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.

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

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

CHRIS DELUCA, Attorney at Law, DeLuca Law LLC

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

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

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

JULIANA FREDMAN, Bay Area Legal Aid

JOSELINE GARCIA, President, United States
Students Association

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

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

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

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

GREGORY JONES, President, Compass Rose Foundation

AARON LACEY, Partner, Thompson Coburn LLP

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

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

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

JULIANNE MARIE MALVEAUX, President Emerita,
Bennett College, President and Owner of Economic Education
SUZANNE MARTINDALE, Senior Attorney, Consumers Union
MICHALE MCCOMIS, Executive Director, Accrediting Commission of Career Schools and Colleges
JEFFREY MECHANICK, Assistant Director-Nonpublic Entities, Financial Accounting Standards Board
SUSAN M. MENDITTO, Director, Accounting Policy, National Association of College and University Business Officers
LODRIGUEZ MURRAY, Vice President, Public Policy and Government Affairs, United Negro College Fund
BARMAK NASSIRIAN, Director of Federal Policy Analysis, American Association of State Colleges and Universities
JAY O'CONNELL, Director of Collections and Compliance, Vermont Student Assistance Corporation (VSAC)
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JOHN PALMUCCI, Interim President, Chief Business Officer, Maryland University of Integrative Health
KAREN PETERSON SOLINSKI, Executive Vice President, Higher Learning Commission
LINDA RAWLES, Rawles Law
ASHLEY ANN REICH, Senior Director of Financial Aid Compliance and State Approvals, Liberty University
SHELDON REPP, Special Advisor and Counsel, National Council of Higher Education Resources
DAWNETELE ROBINSON, Associate Vice President for Finance and Administration, Shaw University
RONALD E. SALLUZZO, Partner, Attain
ABBY SHAFFROTH, Staff Attorney, National Consumer Law Center
VALERIE SHARP, Director, Office of Financial Aid, Evangel University
COLLEEN SLATTERY, Federal Contract and Compliance Officer, MOHELA
KAREN PETERSON SOLINSKI, Executive Vice President, Higher Learning Commission
JONATHAN TARNOW, Partner, Drinker Biddle & Reath LLP

STAFF PRESENT
CAROLINE HONG, Office of General Counsel
BRIAN SIEGEL, Office of General Counsel
JOHN KOLOTOS, Office of Postsecondary Education
JIM MANNING, Acting Under Secretary of Education
ANNMARIE WEISMAN, Federal Negotiator, Office of Postsecondary Education
MS. CARUSO: Okay, good morning, everyone. We're going to get started, as we have a lot to get through today.

Okay, so the Department of Education has updated Issue Papers 1, 2, 3, 4, and 6. We are going to go in a little bit of a different order, just because of printing and the time that it takes to print, so Issue Papers 1 and 2 are being printed, right now, and there are a lot of changes there.

However, for Issue Papers 3, 4, and 6, specifically, Issue Paper 3, there are fewer changes, and so they can be viewed on the screen for everyone. So in the interest of being productive, remaining productive, we are going to start today with Issue Paper 3.

(Off the record comments.)

MS. CARUSO: Oh, I'm sorry, 4, okay.

(Off the record comments.)

MS. CARUSO: Four and then 3. And then, just make our way through it, as we can, and as soon as Issue Papers 1 and 2 are printed, they
will be handed out and you will be given an opportunity to review those in their entirety, before we start to go through them.

So we'll build in that time for you to go off and review them. The Department of Education will remain here, to answer questions about them, before we reconvene and then begin our discussion.

But to get us started today, we were notified yesterday afternoon that there were three students, who wanted to provide public comment that would not be able to do so at the end of the day, so they asked permission to address you first thing this morning and that permission was granted.

So we are going to begin the day with three comments from students, at, at five minutes each. Great. Okay, can we have our first student, please?

PARTICIPANT: Hello. Good morning.

PARTICIPANT: Good morning.

PARTICIPANT: I'm just here to read another story. My name is Luvia (phonetic), I'm a student in higher ed. I'm going to read slower
this time, because I have my breath.

So good afternoon. This message is to
shed light on EDMC and the Art Institutes, along
with Navient and Sallie Mae and the situations that
they have put me and all of my fellow classmates
in, since attending the New England Institute of
Art in 2007, the story goes, as such.

The application process to AI was
simple, make a letter as to why you want to attend
the school, tour the school, get told about their
big issues, connections and apply for loans to go
to school.

They only give you one option, Sallie
Mae and Navient, saying that they are the most
reputable and reasonable company to work with.
They tell you, your payments will be affordable,
loans don't gain interest, while in school, and
you can consolidate. This was far from my reality.

Back in early 2011, my mother and I put
in a, put in a request of loans to figure out my
payments. Navient was asking for $1,400 a month,
with no consolidation offered.

My mother, grandfather and I were
stunned that my initial college degree, which was projected at $90,000 had nearly doubled in size, while in school, becoming nearly $150,000 over two years.

Sallie Mae and Navient refused to consolidate, as well. Stunned by this and realized that there was no way to pay this, we came up with a solution to get Navient.

My grandfather had to take out a home equity loan on his home, in his name, so he could use the loan to pay off my loans. Yes, you heard that right, a loan, just to be able to pay off another loan, to get cheaper payments and make a much more manageable debt. That was our only way to escape the outrageous payments.

We confirmed with them multiple times, via phone, the total debt owed, which is nearly $143,000 in full. They asked us to send three separate checks, which were mailed from a total of $150,000 from us, in the summer of 2011 and 2012.

We told them to keep the extra money.

After that, we didn't hear anything, until six months later, when they said we were delinquent
on our loans for another $13,000 on both me and my mother's sides for $26,000.

Navient pulled a sneaky one on us, with, by withholding paying our loans, deliberately, until our loans capitalized, now charging us for capitalized money, which was paid off in 2011, months before they had a chance.

They lied to us, told us to send payments for the full amount, then deliberately withheld crediting them to our account, months later, just to charge us an additional $13,000.

Currently, as of right now, my loan is looking like a double charge, but have been able to unsolved and due to Navient's refusal to work with us, no matter how much proof we have.

They kept lying to us, redirecting us, changing the department for five-plus years. We only received an answer, five years later, in 2016, only for them to tell us we still owed $65,000 from both my mother and me, because, in the six years we tried to fix the issue, the loan continued to capitalized, which Navient will not admit to and refuses to fix, hence the additional money we owe.
When we kept, when we went to fight it, they kept lying to us, redirecting us and changing the department, for five years. We only received an answer, six years later, only for them to tell us we still owed $65,000.

