knows how to create exemptions or additional requirements in different public contracting situations when it wants to. And I just have real concerns that what the Department's doing here, whether it's a good idea or not, is not something that the Department has the authority to do.

PARTICIPANT: I'd like to respond to that. Our position is that we are not regulating the use of them. We are just saying that if you use them you need to let students know there's some information.

PARTICIPANT: And I understand that, that what you're saying is you're actually regulating the education services and
participation here. I don't agree with that characterization.

You're adding a requirement on the use of those clauses that Congress didn't include in its statute. Congress spoke strongly enough that, for instance, the state of Texas couldn't create this requirement more than likely.

So, again not to be flippant, and I know how hard our friends at the Department are working, they have a much stronger argument that they can preempt the states than they have argument that they can preempt Congress.

MR. BANTLE: William, Chris, then Justin.

MR. HUBBARD: Thanks, Ted.

On (6)(i) on page 4, it's a very minor thing that hopefully will not spark a lot of concern but I think is important, I would like to amend the language or propose amending the language to read -- and I'll highlight the pertinent part -- "Explain the use of a Master Promissory Note (MPN)" as a student loan contract.

Understanding that that may appear
redundant, I think to emphasize the point of the use of the Master Promissory Note as a student loan contract is important.

MR. BANTLE: I think that we might have stopped at (2). Correct me if I'm wrong. Okay, so we'll put that on hold, please. Keep that in your mind.

So, Chris, Joseline, then Linda. Or Chris, okay, Chris, Joseline, and then Aaron, and then Linda.

MR. DELUCA: So my, my question -- or not question but issue, on page 2, (h)(1), the change that was made, "An institution of higher education musts make available to enrolled students, prospective students, and the public easily accessible information regarding any class action waiver or pre-dispute arbitration agreement."

"Easily accessible," what, what does that mean? I mean, is the Department going to have a template that schools are going to be using? You know, it seems to me that what one person might think is, well, this is easily accessible, another
may say no. And I think using the words "easily accessible" creates a level of confusion.

MS. WEISMAN: Do you have a suggestion for what we could say instead? Because we did not intend to create a template.

MR. DELUCA: I'll think about it. Because that was one of the questions I had is whether you were going to have a template or not.

MS. GARCIA: My question is actually on the same thing as to what "easily accessible" means and when institutions are distributing this information what does that look like?

I know that for students, sending an email is not always the most efficient thing because they don't always look at emails. I mean, I don't know if institutions have this capacity, but doing presentations at classes, making them go through a training program before they enroll that goes through all these steps, or, I don't know, using social media. So Instagram, Facebook, Snapchat, I don't know if you all have those, but those are ways where information can be easily accessible to students.
And my question was how, how would the Department be able to enforce that or navigate that because I do assume it would be different for every institution.

MR. BANTLE: So I see that suggestion's been noted in the text up there. So, if anyone has any ideas, feel free to put up your card.

Actually, is your card directly responding or? Okay.

PARTICIPANT: So, could you say, let's see what it is, prospective students and the public.

So, I know that in -- I can't remember the exact wording but I know there are some pieces where it talks about requiring an institution to have a direct URL to that information. Could we possibly use something like that?

Yeah, I think at Consumer Information we have one for state, so something maybe along those lines where it would directly link the student to the page. Meaning, for those that aren't familiar, you don't have to keep, like, linking from page to page to page to page to find that information. It would be a direct link to that.
MR. BANTLE: Next I have Aaron, then Linda, then Jaye, and Suzanne.

MR. LACEY: I'll offer a couple of general comments and then I have a specific one.

I mean, I agree with John. I'll start by saying I think this is, there is a real question as to whether or not this really is an attempt to once again add conditions on to the use of arbitration causes and class action waivers. I mean, I appreciate that it's, as John said, I mean, it has to do with disclosure, but it's still a condition prerequisite to being able to use them, practically speaking.

You know, my other general comment, though, and bigger concern is just that even outside of this room in the context of higher education, I mean it is well established that consumer groups frequently do not like arbitration causes, class action waivers. That's been well established. It's been stated here.

Many organizations, institutions, I don't necessarily mean of higher education, companies often advocate for them, plaintiff's
attorneys don't like them; arbitration unions and associations do like them. I mean, they're just split out there, and people for different reasons go different ways.

The Department has made a conclusion which it has articulated that it is not going to attempt to -- and I agree with completely that it does not have the legal authority to try to regulate arbitration agreements, class action waivers. This feels like a very unpopular attempt to split the difference.

I mean, there's been a lot of testimony, or whatever the right -- commentary here by folks, I believe from all sides, but I don't claim to characterize that but, you know, that dumping more disclosures on people, adding more stuff to the entrance exam and exit exam processes is not going to be helpful. Students already get way too much paper.

And I, it is my personal believe, with all due respect, that the triad is failing institutions and students alike on that score; that institutions can't keep up with all the stuff
they're supposed to hand out; and there's so much stuff dumped on students that it is not meaningful.

And I just really encourage the Department when they go back to consider whether or not attempting to put an unpopular idea out that may not be within their statutory authority is really a good idea. I just don't think it is.

I think I get that the Department was trying to maybe put something out there here that would satisfy folks. And I just want to go on the record as saying I don't think it does, and I don't think it's going to help necessarily students. I mean, I don't want to speak for the students obviously, but I've seen how much paper gets dumped on them, and I just think it's just more paper.

All that having been said, my specific concern which I brought up in the last round again, is that the definition of class action waiver agreement and pre-dispute arbitration agreement have no box around them. So, you know, if the University of Alabama, which I like to pick on, if it's got Title IV students driving into its parking garages and there's an arbitration
agreement on the back of those tickets that they get that print-out every time they drive in, I do not believe that this is putting a box around that.

We've had that conversation. It's clearly not in the definitions on these agreements. And if I look at (h)(1), that's putting an affirmative obligation for disclosure.

So, I just encourage the Department, we've got to figure out a way, unless it's your intention that every single arbitration agreement that Ohio State or any other massive university may have for health clubs -- not health clubs, wrong word, but you know, maybe not in every case -- you know, gym, athletic facilities, parking garages, on-campus concerts, all those places where they may have agreements or tickets that have a pre-dispute arbitration clause and you've got a Title IV student that's signing one of those things, I don't see the box.

And I don't think it's your intent to require that entrance exam to talk about the parking lot in, you know, Building G, but I think this needs more work to make sure that it gets there. And
I did make that comment before, and I just, I don't see how it's there yet.

MR. BANTLE: Do you have a proposed box?

MR. LACEY: I think it could be done easily in the definitions of, well, relatively easy in the definitions of class action waiver, "means any agreement or part of an agreement, regardless of its former structure, between a school, or a party acting on behalf of a school, and a student that" -- and then the question becomes relates to X, fill in the box, and prevents.

And I don't know what the Department's intention here is. You know, is it enrollment? Is it enrollment in the provision of educational services? I mean, we do have a definition of provision of educational services. But, again, I think if you don't put a box here it's going to create an unintended consequence. I mean, I think it's unintended. And certainly one that's going to cause a lot of institutions surprise when they discover that they're out of compliance.

So, I think you've got to have something there. Again, it could be enrollment in the
provisions of educational services, you know.

MR. BANTLE: Linda then Jaye.

MS. RAWLES: There we go. Yeah, I won't just repeat what Aaron said. He did make most of the same statements that I was going to make, only much more eloquently. But I want to add to it just a bit and then make a proposal.

If it was just the issue that we're adding a burden to schools, which always ends up being a burden to students as well, then maybe we would just let this go, even though I haven't heard anyone in here really say that this is particularly helpful to students.

So, I'm a little concerned about doing something that isn't helpful to students but is an additional burden to all parties concerned when I think John is right in his reading of the law. And I worry about if we do reach consensus here, and this is part of it and there is any kind of legal challenge, what that will do to the rest of our efforts here.

So, in that vein and just to get it on the table, in addition to Aaron asking the
Department to reconsider, I'd like to make a proposal that we strike Issue Paper 4.

MR. BANTLE: Jaye.

MS. O'CONNELL: So this is somewhat of a knit, but I think Dan last time asked for the addition of "or electronic" in Item (2) on the top of page 4, which I support. I just had heard on Issue Paper 1 when we were talking about the written decision earlier in the week, so, under 685.206(d)(4), Annmarie, I heard you talk about the Department's kind of longstanding position on written can be electronic.

I'm just pointing out that sometimes we say "written or electronic," sometimes "written" is understood that it can be either. But just within this rulemaking it was inconsistent. So, I just don't know if you want to look at that.

Thank you.

MR. BANTLE: Suzanne.

MS. MARTINDALE: Oh, I just want to support in particular some of the examples that Joseline threw out as a demonstration of how financial literacy often doesn't really work and
is no substitute for substantive protections. You really do need to get into counseling and skill building at meaningful decision making points to help a consumer make an informed decision. Which is why I think, you know, we share many of the concerns that have already been expressed about whether this will in fact be helpful to students so that they can make informed decisions.

The solution to this problem is for schools to stop using pre-dispute arbitration agreements. And not going to relitigate the discussion around authority, but we believe that the 2016 rule got it right and stated a very reasonable basis for what it did then.

MR. BANTLE: Suzanne, do you have any additional proposals to Joseline's list at this time?

MS. MARTINDALE: No.

MR. BANTLE: Okay. William.

MR. HUBBARD: Thank you. I think this paper is getting to the point where we would be comfortable with it. I think it's a great start, and I applaud the Department for the attempt.
Initially my proposal would be to not strike the whole paper. I think that's absurd. And also points to the fact that there's, I think, fundamentally a misunderstanding over what this paper is trying to achieve, which I think ultimately is, as federal money, the Department is in a position to determine if a school wants to take the money, federal funds, how pre-dispute agreements are used, and I think this is getting to that point.

So it's not telling any school whether or not they can or can't use pre-dispute. I think that that would get towards the statutory concerns as outlined by some of my colleagues. But in terms of how it's done if they do accept federal funds, I think it does outline that.

Noting that there is concerns over whether or not dumping a bunch of paper on students is successful or not, I am empathetic to those points. You know, on occasions that can be the case. But that's not a reason for, for throwing this out entirely. I don't think that provides any level of justification for not making the best
attempt possible to inform students.

We, you know, we certainly we can talk later about perhaps more effective ways to do that.

But barring other options, just throwing it out entirely I think would be a tremendously disastrous idea.

MR. BANTLE: Any additional proposals on this section that we're discussing, will?

MR. HUBBARD: So, my proposal is to not strike the paper.

MR. BANTLE: Not strike it. Okay.

I see Joseline, Bryan, Michael. And then I want to wrap up discussion on this section, unless we have new proposals. And Walter will be the final card.

Okay, so Michael will be the final card. Joseline.

MS. GARCIA: Thank you. Yeah, so I mean I echo a lot of the things that Will was just stating right now. I don't think we should strike this.

I mean, my original position is that I'm not comfortable with class action waivers and
pre-dispute arbitration agreements. But, you know, in an offer to negotiate in good faith I think it's important that we have this.

And I see where Aaron is coming from. I don't like to waste paper. And I totally remember being in that situation. But, you know, going back to the ideas I mentioned earlier, I think we can be very creative with this in terms of how we deliver information to students and actually break it down.

And I would be willing to, like, sit down with institutions and the Department. I was a student organizer and knows how to rally up students and get information that is complicated and break it down to them to figure out ways that this can be accessible.

Again, this is really important. This is a really big lifetime and life-changing decision. And I think that more information gives the students to better set them up for success.

MR. BANTLE: Bryan, Michael. I see Abby's card again. Hopefully we're looking at proposals here.
MR. BLACK: I'm actually going to come out in favor of the Department of Education proposal. And the reason I say that, and I want to be transparent here, but I've been, at least on the periphery, involved in litigation that has involved a class action lawsuit against cosmetology schools where a plaintiff firm brought an action under the Fair Labor Standards Act.

And what they were trying to argue, and filed a multi-, multi-count complaint that it dealt with trying to turn our students into employees, even though they're licensed, they're going through a vocational program, they wanted all the benefits that an employee would get.

Most all the District Federal courts have thrown out this lawsuit. But I know the entities that I am familiar with and involved with to some extent have spent well over a million dollars in challenging what really has become a very, very frivolous case. And if we didn't have some pre-dispute arbitration, class action waivers, you know, going forward at least, I feel that we'd be really hamstrung.
The thing that I mentioned even at the very outset of these hearings is that these arbitration agreements seem to be held up only about half the time. It seems that the courts, if they want to ignore them, they simply ignore them and allow the plaintiffs to proceed. So, while we're talking about perhaps that they don't have absolute concrete effect, that they're granted the effect that they are intended, many times they don't have that effect at all, they're just simply ignored by the courts, and plaintiffs get their day in court.

But, again, and I want to be transparent on this, is that myself personally I've seen how a frivolous action can get out of hand. And having that added protection I think is necessary to institutions.

So I support --

MR. BANTLE: Is your proposal as is?

MR. BLACK: It is, yes.

MR. BANTLE: Okay.

MR. BLACK: Thank you.

MR. BANTLE: Michael.
MR. BOTTRILL: So, just a couple points. I'm assuming that it stays. So, my comments are along those lines.

With regard to "easily accessible," I think that there are many places throughout either these regulations, accreditation standards, where you use words that the onus and the burden will always fall upon the institution to demonstrate it. So, somebody questions it. Then the burden falls on the institution to convincingly show, yes, it was easily accessible because of X, Y, and Z.

So, because of that I don't know that we need to add a whole lot of additional language to define that. I'm not particularly persuaded that we need to include, you know, social media or other forms. I mean, the burden will fall on the institution to make that demonstration.

However, in that last sentence I'm not sure that you specifically mean to say -- and maybe you do, and maybe I'm mis-remembering the last conversation -- do you mean to say that the institution may not solely use an internet website? They could use it for those purposes.
PARTICIPANT: So, to clarify, an intranet site is different from an internet site.

MR. BOTTRILL: Yes. I understand that.

PARTICIPANT: So the idea of an intranet site could not be used to meet the needs of notice by any prospective students and the public that they wouldn't have access.

MR. BOTTRILL: My question --

PARTICIPANT: So they could use it for students but not prospective students or the public.

MR. BOTTRILL: Okay. But I'm just suggesting that you may want to include the word "solely" in between "may" and "not." I get that what -- that doesn't get to the public, but they could use that as one tool of several for the purpose of providing that notice as part of "easily accessible" information.

PARTICIPANT: Yes. But it could never be used to provide information to prospective students or the public. So I don't think "solely" would apply there.
MR. BOTTRILL: Okay, fair enough.

PARTICIPANT: Do you know what I mean?

MR. BOTTRILL: I do. I do, okay.

PARTICIPANT: You can use it for your own students but never for prospective students or the public because they wouldn't have access yet.

MR. BOTTRILL: Okay. To Aaron's point -- and I'm not sure that this helps -- but maybe the language under Romanette (ii) on page 3, to put a box around it on behalf -- starting, you know, "or a party acting on behalf of a school, and a student that" and then insert something along the line of "relates to the educational services for which the student received Title IV funding and prevents an individual from filing or participating in a class action" and add "with regard to those services."

And then something conforming or corresponding to that same theme in Romanette (iii). So, at the end of that sentence Romanette (iii) it would be, oh, "any future dispute between the parties relating to the educational services
for which the student received Title IV funding."

Aaron, does that -- Where did Aaron go?

Oh, there he is.

Oh, does that somewhat get to what you were talking about?

MR. LACEY: That addresses that concern, I think, in putting a box around it, excluding the parking lots and the athletic facilities and whatnot.

MR. BANTLE: Okay. Final comment from Abby.

MS. SHAFROTH: I also won't relitigate the issue of whether the Department has authority to act in this area. I strongly believe that it does, and I believe that the appropriate way to address this problem is to, is to not allow institutions that participate in Title IV to use these agreements to silence their students and to prevent -- to take away their right to go to court.

But to the extent the Department isn't willing to do that, my proposals:

One would be to address the problem of secrecy and help protect taxpayers and alert the
Department to misconduct at schools by requiring
the schools to notify the Department of arbitration
claims received and results of arbitration
proceedings as they relate to the type of misconduct
that could be a basis of a borrower defense claim.

This is language that was -- I won't
read all of the language, but there is language
like this in the 2016 rulemaking. And this is not,
is not limiting institutions from using arbitration
agreements, but saying if you are going to use them,
then we at least need you to -- we need some sunlight
on that, and we need you to inform the Department
of those issues.

So that's my first proposal.

My second proposal would be, you know,
I'm not convinced that a lot of these disclosures
would have any meaningful effect on students. If
we want it to be meaningful, then I would say we
should make the -- we should be clear about what
the disclosure language has to say. Like it has
to say "warning, if you enroll in this school it
will require you to give up your right to go to
court."
I would even put a skull and crossbones there, but we'll just leave that language. And I would put it on the college scorecard.