We, effectively, gave them all the money months before capitalization happened and they deliberately did not inform us of withholding the money, or the upcoming capitalization.

They lied and we have proof. Their records and our records show when the payments were sent and the loans capitalized, after receiving the full payment.

They kept, they held the payments processing and lost one of three checks, then, plus continuously redirecting us, for years, so the loans would not be fully paid off and interest would keep accruing, while trying to solve their mistake.

Not only did they refuse to remedy the problem, after acknowledging the mistakes, more than a dozen times, we are in financial decay, still having nearly $1,000 of payments, per month, on the home equity loan we had to take out from the
separate bank loan that was taken out to help ourselves from being ruined. Now Navient still wishes --

MS. CARUSO: You've got minute remaining.

PARTICIPANT: -- to collect $325,000, I mean, $325 a month, from me, and is already collecting $300-plus from my mother, when the loan was already paid off.

No student should ever have to make a choice to get another loan, just to avoid getting ruined by another one, especially, when they are 18 and 20 years old, before they even get a chance to get their life going.

This is not a matter of not wanting to pay. We did pay them and personally sacrificed a lot, family stability, just to get cheaper payments, only to still be punished for it, by Navient, in the long run.

We tried to, at least, get Navient off our backs, to deal with a much more forgiving company, and they still have us in a vice grip. Our family is slowly being tapped out. And with
how bad the job market has been, I've personally been forced to do anything I can and save anything I can do with this, only to become broke and struggling day-to-day.

Please understand, this has nothing to do with wanting free money, but everything to do with how dishonest and unfair this whole process has been to all students.

We have been scammed out of having any life at all. Thank you for hearing my story.

Travis Williams, Photography Graduate of the New England --

MS. CARUSO: Thank you.

PARTICIPANT: -- Institute of Art.

Thank you.

MS. CARUSO: Next, please.

MR. TAYLOR: Good morning. My name is Marquis Taylor, and I'll be reading, on behalf of Kim Bailey (phonetic). You do not know me, but you are determining my future.

In the fall of 2004, I was convinced my future was bright. I recently enrolled in the Art Institute of Pittsburgh Online Division
Interior Design Bachelor's Program, with assurance from my academic advisor, my high school transcript qualified me to enroll, even though my high school transcripts were not much to be desired.

I was assured I would greatly benefit from grants and was contacted by Daniel, with Sally Mae, to secure my student loans.

I believed this school was reputable, had a network of employers, and would guide me to a lucrative and secure career. I trusted my mentors.

I spent six years chasing my tail in the systematic manipulation of the Art Institute.

Realizing this statement may be boring the room, and knowing you all are quite well-aware of how students, like me, have been ripped off, I will keep my victim impact statement to the point.

I think of the person I was, when I was enrolled in the Art Institute. I was 39 years old, working mother of two teenage sons. I was ambitious, determined, hardworking, I was their role model.

I see the success that my sons have
achieved, since then. Community and State college
degrees have served them well and I feel proud and
embarrassed that my experience, at all, for the
for-profit college has turned out drastically
different. It is truly embarrassing.

I no longer feel ambitious. Hindsight
is 20/20. At first, I blamed myself for being
victimized, however, I started to meet more people
with stories that described a very systematic
failure. I grew angry.

I'm now 52 years old and know I will
never recover and cannot start over. I will never
be a college graduate and reap the benefits of a
quality education. Lost opportunity does not have
a price tag. I will never be made whole for the
lost time, or mental anguish.

While you all haggle over it, whether
knowingly should be a part of the verbiage, young
people are contemplating suicide. Others are
waiting tables and hiding tips, so they can pay
for housing. More are moving out the country,
leaving families behind, to start a life free from
this nightmare.
These students don't know how the bipartisan policies of this government has failed them. They are suffering in the shadows. Because of all students I have met, I've dedicated my free time to helping them, while I fight for our future.

I plead you with you, to recognize the suffering behind this failure. I plead with you, to ensure maximum forgiveness is given to victims, while you repair the systematic failures. Dragging this process out is preventing lives from moving forward. Victims have been stuck.

In closing, I will never forget the for-profit college failure is nothing less than tragic. Don't allow yourself to be desensitized to the suffering.

On the eve of the horrific shooting in Florida, recognize the impact that systematic fraud could have had on a person, being victimized, indebted and trapped is true a result of this failure.

As a taxpayer, I'm convinced it is your job to get it right and reduce the risk to our society. As a victim, I am pleading for maximum
forgiveness a.k.a. full refund. Yours truly, Kim Bailey.

MS. CARUSO: Thank you. Next.

MR. RODRIGUEZ: Hi. My name is Joelle Rodriguez (phonetic) and I ask that my words be heard and felt. I have two parents, both, who are disabled. You would think that would cause one to quit, although, I persisted.

Now, the only way for a man, like me, to get into college would be to take these loans. These loans, which are very high, because of the cost of education, these loans, which are, pretty much, predatory in nature, hold individuals back from living the life that they should be able to live, after education.

Now, with the loans, the loan payments that I make, I should be able to purchase a BMW. Although, I live the life of someone living in poverty, because I have to pay off these payments.

Now, I also want to be able to help out my parents. That is the reason why I went and got educated. That is the reason why I chase the American dream, the American dream that is promised
to so many, who are in poverty, so many who are fighting to become a man for them self and women, who can support themselves.

Now, because of these loans, I'm unable to purchase a car, I am unable to buy a house. Although, again, the amounts that I'm paying should allow me to do this.

Now, with the education that we receive, we should be able to live with a living wage, a way that we can support ourselves and live the life and the dreams that were promised to us, by these institutions and these universities, who promised these dreams and say that these are the lives that you will be able to lead. However, there are many predatory institutions, who do not deliver on these promises.

Now, in every industry there are safety nets. So if I purchase food that is not good and I purchase food that makes me sick, there are ways that I can be defended.

Now, if I am in the hospital and I get hurt and a doctor treats me, there are ways that I can be defended, there are malpractice laws.
If I buy a vehicle and this thing is brand new, I expect that it should work, and if it's not, I should get a refund.

With these institutions, these safety nets are being threatened and these safety nets are being weakened, so that those, who are not, who are not benefitting the way that they should, through their hard work, are being preyed upon.

Now, to this argument you will say, what about the institutions? So I'm asking that you defend these students, and many will ask that we defend the institutions. And I also agree. These institutions should be defended and these students should be defended, as well.

However, I asked that, the institutions that are defended, are the ones that deliver upon the promises that they give, the ones that give quality education, the ones who do what they will say they do, and the ones who are able to get those hired that they say they'll be able to get hired.