MS. WEISMAN: So if I can respond to that first piece, that was something that we did discuss at the last session. And I believe we had further discussion to explain that if we are gathering that type of information, then we of course need to be prepared to do something with it.

And our feeling was that we could not commit resources to take on that activity. And we declined to include that in these papers.

MR. BANTLE: I had cut it off, Joseline. Is it a proposal on modification to the language?

MS. GARCIA: If it's possible --

MR. BANTLE: Okay. Very quickly. And then I want to move on, just noting it is 3:00, and we have four more issues to get through today.

MS. GARCIA: I had a question. In terms of the entrance counseling, does that -- is that different for every institution or is there, like, one template of entrance counseling that they
all follow?

MS. WEISMAN: So, we have outlined in regulations specifically what topics must be covered within entrance and exit counseling. We provide information online on our website that institutions may choose to use, and many of them do. But they are not required to use our electronic or other materials. They can use their own if they prefer.

We only regulate the content of what must be within both exit and entrance counseling.

MS. GARCIA: Gotcha. Makes sense.

I'm a little concerned, just because I don't know how this counseling looks like, and I don't know if it's actually, like, accessible to a student to understanding all the financial language and the decisions that they're actually taking place.

Yesterday my intern, I found her crying outside because she was talking to her financial aid office and she had to take out more loans. And it's a really scary process. And she didn't have the resources to fully understand that. I
didn't even have the resources to, like, break it
down to her.

And I don't know if there's any way
within the material that you recommend on your site
if you can perhaps work with some national youth
organizations that work with students to help
reconfigure that language in a way that is more
accessible, and a way that students can actually
understand what their options are and what they're
getting themselves into. Because, I mean, I
remember being in this position. It is very scary.
It's intimidating.

And that's why I stepped out of the room
yesterday because I had to calm her down.

MS. WEISMAN: Sure, I'd like to respond
to that. That would be outside of the purview of
these negotiations. But it's more of an
operational issue. We do have staff within federal
student aid who work with preparing that counseling
website that we offer.

And my understanding is that it has been
kind of pilot tested -- there's a word I'm looking
for and it's not coming to me -- but that students
-- focus group, thank you -- I believe that it has been through that process. We have not made changes to that in at least a few years. But it's something that we could recommend to them as well, is that when they make their next update, or even just looking at it now, to, you know, consider having some student input in that process.

MS. GARCIA: And I can send you organizations that you can reference to.

MR. BANTLE: Okay. Will, is it a proposal?

MR. HUBBARD: It is.

MR. BANTLE: Okay. Final proposal. And then I want to give -- it is 3:00, so I want to give us a 10-minute break. And just looking at body language around the room, I think that would be appropriate.

MR. HUBBARD: I'll keep it brief.

So, as a subcomponent of (h), to Joseline's point a proposal might look something -- and certainly noting what the Department's response, a proposal might look something like "the Secretary may delegate consultation of language
to ensure that it's easily accessible," or something to that effect.

MS. WEISMAN: So, I think I need to hear a little bit more about what the goal is with that text. The Secretary would always delegate the responsibility of, say, program review or audit to federal student aid employees. And they would be the ones who would be looking at whether somebody met this requirement, for example.

So, if I can hear a little bit more about where you're going with this proposal to know maybe how we could finesse it.

MR. HUBBARD: Sure. No, that makes sense. Thank you for that.

I would say, and just remaining consistent with the other text, leaving it at the Secretary's discretion on whether or not this occurs, but also encouraging that as something that might be pursued. I mean, if we want to take the Secretary out of it, that's fine as well.

But just identifying that within consulta -- with consultation with student-centric, or however you want to word it,
organizations is an option. I mean not necessarily a requirement, but strongly encouraged option. That might be kind of some way to put some language around that concept that Joseline proposed.

MS. WEISMAN: So I don't think that we would be looking at putting that operational information within this regulation. I think that would be something that we would consider on the outside. Because, again, that counseling, the use of that resource is not a required resource. And because schools wouldn't be required to use it, I think we're looking at is there a way to adjust this text in a way that makes people understand the idea of notifying the students, whichever method they are receiving the counseling from.

MR. BANTLE: Okay, let's take a 10-minute break. Please be back at 3:10.

(Whereupon, a recess was taken.)

MS. CARUSO: Okay. Annmarie, would you kindly take us through 685.304.

MS. WEISMAN: So, for 685.304, "counseling borrowers," we are picking up on the beginning of 4, at the top of page 4. We do not
have any changes to any of the text on page 4 from
the last session. So I'd like to skip over to page
5.

"If the school requires borrowers to
enter into a pre-dispute arbitration agreement or
to sign a class-action waiver, as defined in
668.418," then they will provide a description of
that process, the internal dispute resolution
process that is.

So this is basically changing the text
in a way that conforms to what we discussed at the
last session where we would not hold everyone
accountable to do this, it would only be the schools
that are using the pre-dispute arbitration
agreement.

Over on the next page, on page 6, we
do a similar thing in Romanette (v) by saying, "If
the school requires borrowers to enter into a
pre-dispute arbitration agreement or to sign a
class-action waiver, as defined" we go on to talk
about the idea of those receiving a loan that they
need to provide that information as specified
within this section.
We have also removed the words "from that school" to again parallel the change that we made earlier because we are not requiring counseling for those who are attending a school each time they attend a new school. And it would be one time only, as we're doing it currently.

On page 7, the change we made was to clarify that we were talking about enrollment in the same school as opposed to "attendance at." The idea here is that enrollment more closely aligns with the language that we have already used, and covers a broader period of time, which could include once someone is admitted going forward. You can obtain a loan before you're actually attending classes.

And then going on to page 8 in Romanette (xi), doing similar to what we've done earlier. "If the school is required" -- "If the school required the borrower to enter into a pre-dispute arbitration agreement or to sign a class-action waiver, as defined" then they need to go ahead and review the student's -- with the borrower the school's internal dispute resolution process. So
we're just carrying over that text again.

On page 9, our key changes are to include the words "to the borrower." So we're again, we did that on an earlier page, we're conforming here as well that the school must provide to the borrower elements of the required information that are not addressed. And, again, this only would pertain to those are required to do so.

And then we make the change where we clarify in (2) the idea that it's a written or electronic form.


MS. CARUSO: Any proposed changes for 685.304? Juliana.

MS. FREDMAN: I have a question for the Department. I'm not really, not familiar with the enforcement side. So I'm wondering what the weight of this proposal is?

In other words, like, how does the Department know what schools are using for dispute arbitration waivers? How does the school enforce it if they are not? What's the process if that's
not -- if these disclosures are going to be provided? What are the consequences?

    MS. WEISMAN: So, just as with any other Title IV regulation, if we determine through the audit resolution process, through a program review, through a student complaint, we would take the appropriate steps as we would already have outlined in those processes.

    MS. CARUSO: If there are no other comments, let's move on to Issue Paper Number 5.

    In the interests of time we're moving on to Issue Paper Number 5 to make sure we capture all of the proposed changes.

    There will be an updated Issue Paper Number 4 presented by the Department tomorrow morning; is that right? No? Just 1 and 2.

    MS. WEISMAN: One, 2, and 3.

    MS. CARUSO: One, 2, and 3.

    MR. BANTLE: We did have a number of items for discussion. I think we'll come back to votes when we're looking at this in totality. But as Moira said, just in the interests of time I think we should move on to 5 and have conversation on
that as well.

MS. WEISMAN: So I stand corrected though, just quickly. We will have an updated Issue Paper Number 4. There were some additional edits and some language that somehow I forgot we had some proposals out there. So we are going to put together some additional language for you and bring that back as well.

And also to note one other correction that was nicely pointed out to us, the statutory citation in Issue Paper 4 is incorrect at the top. Instead of saying Section 455(a)(6), that should be 454(a)(6). So we will note that in the new paper as well.

So, moving on to Issue Paper 5, "Closed School Discharge," under the summary of changes we want to remind you that we are providing for Department review of a closed school discharge claim denied by a guaranty agency.

Other new text appears on page 2. We updated some language that begins on page 1 where we talk about a "nondefault, contested Federal or State court judgment issued by a court of competent
jurisdiction, or an adjudication by a Federal or State administrative agency concluding that the school violated State or Federal law."

So, I think the idea here is adding the word "concluding," is that there is an actual decision there.