Now, these institutions have not delivered on these promises. And by, these institutions, I mean many of the for-profit
institutions, who have, like, used car salesmen, 
shined up their education and their institutions, 
although, they haven't been able to deliver on the 
promises that they said they would be able to. 

Now, again, I think that these students 
should be defended in the same way that these 
institutions should. But why would we defend 
institutions, who are taking away from those in 
need?

MS. CARUSO: One minute remaining.

MR. RODRIGUEZ: Why would we defend 
these institutions, who, in their very nature, 
for-profit, their objective is not to get those 
educated, their objective is not to get those hired, 
their objectives are for-profit.

So again, I ask that we get fair laws 
for these students, we get fair laws for these 
institutions, but not the institutions that are 
predatory in nature, not the institutions that do 
not deliver, not the institutions that are giving 
us a broken car that we're unable to go anywhere 
with. Thank you.

MS. CARUSO: Thank you. Okay. So
before we get into our material for today, I think we've, if we could just take a minute to silence our devices, so that we don't have any distractions, while we get through a lot that we have to get through today. Okay.

(Off the record comments.)

MS. CARUSO: Annmarie, if you can, begin to take us through the changes in Issue Paper 4.

MS. WEISMAN: So I ask your patience, as we do not have paper copies, I, too, am working off of the screen and I'm going to try to attempt to do that, from here, as best I can.

Our changes that we're working off of, in this paper, will be highlighted in yellow. So looking at the language here, in romanette (ii), class action waiver, means any agreement, or part of agreement, regardless of its form, or structure, between a school, or party, acting on behalf of a school, and a student that 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 that
pertains to those services.

In romanette (iii), we've also added, relating to the educational services for which the student received the Title IV funding, at the end of that clause.

So romanette (iii), in its entirety, now reads, pre-dispute arbitration agreement means, any agreement, or part of an agreement, regardless of its form, or structure, between a school, or party acting on behalf of a school, and a student requiring arbitration of any future dispute between the parties, relating to the educational services for which the student received Title IV funding.

So those are the only changes to this Issue Paper. So at this point, if there are any questions, we can take those, and if not, then I'd request that we discuss, whether we have tentative agreement.

MS. CARUSO: Linda.

(Off the record comments.)

MS. RAWLES: I don't want to hold up discussion on this, but I just ask, if we do a
temperature check on this change, we do a
temperature check on the elimination of Issue Paper
4.

(Off the record comments.)

PARTICIPANT: Hello. So this particular change does not really change my concerns that I raised yesterday. One thing was brought to my attention that I wasn't aware of, because I have not really been following the gainful employment negotiator rulemaking, but my understanding is that that committee is being tasked with creating, or working on the actual disclosures and we're not, and I wonder if, maybe, the Department could speak to that and, and please correct me, if I'm wrong about that.

MS. WEISMAN: That rulemaking committee is working on some disclosures, but as they're still working, I'm not able to comment on what they all are.

MS. CARUSO: Kelli.

MS. HUDSON PERRY: So yesterday, I think there was some concern from a, a bunch around the table that, they didn't feel that the Department
had the ability to do something with this, as it relates to arbitration agreement.

So in light of what Linda just said, I think she said that, because she still believes that, so can you give us some insight on why the Department believes and why we're moving forward with this? Just because, I don't know that we're going to get past this, if people think that you can't do this, but you believe that you can.

MS. WEISMAN: So we have had legal analysis of the issue and we believe we have the strategy authority to act in this manner. We do not believe that we can regulate arbitration, so to speak, but we believe that we can request this information, that we can request disclosure of it, for example, to students in the, in the form that we've done so here. We, we heard the comment about pulling the Paper, and we feel that it belongs within this package.

MS. HUDSON PERRY: So I'm not really the right person to respond to that, because I, I don't know why other people were saying that they couldn't, but if there's other people around the
table that might add some comment, I think it would be helpful, because I -- I'm hoping that we can get past this, but I'm kind of sensing that, that might not be the case.

MS. CARUSO: Are there any other comments, before we take a temperature check? William.

MR. HUBBARD: I want to, again, thank the Department for their, their points about the, the ability to regulate how this is done, not whether or not it is done. I think that's a correct statutory read.

In terms of the, the opposite, so striking the paper, I mean, I think that presents, essentially, the statement that students should not be informed that a school has pre-dispute agreements. I mean, I'm just curious, kind of, what the defense of that is? Should we not be disclosing to students that may impact them?

MS. CARUSO: So, William, I want to hold off on that, just until we know if, if this is not going to help us achieve consensus. So what -- we'll definitely have that discussion.
MS. WEISMAN: So I just want to clarify that I'm not saying that we have the ability to regulate how it's being done, I'm saying, we believe we have the ability to have institutions inform students that it is being done, which I see a distinction there. We're not trying to regulate the activity.

PARTICIPANT: With respect to the Department, though, you are regulating the activity. You're saying that, if you exercise a right that you have, under another law, a law enacted by Congress in establishing a clear policy, then the federal government's going to make you undertake these disclosure requirements, regardless of whether or not I think those disclosure requirements are a good idea.

What we're saying is, an agreement between a third party, a student and an educational institution, in order for them to have the right to do something that Congress says they have the right to do, they have to do these other things. That's regulating in the space that Congress regulated in the statute.
PARTICIPANT: So I, I respect, Kelli, your question, but I also want to say, this was an issue that was raised by John, also, other members at this table, as to positions against and, I believe, Abby and others have raised arguments, as to why they believe the Department has authority.

And I, I'll just point out, we're actually in the middle of active litigation on this specific issue, so we're kind of, in a -- so I mean, I think the more accurate position is that we, we don't have a position that we can state about this.

But, you know, please, suffice it to say that, by putting this proposal in here, as this language, we believe that we have the authority to do what is presented in this Issue Paper and we are asking people to decide, whether or not they can reach consensus on it.

Arguments about, whether or not the concept that's greater than this, I believe that's something that's been discussed by various parties, at this table, already, and, and other sessions, and at this one, as well.

MS. CARUSO: Aaron and then Linda.
MR. LACEY: I mean, I voiced yesterday, I agree with John that, I think there's, at least, a question here, and the Department seems to be acknowledging that there is a question, here, as well.

I'm not saying you're taking, you clearly have stated you take the position that you have the authority, but also, you've acknowledged that there's open litigation on the question. I, you know, I mean, I go beyond that, and back to the points I made yesterday, and then I also to add, Will, to your, to your comment.

I mean, so, I mean, you don't have to take my word for this, check, check with the counsel you trust, but, it's, even apart from this, as a general matter, it is my personal legal view and understanding that, an arbitration agreement, a class action waiver, pre-dispute arbitration clause is much more likely to be enforced, if it is adequately disclosed.

So institutions and organizations that want to make sure that their arbitration clauses defeat any type of challenge in court, are going
to make sure that they are adequately disclosed.

They don't have an insensitive to hide them from students. That's going to make it much more likely that they're going to be defeated.

What this does, is it puts a burden on good actors, right, you're dumping a lot more paper on students, and it makes it far more likely that a bad actor will be successful in enforcing their arbitration clause.

Because, if a student goes into court and says, I didn't know about it, and then the institution, the bad actor, says not only was it in the enrollment agreement, but I was forced, under federal law, and can show that I gave it to them in entrance counseling, I gave it to it at exit counseling, and did all this stuff in between, it's going to make it extremely difficult for a student, who may not even understand what thing was about, I understand sometimes that's a concern, but it's going to make it very hard for them to defeat that arbitration clause.

So the point I just want to make is, bad actors do not have an incentive to hide
arbitration clauses, in waivers like this, from students, because that's going to undermine their ability to enforce the arbitration clause.

So my question is, setting aside the legal issue, are we really -- again, we're dumping more paper on students and we're creating a significantly increased burden for bad, for good actors, right, and we're probably strengthening the argument of bad actors and keeping them from, students from being able to defeat arbitration clause.

I don't think it's about wanting to hide that from, from students. So what I come back to is, what's the justification for doing this? I mean, what -- I've, I've outlined, we've got four negatives on the table, what are the positives for doing this?

MS. CARUSO: Linda, William, and then Joseline.

MS. RAWLES: Yes, I won't repeat what Aaron said, because he covered most of my points, but I'd add another negative. Quick background. My constituency isn't pushing against the
disclosures, I mean, it's, it's another disclosure.

   I think it's a burden on, on the schools, but that isn't the main issue to me. I, I've heard other people, all around this table, say that it's just throwing more, more paper at students, so I don't see what good it does.

   And I'm like Aaron, I'm very puzzled, just more puzzled than anything, as to why, if we're in litigation on this, already, and no one is, is vociferously saying that this is going to be great for students and we all know it's going to be another burden to schools, I don't understand the motivation to put the entire process in jeopardy and embroil us in that litigation with this act, when there's no good that's going to come of it.

   So I'm mostly just not understanding why we're doing it.

   MS. CARUSO: William.

   MR. HUBBARD: I think I can, perhaps, help illuminate that point for you, Linda. The thing is, it's been stated several times that good schools don't use pre-arbitration agreements. I've been keeping a tally, it's, it's like over
a dozen, at this point, over the series of these negotiations.

So good schools are not doing this, anyway. I don't, I'm not going to speak to your clients. I don't know if they do, or don't use it. I don't know that that's relevant.

But, the point is, ultimately, for students who are going to potentially go to a school that has this, the why is quite simple, informed decision making.

If a student wants to go to a school that uses pre-dispute agreements, they ought to know that, plain and simple. I don't think any number of lists and the, we've got five reasons here and five reasons here, I don't need five reasons, I have one informed decision making, period. That's, that's a sufficient reason for including these disclosures.

And, Aaron, I mean, I, I completely appreciate your point, about the fact that good schools will make that disclosure readily available.

I think, for nothing else, that
demonstrates that it's not a burden that the good schools are going to do it anyway. So it's difficult for me to understand why there's, kind of, this, this balance of, this is too much for schools to do, the good ones are doing it anyway. It's a non-unique argument, it's already been done.

MS. CARUSO: Joseline.

MS. GARCIA: Also echoing what Will said, I wanted to add that, a student not having the information necessary to make this life-changing decision versus giving them a few more papers, I really don't think it's that big of a deal, or is so burdensome.

And also, yesterday, I laid out multiple different ways that students can get access to this information. It doesn't have to be through paperwork.

And I think that knowledge is power and, again, especially, with this really big decision, as some of the students who came up earlier to tell you about what that decision lead them to, I think it's important that they are very informed when
making this, and I think just the amount of paperwork is not an argument to not do this.

MS. CARUSO: Bryan and then we are going to take our temperature checks.

(Off the record comments.)

MR. BLACK: So I, actually, like the version that the Department had before this, because what this seems to be saying is that, it has to relate to the educational services.

And as I, as I pointed out in Title IV funds, as I pointed out, yesterday, we have some peripheral situations, like what I sited yesterday, where our students wanted to be classified, as employees, under the Fair Labor Standards Act and filed lawsuits to that effect and we've spent over a million dollars in attorney fees.

So I like the version better yesterday, because that really seemed to encompass a disclosure, a fair and open and honest disclosure that, if you sign these agreements, it's not just the receipt of Title IV money, or that which relates to educational services, but would cover those.

Quite honestly, they were frivolous
situations and most federal district courts threw these cases out, but at the same time, we spent over a million dollars in attorney fees, fighting a frivolous claim. So I, actually, liked your version better yesterday than what I'm seeing here this morning.

PARTICIPANT: Bryan, if I could just jump in, with a facilitator note, do you have a proposal that would address the concern that you are raising now, but also address Aaron's parking lot concern, for lack of a better scripture --

MR. BLACK: Well --

PARTICIPANT: -- which, I think, was the intent of this language, correct?

MR. BLACK: -- yes, I mean, --

MS. WEISMAN: Yes, the point of this was to, I believe, Aaron's phrase was to put a box around, kind of, what this would apply to, so that it wouldn't include the parking lot, or issues that were outside of, of the scope of what we were really seeking, which is related to the education.

MR. BLACK: Yes I --

(Off the record comments.)
MR. BLACK: I don't know, I just like the -- I don't like that language in there, for the reason that applied to our schools, so for me, I like the version better, yesterday, and taking out that language that you put in there today.

So to me, I think, if there's going to be a good disclosure and everybody knows going in that it's available, that's exactly what you want and courts are more likely to uphold that, so.

MS. CARUSO: So I'm going to get to the cards that are up, I would, I would just ask that, if it's something that we've already heard, like, giving more paper to students, or informed decision making, then you reconsider your tent, given the amount of work that we have today, so I would just ask that. Valerie, Chris, Abby, and then Ashley Harrington.

MS. SHARP: My question is for the Department, on the, the statutory right to do this. I'm not concerned about having to do, schools having to disclosures, but I am concerned that there's real concern in the room about the statutory authority and making sure that we address that
concern, before we take the vote.