On the last time when we met we had a couple of places that appear on page 2 where, although we had stated our intention to move from 120 days to 150, we had forgotten to make those edits. So we have made them here in paragraph (d) under 682.402 for closed school. Again, moving that time frame from 120 days prior to the date that the school closed, and the idea that we could extend that period as well, where necessary, at the Secretary's discretion.

So, again, we've updated that text.

We continue on to say "but are not limited to:" -- and, again, these are the exceptional circumstances -- "revocation or withdrawal by an accrediting agency of the school's institution accreditation; the school's discontinuation of the majority of its programs;
the State's revocation or withdrawal of" -- and I think, oh no, it is there -- we have the "of the school's license to operate or to award academic credentials in the State; or a nondefault, contested Federal or State court judgment issued by a court of competent jurisdiction or an adjudication by a Federal or State administrative agency concluding that the school violated State or Federal law."

On the bottom of page 2, while we were at it we made the edit from "shall" to "must."

We have done that in some other places as well within this paper, including at the top of page 3; again in the middle of page 3 in (F).

We also state in (F) that "the agency must notify the borrower in writing of that determination," -- This is referring to the guaranty agency -- and "the reasons for the decision, and how the borrower may ask the Secretary to review the decision."

On the rest of page 3 we are changing our "shalls" to "must" again.

Doing the same over on the top of page
4.

And then we come to our new text in (J)(1). "Within 30 days after receiving the borrower's request for review of its decision that the borrower did not qualify for a discharge under paragraph (d)(6)(ii)(F) of this section, the agency must forward the borrower's discharge request and all relevant documentation to the Secretary."

So this is just kind of outlining what that process looks like for the Secretary review.

In (2) we say, "After reviewing the documents provided by the agency, the Secretary notifies the agency and the borrower of the decision on the borrower's application for a discharge. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being informed of the Secretary's decision, the agency must take the actions described in paragraph (d)(6)(ii)(H) of this section, as applicable."

We then continue on to say, "If the Secretary determines that the borrower meets the requirements for a discharge" the agency has 30
days after the decision of the Secretary's decision
to take the actions required, as indicated above.
And that "the lender must take the actions
described in paragraph (d)(7)(iv) of this section,
as applicable."

And then the last change we have in this paper is over on page 5 at the top where, again, we make the conforming change here that we mentioned earlier stating, "concluding that the school violated State or Federal law."

MS. CARUSO: Ashley Reich, would you like to open us up with comments and proposals?

MS. REICH: Just I have some real minor, minor like spacing, commas, et cetera. Should I just work with Aaron to --

MS. WEISMAN: If they're seriously just spacing and things like that, I'm fine to have you work directly with him.

MS. REICH: Okay. Yeah, that's all it is.

MS. CARUSO: Juliana.

MS. FREDMAN: So, I have a question about how the Department views some of these
exceptional circumstances in terms of the timeframe. So, in other words, if there's a state or federal administrative agency decision, or one of these other events, will the Department look back to when the -- when the conduct underlying those events began when looking to set a new date for the school closure in terms of the deterioration of the services, or whatever it might be?

Or is it the date of the actual judgment or decision, which could come a year later?

MS. WEISMAN: The Secretary already has the ability to extend the deadline. So I think that it's within the Secretary's discretion then to consider information even earlier.

MS. FREDMAN: Yeah, I don't -- you'd consider it information that happened earlier after the, after the final decision was made, in other words, like, the conduct underlying, that they could set the date back further from that decision date? Is that what you're saying?

MS. CARUSO: Anything remaining for Issue Paper 5?

(No response.)

As we have no edits in Issue Paper Number 5, can we see a show of thumbs as to whether we are at consensus, barring any spacing, periods, commas?

PARTICIPANT: Why didn't we do that with Number 4?

MR. BANTLE: Because we had edits.

MS. CARUSO: We're going to have an updated Issue Paper 4.

MS. WEISMAN: So, maybe to clarify, we're looking for tentative agreement. This is not final. This is not binding, just what you're thinking of what you saw.

MR. BANTLE: And we are temperature checking because there were no edits, so we will not have a new version of it.

MS. CARUSO: Given all of that, how do we feel?

(Show of thumbs.)

MS. CARUSO: I see no thumbs down.

Thank you.

On page 1, under 685.215(a)(1)(i) we now streamlined the language and say, "Certified eligibility for a Direct Loan for a student who did not have a high school diploma or its recognized equivalent and did not meet the alternative eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, applicable at the time the loan was originated."

So, as we mentioned at the last session, the goal here was to conform this language to the updated requirements that pertain to having a high school diploma or its equivalent, and what that equivalent is.

And so we make a similar change on page 2. Under Romanette (ii) we say, "Received a Direct Loan at that school and did not have a high school diploma or its recognized equivalent, and did not meet the alternative to graduation from high school eligibility requirements described" in regulation or in statute, as "applicable at the time the loan
MS. CARUSO: Questions, proposals for Issue Paper 6?

(No response.)

MS. CARUSO: If there are none, can we see a show of thumbs, temperature checking and moving on from Issue 6?

PARTICIPANT: I was just conferring with Juliana. We just wanted to make sure we -- I appreciate the change to the language in Issue Paper 6 that the Department made. We are trying to figure out whether the language would clearly cover the instance where a school has worked with another company to issue false high school diplomas, invalid high school diplomas to students.

Could the Department clarify whether this language would provide borrower's relief in that instance? And if it wouldn't provide borrower's relief, maybe we could change the language by inserting "valid," "who did not have a valid high school diploma."

MS. WEISMAN: So our understanding, especially given a case that happened fairly
recently, is that we have used this for that purpose, and that the case went forward. And so we would not expect any issue.

But I understand your concern. And so the idea of saying a "valid high school diploma" is certainly something we could consider.

MS. CARUSO: Mike Busada.

MR. BUSADA: You know, any changes I would want to make sure fully protect schools. And this is an issue that hits very close to home.

Some of you may be familiar with the United States vs. Bobby Ray Lowe in the United States District Court for the Eastern District of Louisiana.

Mr. Lowe was convicted through his printing shop. He was falsifying and creating fake diplomas for students that were used to get into primarily one school in New Orleans. This went on for a good period of time. He has been sentenced.

And I bring that up because this was a professional printing company that does it for a living that was creating very, very hi-tech, very nice diplomas that were being used, and the schools
were being defrauded on that with this individual and with some fraudulent people that were working with him to scam the system.

So I just want to make sure that anything that we do is going to recognize the fact that there are these Bob Lowes out there in the world, and schools need to be able to protect themselves as well.

MS. CARUSO: Alyssa.

MS. DOBSON: Just a small concern with some verbiage. On page 1, Romanette (i), it says, "as applicable at the time the loan was originated."

And some schools originate very early for cleanup processes, to provide notice to students a little bit earlier. Sometimes maybe change that either to "applicable for the period of enrollment," or "for the loan period," because that at least means that they would have had the high school diploma for the time frame that the loan was intended, maybe not yet at time of origination, especially for incoming freshman.

And that same issue then on page 2, top of the page, Romanette (ii), it has the same
verbiage that could be problematic just timewise, not in concept.

MS. WEISMAN: So I hear your concern. But I, in hearing the concept I missed the specific language that you suggested. So were you saying applicable for the time that the loan was originated or something else? I'm sorry.

MS. DOBSON: Right. So I guess I'm suggesting, if you're referencing the first page, "applicable for the period of enrollment." Or maybe it's even more clear to say "for the loan period."

Rather than requiring having the high school diploma at the time of origination, having the high school diploma prior to the start of that loan period makes more sense and helps schools be in compliance.

MS. WEISMAN: So just in case anybody is unclear on why we would make that change, the issue becomes that an institution who is awarding students in March for incoming students who begin in, for example, September, could be awarding a high school student who does not currently have
the high school diploma but will have it.

So, again, I understand. So I think we're there in concept.

MS. CARUSO: Aaron and then Michael.

MR. LACEY: Unless I'm missing it, I'm very concerned that knowledge has dropped off. In the prior version a false certification required that a school knowingly certified the eligibility for a Direct Loan for a student who did not have a high school program or its recognized equivalent.

And we had also talked about adding to the back end something about affording the institution an opportunity to demonstrate that the student had represented to the institution.

I mean, I think those were redundant, but one of them's got to be in here. I mean, there has to be an opportunity for the institution -- well, let me state it in the converse.

If a student had represented to the institution at the time of graduation that they have a high school diploma and provided them with a false document, and then the institution certifies the loan, and then it's subsequently
determined that that loan was certified but the student didn't in fact have a high school diploma, that should not be a false certification.