Or, is the authority that the Department is looking at, just to require the disclosures, based on the contractual agreements that schools make, through their agreement on the PPA, so it's really more of a contractual agreement to participate in Title IV, you're willing to do these extra things?

I know that applies in some other areas of law that, schools aren't covered, necessarily, under a statute, but under the contract, we become, you know, liable for what the Department would like us to do. Because I, I don't know if that would help address some of those concerns, because then it's more contractual.

MR. LACEY: I'd like to request a private caucus of the institutional representatives and the AGs, if they are amenable, out in the hall for ten minutes, while the Department's chatting, is that okay?

(Off the record comments.)

MS. CARUSO: It's 9:46 a.m., we will be reconvening at 9:56 a.m.
(Whereupon, the above-entitled matter went off the record at 9:46 a.m., and resumed at 9:56 a.m.)

MS. CARUSO: All right. Okay, getting started. May we have a report and/or request from Aaron?

MR. LACEY: Yes. So as an initial matter, I want to make clear that I'm only reporting on my observations. I don't speak for the group, I only speak for my constituency and, more specifically, for me.

So my concern was and, and in general terms, the discussion was around the idea that, as has been expressed, there are individuals, who have significant concerns with this idea, not just the particular language that we are word smithing, but in principle, whether this is an appropriate or legal thing for, for this Committee for the Department to attempt to regulate.

And, and the question in my mind became and what I was hoping to discuss with folks was the extent to whether, to which, there's a difference between changing your mind on that point
and being willing to consider a compromise, still believing what you believe.

And, and, after we discussed, it became clear, in my mind at least that, whether or not folks could be willing to compromise their belief, or their position was going to depend very much on where some of the other more challenging aspects of this rulemaking, in my mind, very, I won't say more challenging, but challenging aspects play out.

So all of this is my way of saying, I don't think it's worthwhile trying to come to a conclusion on, on IV, I know that was the agenda.

I also deeply appreciate that we can't just keep punting on everything, but I think, whether and to what extent, positions on this paper might move are going to be determined by how the negotiations around I and II, in particular, go.

So our request, recommendation is that we park IV, with the understanding of the comments that have been made, no promises as to what might happen, but, but the very clear belief, I think that, whether there could be movement on IV, one way or another, is going to, is going to depend
on how things turn out with the other Issue Papers and it would be productive then to move on to the others.

MS. WEISMAN: So I think I heard Elmo.

MS. CARUSO: You did, indeed, Annmarie.

MS. WEISMAN: I'm fine with that, if the group is fine with that.

MS. CARUSO: Do we have any major concerns with moving on, as Aaron has suggested?

(No audible response.)

MS. CARUSO: Moving on. Oh that was from the --

(Off the record comments.)

MS. CARUSO: Yes. Okay.

(Off the record comments.)


MS. SHAFFROTH: Yes, and I'll be, I'll be really quick. I, I just wanted to say, briefly, my understanding now is that the Department is, either, has already, or would put in a severability provision, such that, if the arbitration provision that comes out of this process is, is struck down
by a court of law that wouldn't impact the rest of the regulation.

In light of that fact that, that, to me, is even more reason that we shouldn't take half measures that we should, that the Department should go the full way and prevent institutions that want to access that participate in the Title IV program from, from using a forced arbitration and class action waivers, at all and, to me, that, that puts that back on the table.

But if, if no one is, if the group is not willing to discuss that, right now, I understand, but I just wanted to put that position on the table.

MS. CARUSO: Ashley Harrington.

MS. HARRINGTON: I would be more than happy to discuss that, if other people would be willing to discuss it. And piggy-backing on what Valerie, the non-lawyer said, before the agreement, we're just reminding people that, every school signs a program participation agreement, which is a series of requirements for participation in the federal funding program, which is not a right.
It's not a right to participate, institutions choose to get access to Title IV money.

I think we should re-discuss this band, which I have not heard anything to dissuade me from the legal argument the Department has made, previously, about why they have authority to do this, and which, if they have authority do this, they have authority to do more. So I think that could be a worthwhile conversation.

MS. CARUSO: Thank you. Okay, moving on to Issue Paper Number 3, is that still the plan?

MS. WEISMAN: If there are no other comments, then yes, we can move on. But, if there are other comments about that topic, we can certainly address them now, if that's appropriate.

MS. CARUSO: William.

MR. HUBBARD: That also being the case, I mean, I think, fundamentally, I just want to make it clear that, the military and veteran community can't say more strongly, but oppose the fact that arbitration agreements are even included, as part of something that is foisted upon students in, in a tremendously unfair way.
But, I think, ultimately, the point stands that, if it will be used, it must be disclosed. I, I'm still having a hard time understanding what the fear of transparency is, it's as simple as that, really.

MS. CARUSO: If there are no other comments, moving on. If the understanding is still that, we are moving on to Issue Paper Number 3, are Issue Papers 1 and 2 printed, or --

MS. WEISMAN: Issue Paper Number 1 is ready, Issue Paper 2 is still being printed, so I think we should move on to do Issue Paper 3. When we have both of them available, we can distribute them, maybe, give a slightly longer break and allow some time to read.

MS. CARUSO: Okay.

MS. WEISMAN: But, I think, at this point, we should ask the members of the subcommittee to come back up and be available for any questions and move on to Issue Paper 3, so that we can still keep it moving.

MS. CARUSO: And can Issue Paper Number 3 be --
(Off the record comments.)

MS. CARUSO: It is. Thank you, Barbara. Issue Paper 3 has been emailed to everyone.

(Pause.)

MS. WEISMAN: So I'm going to kick us off with the change to the text on the triggers and then I'll have a member of the subcommittee come up to discuss the more specific, I don't know if there's an equivalent term for legal ease to account ease, but I will have them address those items.

So we did change the triggers, to some extent. We adjusted language in romanette (iv) here, by saying the institution stock is de-listed from an exchange voluntarily, or involuntarily, for any reason.

And then, romanette, I'm sorry, Roman Numeral V, no, Arabic 5, is the institution is required to pay any debt, or incur any liability arising from a final judgment, or determination, in a judicial, or administrative, proceeding, related to making of a direct loan, or the provision
of educational services.

So this is adding, for all institutions, it's another discretionary trigger, where the school would be required to notify the Department that the condition exists, and then the Department would use that information, evaluate it and determine, if they want to take additional steps.

MS. CARUSO: Are you going to, is that where you're going to pause?

(No audible response.)

MS. CARUSO: Okay. Aaron.