So, I mean, we -- that was in the prior version. I'm also, respectfully, a little concerned that this doesn't show knowledge, having been struck from this version. Makes me a little nervous.

But that's absolutely essential. I mean, it has to be knowingly certified. And it was previously.

MS. WEISMAN: Okay. So, mystery solved. The idea of knowingly or knowledge of the institution was language that we discussed in one of the sessions but it was not in current text. So it's not something that we had to redline because it was only proposed language. And when we decided we weren't including it, we just eliminated it.

So that is why it disappeared.

The feeling of why it disappeared, also, is that there is no requirement that the school knowingly certified it in that manner. So we're not holding the school accountable for knowing.
We would just say if it's determined that the document is not valid, or the credential has not been received, we will review for false certification.

MS. CARUSO: Go ahead, Aaron.

MR. LACEY: Yeah. I mean, I'm just -- it's, it's very important for me that "knowingly" be there. I mean, it says, "the Secretary considers a student's eligibility to borrow to have been falsely certified if." And then it says if you certified the loan for a student who didn't have a high school diploma.

Well, if you didn't knowingly do it, it's not a false certification. "False" implies knowledge; right? If someone represents to you that they have a high school diploma and you certify the loan based on that representation, which schools are able to do; right?

MS. WEISMAN: So it's not talking, it's not referring to the conduct of the institution. It's just referring to the fact that it was not certified under the conditions that are part of the Title IV eligibility requirements.
MR. LACEY: Okay. I'll have to think about it. But you understand my concern? If the definition of a false certification is certifying the, you know, the loan who did not have -- for a student who didn't have a high school diploma, I don't think that's sufficient. I think there has to be a knowledge element there.

So I'll look at it, but I would not be able to agree to a concept that if a school certified a loan, that in and of itself would be false certification to certify a loan for a student that didn't have a high school diploma and it's a false certification if they did it and did not have knowledge that it was -- that the student didn't have the high school diploma.

MS. WEISMAN: So this is currently regulation and outlined as a basis of statute. And this is what we call it.

MR. LACEY: Yeah. Well, it's --

MS. WEISMAN: So this is not new.

MR. LACEY: -- ability to benefit right now; right? I mean, there's nothing there about high school diploma in the reg.
But I'll, I'll -- let me go back and look at it. I'll look at it.

MS. CARUSO: Michael.

MR. BOTTRILL: I just, to Ashley's point and, Annmarie, where you had said, I just want to make sure because I think Ashley had said "for the period." When we were talking about loan origination she said maybe "for the period that the loan covers."

I think you had said "prior to." And I just, I would support the "prior to" the period that the loan covers as opposed to "during the period," meaning that they get that documentation or they, they do the certification prior to. Maybe not at the time of origination but prior.

MS. WEISMAN: So that was Alyssa's comment.

MR. BOTTRILL: I'm sorry. Alyssa, I'm sorry.

MS. WEISMAN: So, maybe we can look at the language up on the screen and kind of look at what we might best say. Noting that we're starting in 685.215(a)(1)(i), at the bottom of that where
it talks about at the time the loan was originated, and trying to find a place that would then be parallel on the next page as well.

MR. BOTTRILL: So, I'm suggesting it would say "prior to" the period of enrollment for the loan period. So that's in between the time that the loan was originated and the period; is that correct? Am I --

MS. CARUSO: Alyssa, do you want to weigh in on that?

MR. BOTTRILL: Yeah, I'm a little out of my depth. But I just, from an accreditation perspective, we typically have an expectation that admissions documentation is secured prior to when the students start class. So that would be the appropriate time to have it in.

MS. DOBSON: Right. But to me, that makes it just the same as it was before, which is when it was originated. Because you can originate a loan prior to the period of enrollment. However, the requirement is simply to have the high school diploma or equivalent right as of that day of the period of enrollment.
I think -- and maybe the Department can correct me if I'm wrong -- but I think it still retains the essence of the meaning if we simply say the period of enrollment or the loan period, without have the "prior to." Because putting the "prior to" puts us right back into the spot that I'm trying to avoid from the school perspective.

MS. HARRINGTON: Could it just be prior to the period for which the loan was intended or made, prior to the start of that period, or something like that?

MS. CARUSO: That was Ashley Harrington. Ashley, do you want to repeat that?

MS. HARRINGTON: I'm just trying to be helpful and help find some language. Prior to the period -- to the academic period for which the loan was intended or made?

MR. BOTTRILL: I mean, that's what I have in my notes is prior to the period that the loan covers or for which it was made. That's what I'm -- But, look, this is your wheelhouse and I'm not trying to monkey around in there. But I think that the "prior to," if you're certifying the
eligibility for that individual.

MS. CARUSO: Microphone issues.

PARTICIPANT: So, I think especially now, with the recent advent of early pass for this, it becomes even more important. As time frames are being shifted forward, all in an effort to be more forthcoming and allow more time for students and borrowers, that it's going to become even more problematic if we leave the "prior to" in there.

I'm just trying to avoid a loophole because there can be -- we can be, you know, determining awards months, and months, and months, and months prior to the period of enrollment where they're actually still in high school.

MR. BOTTRILL: So, can I ask a practical question then? So would an institution certify eligibility for a Direct Loan without knowledge that it has, that that applicant in fact has these credentials?

PARTICIPANT: I'm going to give you the financial aid response of "it depends." And so --
MR. BOTTRILL: Does that mean that there's a real response?

PARTICIPANT: Technically what, what we would do is we would originate early and prior to the start of the semester. But prior to disbursement we would go through all of those certifications and make sure that they had them.

I don't know if we want to get that muddy or cloudy in this.

MS. WEISMAN: I don't think we do.

PARTICIPANT: Yeah.

MS. WEISMAN: I mean, I understand the practice and how it's done. And you're correct, for the current high school senior you're going to originate the loan as soon as you can so they know what they would be eligible for. And then go back and reconfirm later.

It's a matter of trying to find streamlined language that doesn't go on and on and on, and catches all of what we're trying to intend.

PARTICIPANT: Right. We have our own accreditation standards in this area that require documentation prior to the student starting class.
That's good enough, you know, for me along those particular lines.

MS. CARUSO: Okay, we've got a suggestion from Kelli.

MS. HUDSON PERRY: Unless I'm totally missing it, too, is there a reason that we can't just say "prior to disbursement"?

MS. WEISMAN: No, because that's really the test. You don't, you do not want to disburse the funds if you'd certified that this has happened.

PARTICIPANT: You know, I don't think you want to say "prior to the loan period" because do you not have students that come in after the loan period has begun --

PARTICIPANT: Yes.

PARTICIPANT: -- and you're certifying them?

PARTICIPANT: Yes.

PARTICIPANT: So you could have ones that come in late, for late certification.

MS. WEISMAN: Okay.

MR. BOTTRILL: So I just had one more. Are we moving on?
MS. WEISMAN: So I think "disbursed."

Gold star for Kelli for today. I think "disbursed" gets us to where we need to be and we feel like we're not missing anything there.

I'm seeing some head nods. And then I'm seeing some looks that just say "I don't know."

Does anybody have any objection to using the idea of "disbursed"? Is there something we're not thinking of? I think that covers us for people who get disbursements just prior to enrollment or just prior to the disbursement being ten days prior to the semester start or the date of period of enrollment. I think it covers those who disburse after a term begins. I think it gets us to what we're looking for.

MS. CARUSO: Okay. So we'll do a temperature check at the end after we have any other suggested changes. But we're ready to move on to Abby and Dan.

MS. SHAFROTH: Thanks. So, I was just looking back over the transcript from Session 2. We had a, we had a really long and I think robust discussion of whether, whether "knowingly" should
be in the requirement or not. And it seems that we as a group had largely reached consensus that it should not be in there.

And one of the reasons I discussed last time that it shouldn't be in there is, you know, that it's the school's responsibility to determine if the borrower has a high school diploma and if they're going to certify that the student does have a high school diploma and is eligible on that basis,.

And if we include "knowingly" in there, then that's a problem in that, for one reason, that some schools just don't ask whether the borrower has a high school diploma or not is an issue we have seen. And if the school doesn't ask but they go ahead and certify, then the student should be able to get a discharge if they didn't have a high school diploma.

So that, so, you know, essentially that gives the school's still falsely certifying if they didn't bother to certify but they say they did. And you don't need the knowledge language in there to do that.
So, you know, I think that the Department's change since last time was based on that discussion. And I don't see a reason to reinsert a knowledge standard in there, which would make it, again, like really hard for a borrower to demonstrate that the school did or did not know. And we'd get into some proof issues.