MR. LACEY: My concern is just, even with the box around the provision of educational services, there's an awful lot that gets in there and institutions that are going to want to be compliant, or, or, you know, want to avoid any potential non-compliance with the notice requirement, are going to take a conservative view anyway of what that means, and I just want to be clear.

I mean, if every time Ohio State gets sued by a student, right, and has any debt, or
liability, 100,000 students, major state university, they're going to have to report it to the Department. I mean, I think this is going to require the reporting of thousands of claims a year.

There are all kinds of little lawsuits that occur and this is every institution, this isn't just publically-traded institutions, and every time that this doesn't have any sort of qualification for amount, there's nothing about how substantial it is, relative to the school's resources --

MS. WEISMAN: So do you have a threshold amount suggestion?

MR. LACEY: I would, I would take Number 5 out. I just, I think that's, I don't think that's administratively workable for the Department.

You know, I mean, I get the concern on the other side, we want the Department to know about, you know, anything that's material's going to be reported in your financials, every year, if, if the auditor thinks it's material to the institution.
I just do not think that's workable. I, it's not about, I, you know, it's not about knowledge, I don't have a -- I just don't think that's administratively workable. I don't think we're clear on the volume of stuff you're going to be getting, from every institution in the country, so I don't know, but I would strike it.

MS. WEISMAN: So could I suggest --

(Off the record comments.)

MS. WEISMAN: Oh, go ahead, Ted.

MR. BANTLE: So, Aaron, understanding your suggestion is removal of Number 5, I heard you use the qualifier material, which, with my limited understanding of accounting, does have significance. Would it address your concern, required to pay any material debt, or something of that nature, does that address your concern?

MR. LACEY: You know, we could add, I mean, this is a determination the institution would have to make, but you could add something like, any -- I mean, there's a couple of different concepts, there's, sort of, material adverse effect. There is (indiscernible) that are a
current liability -- let's put it behind the liability, actually.

So the institution's required to pay any debt, or incurring any liability that would be material to -- I mean, the accountants can help me out, to the --

(Off the record comments.)

MS. WEISMAN: So I have a suggestion --

MR. LACEY: Well, yes, here we go.

Help me, help me --

(Off the record comments.)

MS. WEISMAN: Oh, go ahead. Yes.

PARTICIPANT: Well, I guess, I'm a little confused, because this concept, so you're paying a debtor, incurring a liability, this is going to be part of your composite score calculation, because you're going to put it on the books, where these other things here, are not things that would be part of that composite score. So this is already captured in the other sections of this, I think.

MS. WEISMAN: So the idea here, of the triggers, is to give a more early warning system
to the Department, so that it can act before a significant number of claims would be received, and determine if there's a reason to obtain the letter of credit, because they see substantial risk coming.

So if you think about the idea of a private non-profit institution, or a public institution, they have nine months, after the end of the fiscal year, to submit their financial statements, then we have some time for the staff member to work them.

So we're looking at a year, plus, before we ever really get that information. This would give us the information immediately, within ten days, so to speak, you know, whatever we determine that, that time frame would be for reporting, but it would give us a much earlier warning.

So then, to the second point, the idea of saying material concerns me, because I think people are going to want to qualify that, to some extent. So what I was thinking is, could we do something with a percentage of the Title IV(a) disbursed in the previous year?
MS. HUDSON PERRY: Well, so material, material doesn't really have anything to do with your, the amount of financial aid, material is based on your financial statements, as a whole.

And there is a very clear definition of material, when you're audited, from your financial statements. So every single accounting firm is going to calculate materiality, based on an individual's financial status. So each school has a different materiality level, based on their audit and financial statements.

But with this, it -- so assuming that this stays, which I, I'm not sure I agree with it, but do you also then, in the part where you're going to recalculate a score, include this? Because, it's the same real, it's really the same concept of the Department incurring a liability.

It is, from a financial statement perspective, it is, because, what this is saying is that, they have a final judgment that says they have a liability that they then have to pay, which is the same concept, as the Department saying you have a liability that you have to pay. So there
should be a, if this stays, there should be also a recalculation of the score and how it effects that. It shouldn't just be based on the fact that there's a judgement, because it might not have an effect on a composite score that's already defined.

PARTICIPANT: I would strongly disagree with creating, yet, another requirement for the Department to try to take a, you know, a perspective liability, or, or, and, once again, recalculate some sort of interim composite score.

I understand philosophically that it would make sense, I already disagree with recalculating on the basis of the borrower defense.

MS. HUDSON PERRY: And I, and I totally agree with that.

PARTICIPANT: Yes.

MS. HUDSON PERRY: I'm just saying, if, if this language were to stay, I think that you need to recalculate. This alone should not be a trigger, for loss of a better word.

PARTICIPANT: It, I don't think it's a trigger, it's just a notice requirement, so the Department's aware of the judgment. And then, if
they feel like that's worthy of some sort of further investigation, they can do it. I don't want to require an additional automatic -- right, but, but I think that the point, I totally agree with Kelli that it's got to be materiality relative to the operations and financial, overall financial health of the institution.

MS. HUDSON PERRY: So if we are going to add a materiality clause, I think it's materiality, as defined by your external audit firm, or materiality, as it relates to -- it's really your audit firm that's calculating that materiality. I don't know, Sue, if you have a recommendation on that?

PARTICIPANT: I agree. Unless you want to define materiality, based on a Title IV threshold. Because, an auditor could use that judgment for an institution.

PARTICIPANT: I would disagree with calculating the materiality threshold, based on financial aid. We all have independent audits, profit, as well as not-for-profits, and I have seen these thresholds range from $5,000 and then they,
the essence of the University of Alabama, or the Ohio State, it's over a Million Dollars. So I think putting in just a, a statement, without defining how that statement is to be defined, is probably at right.

MS. CARUSO: Okay, we've got Suzanne, Abby, and Alissa, but does the Department, or the Working Group, want to respond further, at this point?

MR. KOLOTOS: This is John Kolotos. I just want to say a few things, before we get too much into this conversation. The reason for the recalculation is for the Department to determine --

PARTICIPANT: Could you speak into the mic?

MR. KOLOTOS: -- whether it's a material event. We can't, in this trigger, or in any other trigger, put limits on what the materiality is, because that defeats the purpose of what we're doing. Okay.

If you think about it, it's a $1-Million-Dollar liability material. It's material to us, if it drops the composite score
below a 1.0. If it doesn't, it's not material to us.

We can't build that in, you can't pre-qualify this particular trigger. Now, what you might want to consider, is putting some limits around what the administrative and judicial judgments might be, for example, would they only stem from a state or federal agency action?

MR. LACEY: John, respectfully, I totally disagree. I, these are all, essentially, definitions of what you think represent materiality, right? When these events occur, the Department is taking the view that they're material events.

So for the Department to say you've got a notice obligation when this event occurs and including a materiality qualifier is totally workable. That kind of standard exists all the time.

And, if the institution fails and you subsequently fail to notify you and you subsequently determine that they failed, because of something, in your view, was material, then
that's on the institution.

I mean, the burden is on them to make the determination, as to whether or not they think something is material, some liability, or judgment, is material to their overall operations.

But, look, without any kind of materiality concept included here, there's no way I could support this idea. I mean, I would also ask that we take a temperature check on striking it. I mean, that's a proposal. I just think that this is, without a materiality threshold, administratively unworkable.

MS. CARUSO: Okay, so before we do that, I, I want to give everyone else a chance to speak, they've been waiting. Suzanne.

MS. MARTINDALE: Just a couple quick points. We're talking about final judgments, or resolutions, and this is also a discretionary trigger, so I think that's important to emphasize.

Another thing I wanted to mention is that, when I opened my Google Doc, there was language that said final judgment, or determination in a judicial, or administrative, proceeding, or
a settlement, and I don't see that up there, so I just want to make sure that we're, we had the right, that we're talking about the right language. Did you intend to include settlement, because that's what was in what was emailed to me?

MS. WEISMAN: The language on the screen is the updated corrected language.

MS. MARTINDALE: I see. Okay. So final judgment, or determination. And is it, in your view, would a determination include things, like consent orders and other, other forms of publically-announced final resolutions of cases, not just judgments? And I appreciate the language, thank you.

MS. WEISMAN: So based on the comments that we heard at the table, yesterday, from our AG representatives that we believe that they would be consent judgments and that they would be publically available.

MS. CARUSO: Abby.

MS. SHAFFROTH: I'm also supportive of this addition, I appreciate it, from the Department. I, I disagree with Aaron that we need
to include a materiality provision here, especially, a sort of financial materiality provision.

In some ways, I think that would make it harder for institutions to comply with, because they'd have to do this assessment each time, rather than just immediately notifying the Department, if there is a final judgment against them that, that falls into this category of relating to the making of direct loan, or provision of educational services.

The other reason that I think a materiality provision is inappropriate is, you know, as Suzanne mentioned, this is a discretionary trigger for the Department.

It's just notifying the Department, so the Department can take a closer look and see, is this a signal that the institution is in trouble, that it might not be able to meet its financial responsibility and administrative capability anymore and that we need some sort of assurance, to protect tax payers and to protect the students.

In light of the, you know, there have
been, there have been negotiators this week saying that, that the amount of, that, often, the amount of relief to a student, in a borrower defense claim, isn't, even if it's a small, a small financial amount that could still be devastating to a school, because of the reputational harm that, that -- and I imagine that same thing would hold for a judgment, if there was a final judgment against a school that the school committed fraud, then the Department should know about that, because, because that might mean that that institution is going to be in a lot of trouble, soon.

That might be that, students are going to withdraw. That students aren't going to enroll. That they're, that they, that they might lose their accreditation. That, that, that's an important signal that, that some that that institution, you know, may be, may be in a lot of trouble.

Sometimes it's not. You know, sometimes it might just be a small one-off thing and it's not going to, going to matter that much, but this is, that's why this is discretionary, the Department gets to look at it and gets to make that
assessment. So I'm strongly in favor of including this provision and of not limiting it by some financial materiality standard.

MS. CARUSO: Alyssa.

MS. DOBSON: To the extent that this is supposed to apply to all institutions, I'm not certain that the amount of work that, a public institution would have to do with sending in these disclosures, would result in anything, if we've already kind of determined, and it's included in the language, that a letter of credit wouldn't be necessary since we are backed by the full faith and credit of our state, then I'm not really sure why the Department would want that kind of volume of communication from the public. So I just can't see the value in including public institutions in this requirement.

MS. CARUSO: Kelli.

MS. HUDSON PERRY: Abby, I can totally appreciate what you're saying. But, because of the fact that we're writing this for every institution across the country, we have to, I mean, we have to think about the fact that you could have,
in this case, there could be a judgment that's $10,000 for a school that has a $500-Million-Dollar-Budget.

I mean, it creates a lot of additional reporting that, or could create a lot of additional reporting that just isn't going to warrant anything.

MS. CARUSO: Aaron.

MR. LACEY: Yes, and I'll point out, it's not just a final judgment, right, it's a determination in an administrative proceeding. That's the lowest threshold, the way you can read this language.

So if I go through a process, when I do my annual audit, with the Department, right, my final audit determination, that's a final judgment in an administrative proceeding, right, any kind of program review.

If I settle something with OSHA. If the state comes in and does a review. This isn't even limited to borrower defense claims, right, this is any administrative proceedings.

So you're talking about a major public
university, with a, you know, 90,000 students and 50,000 employees. Every time there is a state, or federal, or any kind of agency administrative proceeding and you have a determination in that administrative proceeding, for $5.95, I have to report it to the Department.

I'm telling you, this language is disastrous the way it's written. If you want to change it to arising from a final judgment, you know, in a state, or federal, court proceeding that the institution committed fraud, I have no problem with that, no problem.

I mean, if the concern is fraud, let's, let's get at that concern. But, as written, this is a disaster, respect, respectfully.

And I'm assuming that just wasn't appreciated. It's not even borrower defense claims, it has nothing to do with fraud, or not fraud, it's any administrative proceeding. That would be a disaster for, for, for institutions, in terms of the reporting that's being required here.

So I would propose, arising from a final
judgment in a state or federal court proceeding that determined the institution committed fraud. I don't have any issue with that, the Department should know that.

MS. CARUSO: Okay. Juliana. And, Abby, if you could, I'm having a problem distinguishing your tent from Juliana's, just because of the placement of the drinks in front of you. Thank you. Thank you.

MS. FREDMAN: So first, I think, there is a limiter on there, it's related to the provision of educational services, so I don't really see how an OSHA administrative proceeding would make it into that equation, because that is most certainly not related to the provision of educational services.

We would be opposed to having the fraud language, because it would leave out, for instance, State Unfair and Deceptive Practices Act lawsuits, which might be completely related to the kinds of issues Abby raised.

And, finally, to the extent that arbitration clauses are not banned, then an
arbitration decision should be added to that judicial, administrative, or arbitral proceeding.

MS. CARUSO: Kelli.