And, regardless, if the school certifies without knowing, that's a problem, and the student failed to get relief.

The other thing I just wanted to point out is that this is the standard for the borrower to get relief. There's a different standard for the borrower to seek a recoupment from the school. You know, that exact language is referenced actually in Issue Paper 2 that the school's only going to be liable if the school was negligent or willful in its false certification. So I think that might address some of the concerns here as well from the school side.

MS. CARUSO: Okay. So, Dan, was that your point? Okay.

Aaron and then Mike Busada.
PARTICIPANT: Just make a quick comment just to clarify that what is in Issue Paper 2 is a process related strictly to borrower defense. And that would not cover false certification. Subpart G does but --

PARTICIPANT: Whoa, whoa. That's not what it says. It says remedial actions of the school's negligent or willful false certification under 685.215.

PARTICIPANT: I did get that advice from counsel.

(Laughter.)

PARTICIPANT: I said I'm not an attorney. Thank you.

No, it's fine. I stand corrected. You are correct, it is covered by Issue Paper 2. Rewind, splice that out, start again.

MS. CARUSO: Aaron.

MR. LACEY: We did have a robust conversation about knowledge last time. And I had proposed at a different place here in this regulation that the institutions have the opportunity to provide an affirmative defense that
the borrower had represented to them at the time that they did have a high school diploma.

And the agreement was -- and I think if you do look at the notes and the transcript you'll see that the agreement was that it should be in one place or the other. And we were willing to drop knowledge from the front end, provided that there was the opportunity for the institution to assert an affirmative defense and demonstrate on the back end, before there was a decision made, that the borrower had represented to the institution that he or she did have a high school diploma.

So there wasn't an agreement to drop knowledge, it was a tradeoff.

Second, I will note that I am okay with the idea of the institution having to provide that defense. My experience is -- and we were talking about this -- in the vast majority of the cases where there is a dispute, institutions will have some sort of documentation besides the FAFSA. And I want to point out to everybody, this happens all the time. You have home schooled students, you
have students who can't find their high school transcript, their high school is closed, et cetera. I mean, it is not an uncommon occurrence to have a student who cannot produce a transcript and who will certify to you, even apart from the FAFSA, on some other document that they have a high school diploma.

So, schools should have to prove that. But my point is before you grant a false certification discharge there should be a mechanism by which the institution has an opportunity to demonstrate to the Department at the time of enrollment the student certified to the institution, apart from the FAFSA, certified to the institution that he or she had a high school diploma. And that's not here.

Now, the reason I think that you don't see knowledge here presently is because this is a revision of the ability to benefit standard. And the ability to benefit determined required a decision on the part of the institution; right? So a school -- a student was not going to certify to a school that they had the ability
to benefit. A student was going to -- a school was going to put them through a test or process and reach that conclusion. So you would need a knowledge qualifier.

But the problem here is it is a common occurrence that students will have to represent to institutions that they have that high school diploma. And many times they do legitimately. They were home schooled, so they don't have one. Again, they may not have access to a transcript.

And I think we all agree those students ought to be able to get access to Title IV and higher education. But if an institution is relying on that certification, it ought in the least to have an opportunity to demonstrate that it has that documentation.

And the way I would suggest doing that is by saying, if you don't like "knowingly," let's see, certified eligibility for a Direct Loan, et cetera, et cetera, et cetera, prior to disbursement, and the institution cannot substantiate that the student certified at the time of enrollment that the student had a high school
diploma, or something like that. Valid high school diploma or its equivalent.

MS. CARUSO: Sure. I just want to make sure that the language gets right.

Aaron, can you review that sentence, please?

MR. LACEY: I can try.

MS. CARUSO: Thank you.

MR. LACEY: I'm getting old.

Let's see. Let's see, prior to disbursement and the institution cannot substantiate that at the time of enrollment -- or, yeah, could not substantiate that at the time of enrollment --

PARTICIPANT: I thought we'd determined "disbursement."

MR. LACEY: "Disbursement," is that what we want? I mean --

PARTICIPANT: That's what we want.

MR. LACEY: Okay. If that's the standard.

And the institution cannot substantiate -- wait, shouldn't it be "prior to disbursement"?
Okay. And the institution could not substantiate that by the time of disbursement the student -- Wait. The institution could not substantiate that by the time of disbursement the student had represented, or had certified to the institution, let's say that, certified to the institution that he or she had a -- There you go. Sure. Recognized, or its recognized equivalent.

MS. CARUSO: Dan and Michael, are your comments in relation to that sentence? Okay. So Dan, Michael, and then Kelli.

MR. MADZELAN: If you're going to say "valid high school diploma" here, are you going to make, need to make a conforming change back in Subpart 8, student eligibility? Because I think that just says to be eligible you have to have a high school diploma and recognized equivalent. I don't think the word "valid" is in there.

MS. CARUSO: Michael.

MS. WEISMAN: Okay. So I think we're ready to regroup. The feeling is at this point that we feel we need to go back to the original language, as proposed, regarding the idea of not
including knowledge and not including the
information up here that Aaron had proposed.

The feeling here is that we would be
going beyond our statutory authority; that we have
been doing this discharge and this process has been
in existence, and that we are following what the
statute asks of us. Schools are required to have
a process in place to verify the validity of high
school diplomas received. That's part of the
verification requirements and student eligibility
requirements.

So while we agree that changing the text
to "at the time the loan was disbursed" makes sense,
we do not feel we're able to make the other changes
requested here.

MS. CARUSO: Do you agree to adding
"valid" in front of "high school diploma"?

MS. WEISMAN: No. Our feeling is that
that's not necessary, given the processes already
in place through verification, through student
eligibility, and that the student would then make
their case about what they are presenting. And
we would talk about the idea of going after a school
separately if we were to do that.

MS. CARUSO: Mike Busada and then Ashley and then Aaron.

MR. BUSADA: And this is just to get on the record. I understand the point.

I just want to make sure under the scenario, the real life scenario that I laid out that went through the court process, and this was actually determined by an undercover agent with the Department was the one that uncovered this when he went and bought one of these diplomas.

This school that accepted these diplomas would not face any penalty, they would not have to undertake legal costs to defend themselves. I mean, basically these schools that accepted this, these diplomas that were fake, they had no idea.

MS. WEISMAN: So, what I'm saying is that through other regulations that we have on the books through part of student eligibility as well as verification, we require the institution to have a process in place to determine the validity of diplomas. That said, we understand that, you know,
there could be a time that you would be fooled.

We would look at whether to grant a discharge to a student first. We would then have a process in place where we may discuss with the institution the idea of restitution for that, but that would be a separate process as we have outlined already in regulations. And the school would have the ability to say what their process is for looking at the validity of high school diplomas.

And that's not to say that one couldn't ever get past this.

MR. BUSADA: Well, I guess more specifically when a -- if a loan was discharged, the school still would have the opportunity before that loan is discharged to provide the Department with information showing that they were given what they believed to be a valid diploma.

In other words, the taxpayer is not left on the hook. I mean, it's not, you know, the loan is discharged and then after it's discharged you come to the school, and the school says, look, we can show you. And then the taxpayer's on the hook.

I just want to make sure the taxpayer's
not left on the hook if there's a bifurcated process there.

MS. CARUSO: I appreciate your concern for the taxpayer. As a member of the Department that, we appreciate that. But this is statutory. And Congress didn't have so much concern in that regard in directing us to do it a certain way.

However, in recovery against the school, as others have corrected me since I'm of dubious us as counsel, you know, in recovering against institution we don't -- a recovery action is only brought if it's willful or negligent. So the institution, if recovery action is brought against the school, would then have opportunity to demonstrate that it was neither willful nor negligent, if that, if that's helpful.

MR. BUSADA: Well, and I appreciate that. I mean, obviously if you don't have the statutory authority to do it, there's nothing you can do. So, I mean, I think that it's something though that Congress, just to put on the record, it's something that Congress ought to look at because it does leave a situation where taxpayers
can be left on the hook. And, you know, we've seen a situation where that occurred.

So, thank you, I appreciate it.

MS. CARUSO: Ashley.

MS. HARRINGTON: I just have a clarifying question. We were talking about this kind of in the back here. But is -- does the Department consider career pathway programs to be a recognized equivalent? Because some of these they won't have one but they can go through a different process.

And under the -- within the FSA handbook it doesn't lump career pathway programs under the recognized equivalent language. It's kind of its own subset on the side.

So do you consider that to be part of this or should that be clearly spelled out here?

MS. WEISMAN: So, we've used the term "alternate eligibility requirements" and then we referenced our student eligibility regulations in Part 668. And we also referenced the statute in 484(b), with the idea here that it covers what Congress is doing now, but also what they might
do in the future without us having to go back and amend our regulations.

MS. HARRINGTON: So this would fall under alternative eligibility basically, because there are high school grad -- or, they haven't necessarily graduated, but they're still eligible, and they won't have a diploma. So I just wanted to know where they fell.

So is it alternative?

MS. WEISMAN: Yeah.

MS. HARRINGTON: Okay.

MS. WEISMAN: Anything that's not specifically the high school diploma or recognized equivalent, which would be the GED, if it meets the requirements under the statute, that's when it's included as alternative eligibility requirements.

Again, we've changed this to reflect that we're taking out the ability to benefit test due to the change back in 2012 for that. So, when things are added in, then that would be the box that we would consider them under.

MS. CARUSO: Mike.
MR. BUSADA: In this, for informational purposes too, and I just want to point out I don't want anybody to get the wrong idea, for schools -- and I can't speak for every school but I can tell you just our accrediting body we have to, in order to stay accredited have to have 60 percent completion rate, 70 percent placement rate, 70 percent license or exam rate.

There is no incentive, for at least schools that I know about, to want somebody without a high school diploma because all it means is that you are going to lose your accreditation on the back end.

So, my fear is that a lot of times a lot of our students are second, you know, are coming to school they're your non-traditional students. I mean, some of them are 40, 50 years old. Their high schools it's almost impossible to get a transcript sometimes. They have a copy of their diploma. And, you know, it's very taxing on small schools to say now you have to put this piece of paper through, you know, a TSA screening in blue lights and everything else, I mean.
And I think that some of the others here can testify to that, especially when you're dealing with older students from out of state. So, I know we can't do anything about that specifically now, but I just wanted to make clear why that's important. Because it's to the detriment of schools if somebody slips in with a fake diploma.

But it's also very taxing, with limited resources, to determine whether documents are real or not, especially in this day and age with computers and technology.

MS. CARUSO: Are there any other suggested changes to Issue Paper 6?

(No response.)

MS. CARUSO: Okay. So if we are going back to the, just the initial change offered by Alyssa to "prior to disbursement" can we get a temperature check, with all other things in place, whether this version of Issue Paper 6 would be acceptable?

PARTICIPANT: Changes at the time of disbursement.

MS. CARUSO: Prior to the time of
disbursement?

PARTICIPANT: No, at the time.

MS. CARUSO: At the time of disbursement. Okay. Thank you.

(Show of thumbs.)

MS. CARUSO: We have a thumbs down.

Aaron, can you please offer an alternative?

MR. LACEY: I've offered an alternative. And I respectfully disagree with the Department. I've look at the statute. You know, it is well within the discretion of the Department to define what constitutes a false certification. And I believe that defining it in the way that I suggested, again, is well within the statutory authority.

I would just point out we created the entire bar defense framework out of one paragraph in the statute. I just cannot imagine that the Department lacks the regulatory authority to indicate that a false certification on the basis of a high school diploma would only be the case if X is not true.

And I think it is just extraordinarily
unfair to institutions to suggest that if an individual certified to, and you can provide documentation that the individual certified to you that they had a high school diploma prior to disbursement that that still constitutes a false certification. It's a problem for me.

MS. CARUSO: Shall we have any more discussion?

MS. WEISMAN: Can we take a 5-minute break?

MS. CARUSO: Sure. The time is 4:17. Please come back -- okay, come back at 4:25, please.

(Whereupon, the above-entitled session recessed at 4:17 p.m., to reconvene at 4:25 p.m.)

MS. CARUSO: So, the Department has heard enough information on Issue Paper 6; is that what I'm hearing? So, Annmarie, can you open up Issue Paper 7 for us, please. Thank you.

MS. WEISMAN: Yes. Thank you.

Moving on to Issue Paper 7, "Guaranty Agency Collection Fees." The only changes that we made on this issue paper are found on page 2.
We've added "(b) Administrative requirements."

We have changed in one, two, three, four locations from "shall" to "must." I'm sorry, from "shall" to "may" or from "will" to "must."

And we've done some other cleanup in clarifying some regulatory citations in Romanette -- in numeral (2), Romanette (ii), as well as in (iii).

I believe all are items we discussed and agreed on at the last session, but we are open to hearing comments.

MS. CARUSO: Mike.

MR. BUSADA: I hope you'll pardon this personal privilege. But some of you may have seen recent -- just now that there was a school shooting in Florida, 14 people wounded and some fatalities. And so, just as we are here to talk about education just wanted to ask for a moment of silence for those that are involved right now in Florida. It's a high school.

(Moment of silence.)

MS. CARUSO: Any comments, proposals, suggestions, edits for Issue Paper 7?
Jaye.

MS. O'CONNELL: Just thank you for the technical corrections. And no further comments.

MS. CARUSO: Okay. Can I see a -- Seeing a show of thumbs, is Issue Paper 7 as is, and are we ready to move on to Issue Paper 8? Show of thumbs, please.

(Show of thumbs.)

MS. CARUSO: No thumbs down.

Issue Paper 8, Annmarie, please.

MS. WEISMAN: Issue Paper 8 has no adjustments from the last session. So we are going with language as proposed and reviewed in Session 2.

MS. CARUSO: Questions, comments, proposals for Issue Paper 8?

(No response.)

MS. CARUSO: Seeing no tents pop up, can I see a show of thumbs for Issue Paper 8 as is?

(Show of thumbs.)

MS. CARUSO: So, no thumbs down. So I think we have made it at least through Issue Paper
8. I know we have to go back to Issue Papers 1 through 4 tomorrow morning. So, we go through that piece.

So, the time is now 4:37. I'm wondering now if we can open the floor up to public comment. Are there any public comments this afternoon? One. Okay, if you could come -- Two. Okay. Do you know how long they'll be, like?

PARTICIPANT: Two minutes.

MS. CARUSO: Two minutes. Okay.

Okay, so I know we're a little early, but we still want to leave it to five minutes apiece for public comment. And we will work in that time for that one person who's on their way, so.

MR. HALPERIN: Well, I'm David Halperin. I have heard it said by representatives of the for-profit schools in this rulemaking and in the past that the industry has changed. That with Corinthian and ITT gone, all that is left are good schools who are trying to do the right thing.

There are many good schools, but that is not a true statement. Many schools that have
engaged in predatory behavior still operate, still enroll students. Examples: Career Education, Kaplan, Bridgepoint, College America, and many more. And there have been many law enforcement investigations and actions against these schools. And those are still ongoing.

You've heard student stories. There are also employee stories. And I've spoken with hundreds of employees who were pressed by their superiors to do the wrong thing. And I just want to read you one of those many accounts. This is one that we provided a few years ago to law enforcement. It's from a school still in operation called the Art Institutes. They're all across the country.

"Overcoming objections was what this job was all about. There are only so many objections that a person can have to attend college." This is from a recruiter. "Money, time, fear, family support, to name a few."

"Once you knew what the objections were you could have an answer for each one memorized and tailor your response to each individual
student. Essentially, we would use hope and fear to drive our results. We would guilt parents into supporting their students, while painting a vision of the student succeeding with their course and career."

"What we didn't tell them was that our associate degrees cost $60,000, and our bachelor's degrees cost $90,000. What we would tell them was that the cost of tuition was $473 per credit hour."

"What we would tell them, if they asked, was if they wanted to know more they could go to financial aid for a consultation. Our job was to sell the American dream and a degree at the Art Institute at the only way that the student could fulfill that dream."

"Our work environment were tightly packed cubicles that resembled any sales bullpen. We could hear everyone speaking, and that would benefit the new people who were constantly overcoming objections and selling the school in their own way."

"We had beautiful interview rooms, one for each degree program. If a student wanted to
study animation, we interviewed him in our animation room. Same for our interior design and other programs."

"It pains me to think of the lives that I helped derail with massive amounts of student debt. The first student I signed up for the school was a 46-year-old father of three named Donald. I think about him often. I manipulated this man's religious beliefs, hopes, and fears to get him to sign up for a graphic design program."

"Donald already had a master's degree and only enough financial aid to complete two quarters of school. When he came to the school late one Monday night he told me he wanted to learn graphic design to spread the word of the Lord. I gave him the standard tour. And during my final closing pitch I said to him, 'Donald, I feel like something larger than you and I brought us here today.'"

"His eyes lit up and he said, 'I feel exactly the same way.'"

"I signed up Donald right then and there and afterwards had a long walk home. I remember
not sleeping that night. The next day when I told my director that Donald will run out of financial aid and could not possibly finish the program, he told me -- he said that each student is responsible for their own decisions. That's what everyone said when a student would drop out. They were responsible. They didn't work hard enough, et cetera."

"But what I knew was the truth: many of these students did not belong in this program, were not prepared for the task in front of them. None of these things mattered to EDMC, the owner of the Art Institutes. The only thing that mattered were the numbers."

Now, I would just say to conclude, the difference between a strong borrower defense rule as issued by the Department in 2016, and a weak rule as proposed so far by the Department this year, is that a strong rule would separate the good schools from the bad schools, penalize and deter predatory behavior, allow honest operators to thrive, improve student outcomes and, in the end, save taxpayers a lot of money.
A weak rule, by contrast, will allow bad behavior to increase, causing immense harm to students and taxpayers, and ultimately, I believe, trashing the reputation and imperiling the survival of for-profit colleges, good and bad.

That is the choice that you face and the Department faces.

MS. CARUSO: Thank you.

Other public comments? Any idea on time, Joseline? Do we want to -- Okay.

Just step up right here. And I know you're just hustled through, but we are trying to keep it to five minutes, please. Thank you.

MS. LIVIA: Hello. My name is Livia. I'm a student in higher ed, and I'm here to read a number of students' stories because, once again, I feel like it's very important for this conversation that you all are having at the table.

"My name is Anders Tavares and I am a student victim who attended the Art Institute of San Diego. I did so only after being shown what I, what I now know to be false job placement statistics. These complete fabrications were used
to ease my fears that I had regarding the debt. They were used to cover up the fact that the schools were actually viewed unfavorably in the industry they worked.

"I never considered that a college would outright lie to its students. My future wife also went there after believing that those statistics represented the school's legitimacy."

"Together we graduated at about the same time, owing $96,000 in debt. Although we both -- we were both outstanding students and very active in our job searching, we can definitely say that --" Sorry, I'm a little out of breath. "-- we can say that we have never benefitted from our degrees or education at the Art Institute of San Diego."

"Now, ten years later, we have paid over $100,000 towards the degrees, but due to interest that we acquired, we will have to pay an additional $160,000 before it is paid off. We will both be in our fifties."

"I submitted my detail in August of 2015. It goes without saying that it is still in
pending status. I'm not an economist, a lawyer, or historian. I went to school to learn film. But I can still see the way that our current higher education system functions and is morally wrong."

"Schools being allowed to defraud their students for profit and then face no consequences or accountability is wrong. The U.S. Government profiting off the debt of all these student victims, who are all sold on American taxpayers funding their jobs, is wrong. Higher education should not pay the risk of financial ruin."

"My wife and I are examples of how even trying to pay this debt has dramatically altered the course of our lives. Whether or not a person is able to pay, their lives are put on hold, their life choices become more limited, dreams seem less attainable. I have become tired of telling my story, of adding it to the sea of woe that is a part of an inept system."

"You all know in your hearts that our system is broken, that it's dragging our economy down. You all know that students are dramatically under served because the predators are protected
while the victims are ignored. By now you have encountered so many of what you probably refer to as student fraud stories, that you have developed a callous type of selective hearing when you hear them."

They are disturbing stories on their own. But equally disturbing is how nobody seems willing or able to truly help these students. Our parents, grandparents, no other generation in our nation's history has collectively held debt of this magnitude from higher education. Shame on anyone that does not refer to this as a crisis. Shame on anyone who is actively trying to be a part of the solution but -- trying to be a part of the solution but instead stalling it in favor of defending the predators.

During this network I have witnessed so much opposition of regulations under the premise that these regulations could potentially hurt the good schools. So much work for this hypothetical when we have actual tens of thousands of people who have laid out their reasons for their suffering in their DTRs. These students, like myself, are
suffering every single day due to lack of action. Each day that passes, more desperate people are trapped in debt and are falling victim to debt relief scams.

Arbitration has stripped them of their rights. Not hearing or sensing a lot of concern for these actual current victims in this committee, we students are the only variable in the U.S. higher education equation that bears any risk. The schools should bear the risk and be forced to prove their worth, to compete based on their reputations rather than how they can get away with charging.

I'm sorry if this is difficult, but I refuse to believe that it is not possible. You postponed the results from the last reg and now you are on track to do it once again. Every single dollar that is added to the $1.4 trillion -- every -- sorry. Every single dollar that is added to the $1.4 trillion, every person that gambles with their dreams by enrolling, every desperate person that falls victim to debt relief scams you should feel that weight on you.

There are people -- these people are
wronged. You have the chance to do truly great things, but all I see in here are arguments over the semantics of a failing system. The efforts of this negotiated rulemaking committee will ultimately be remembered more for the strange predictable and telling battle over the transparency of the life stream. It will not be remembered as a victory for students.

When you allowed the bad actors to the bargaining table, you ensured that there would be no way that student interests were served. The $1.4 trillion is not going away. The multitudes of people who are now student victims, as well as taxpayers, are not going away. They are growing.

We see each day more sensible minds advocating for the tangible idea of tuition-free college and total debt cancellation. This is the kind of bold progress that we need in order to make any sort of meaningful difference in people's lives and return the dignity of the education system of the United States.

Each day more victims are waking up to the fact that education that they were sold was
a lie. They are waking up to the fact that there are so many people in Washington who are willing to stand up for them. They are uniting and informing others about our education system and how it has been broken.

Despite our best attempts, I have faith that progress will be made. I am sorry that you cannot be part of it. We gave you a shot when we entrusted you with all the evidence submitted in our DTRs, but at this point we are tired of sitting and waiting. At this point we are out of trust.

Thank you.

MS. CARUSO: Thank you.

Annmarie, does the Department have any last logistical information before we adjourn for the day?

MS. WEISMAN: Yes. We are circulating a letter. At this time we only have copies for the primary negotiators. I apologize. We will try to obtain additional copies.

This is a letter from Congresswoman Maxine Waters from the 43rd District in California. Congresswoman Waters wanted to be here, and was
not able to do so, during the public comment period.

So she asked that we distribute her letter to the Borrower Defense Committee, to you, and so we are doing that on her behalf.

So those are coming around, down each side.

In addition to that, I do want to thank everybody for their hard work today. And just as a note on looking at the time, there are a lot of people who said we would not do what we just did.

So, again, I know we did rush through some of it a little bit more than we would have liked. But I would like to thank you for the discussions that we had today that I think were very helpful.

We have some issue papers to bring you back tomorrow, so we will be revisiting with some edits that have been discussed around the table, and with some proposed language where the Department had some homework to go and craft some new language. So, we will have a pretty busy day tomorrow as well.

If you are bringing luggage through, please be aware that that would need to go through
security, so leave a little extra time in the morning because we will be starting promptly at 9:00. But you may certainly bring that with you if that's easier for you. Just, again, note that it would need to go through security.

MS. CARUSO: Joseline, did you have one comment?

MS. GARCIA: Yeah, just one quick comment.

I wanted to thank those who have appeared in public comments. And I also wanted to thank the people here at the table, and the people in the audience, and the Department for sticking through this very difficult process and putting in the work.

But I especially want to give a shout out to those who are coming out of their way to give information to those at the table. And I think it is very disrespectful when negotiators, also alternative negotiators, Linda, when they're on their phone and not paying attention to people who are coming here out of their way to give us information, to tell us stories.
The story that Livia just shared and the comments that David made were very disturbing to hear. And the thing is that these are people's lives. And I think the least that we can do as negotiators is give them their undivided attention because people are asking us to work for them and to put in the work. And I just think that being on our phones and being on our laptops is not okay.

PARTICIPANT: I have a client with a student threatening to blow up the school, so sometimes we have to work. I apologize for that. But it's important.

MS. CARUSO: Okay. So, tomorrow is a new day.

PARTICIPANT: I'm sorry, I'll keep this extra brief. But I also feel distressed with the fact that when student voices are brought into the room they are not being heard. It's not a one-time thing. I just would, would ask that when student voices are in the room, whether that's a story being read or being read in public comment, that the room pay full attention.

And if there's a scenario where someone
has to step out, it's understood, but while in the room choose to provide that level of respect. I think that's absolutely critical.

MS. CARUSO: Okay. So, tomorrow is a new day. And we will take that information back with us. We will see you tomorrow at 9:00 a.m., because we have a lot of work to do.

Thank you.

(Whereupon, Session 3 recessed, to reconvene at 9:00 a.m., Thursday, February 15, 2018.)