MS. HUDSON PERRY: Well, this, then makes the definition of provision of educational services much more important. Because, if we don't have that box around it, in the other Issue Paper that we talked about, this could extend into things that it, it may not have anything to do with borrower.

MR. LACEY: And I'll just add, I mean, I've thrown out the fraud, because that was the example given. But I really don't think that makes sense.

I mean, what we're really talking about is financial responsibility and whether there's a consequence of whatever this judgment might be, there's some sort of potential harm, or risk of failure of the institution, which is why a materiality threshold, based on the financial wherewithal of the institution, as a whole, makes perfect sense, right.

I mean, that's what we're talking
about, was there some sort of judgment? Who cares what it was about? Who cares? If, if it's threatening the financial stability of the institution?

That's really what it's about, is what the Department wants to know, which is why I go back to my point that, qualifying this with some sort of materiality threshold, which accountants in schools do all the time, relative to the overall financial health of the institution, is the sensible thing to do.

That's what the Department wants to know here, is, is there a threat to the financial, institution's financial health? And if the school screws it up, that's on the school.

They've got to -- and they're going to be conservative, because they're not going to want to fail the notice requirement, right, but make the school have to reach a determination, as to whether they think it's material, or not.

MS. CARUSO: Aaron, I, I could be wrong, I think I heard you say that you wanted to reclaim this fraud language, take it, take it out
of that proposal?

MR. LACEY: Yes that's fine. I'm okay
with it.

MS. CARUSO: Okay.

MR. LACEY: The most important thing
to me --

MS. CARUSO: Knowing that it's
probably not going to be accepted?

MR. LACEY: Yes, the most important
thing to me is that, the whole idea here is that
some event has occurred that is material to the
institutions -- not Title IV, because that doesn't
necessarily rate to the institution's overall
financial health.

The question is whether or not the debt,
or liability, is a threat to the institution's
overall financial health. And I'm sure the
accountants have a better way of qualifying that,
than I do, but that's the key concept.

MS. CARUSO: Okay, while they're doing
that, Michael, and then Abby.

PARTICIPANT: Right, I mean, this
section is about determining financial
responsibility. It's not about determining, whether or not fraud has, has happened.

So I agree. First, I'm not, I don't really remember where this came from, because it wasn't in the original draft, but, or how it got added in, but that notwithstanding, I think that the materiality piece is the right way to go and that, it should be limited to, pay any liability, I don't know why it's a debt, or a liability, it's just a liability, from a final judgment that would be for them to -- that that liability is material to the institution's financial health, or soundness, and just -- that's the box.

It doesn't have to be about fraud, or any -- this is not about that, this is about financial responsibility, period, and when the Department's going to take a look at it.

And I totally agree with Annmarie, because, if creditors have the same problems in getting financial statements that are six or nine months after the fiscal year -- my agency has a similar requirement.

If there is a final judgment, then we
want to know about it, regardless of when it, what set of financial statements it ends up on, you've got to notify us of that and then we will take a look at it.

So this is a mechanism. And I agree with the avenue and the opportunity, but we got to move on, folks. So materiality, let's give the Department a chance to look at it and, and, and, you know, move to the next issue here.

MS. WEISMAN: Michael, since you mentioned that, I'd just like to pose a question that might help to inform us, as well. Since you're saying your agency has a similarly requirement, can you give us a sense of the burden of reporting, how many of these you get in a year, for example, I mean, do you see this a lot, do you see it a little?

PARTICIPANT: So my agency accredits about 750 institutions, public, private, for-profit, non-profit, but predominantly, probably, for-profit, and I would say it is, and, for final, it's de minimis. It's not a large number of final judgments coming from court action.

Now, maybe, now administratively,
administrative actions, however, that is the bulk of the, of the types of notifications we get. We get them from the Department, we get program reviews, we get final determinations on that, all the -- and they, as I said yesterday, they can be for $13.40, or they can be for several million, and letters of credit and everything else.

So, but I still think that, I don't find that to be such a burden that we shouldn't, that we choose not to do it. We get the information, if -- and I don't -- Aaron, to your point, if the Department is not saying that it is a burden, then I don't think it's our role to tell the Department what's going to be a burden on them.

If they're not objecting to, to this, that's up to them to, to make that determination, make that objection. That's not up to us to tell them what's a burden on the Department.

So if they're not objecting to this language, on those grounds, then I'm taking them at their, at their word that, that they're able to, to handle that and they're not, they're not objecting to it, so.
But, for the sake of moving this conversation along, I think that the right place to put this is about materiality and, and, and move on to the next thing.

MS. CARUSO: And, Michael, can you just say a bit more about the right place, to put it in this paragraph?

PARTICIPANT: So I would just, and Kelli could probably help with this, but the institution is required to pay any material liability, arising from a final judgment, or determination, in a judicial or administrative proceeding, related to the making of a direct loan or the provision of educational services.

That keeps out a number of other, of other kinds of material finds, but those will, those will show up on the financial statements, later on. It's not like we're never going to see them.

But what the Department is concerned about is, this is relating to the making of a direct loan of the provision of educational services.

MS. HUDSON PERRY: The only thing I would add is, any material, as defined by the
institution's auditors, for financial statement purposes, because, then that puts somewhat of a box around material. Every institution has a materiality threshold, for financial statements.

MS. CARUSO: Okay, if you could, review that, and then, and then, I'd like to hear from Abby and Ashley Harrington.

MS. SHAFROTH: Thanks. So and, not being an accountant, I don't know whether material, as defined by an institution's auditors, for financial statement purposes, would get at the, the type of judgment I, concern I raised.

So a judgment that it might be, the, the financial liability for the judgment, itself, may be small, but it may be that, that the judgment is, you know, the judgment findings are, sort of, so inflammatory and damaging to the reputation of the institution that, that there's real risk that the institution is going to close.

I mean, that's what, what Mike Busada's been telling us, this week, that there's real, real threats to institutions being able to, that, that his, basically, he said that if there's a successful
borrower defense against his school, his school
would probably close.

And so that's what I'm trying to get
at here, if, you know, even if the liability,
itself, is, is fine, is, the monetary amount is
small, that there might be a real risk and I'd like
the Department to have the discretion to, to, you
know, to take, to take steps to get protection,
if that's the case and it's, you know, it's
discretionary and, so just, yes, not being an
accountant, I don't know whether this would, this
language would get at that.

PARTICIPANT: And I understand that.

But, this is not the mechanism, necessarily, for
that to happen. There are other mechanisms, within
the triad, for information sharing that will give
the Department knowledge, either, through the
relationship with their state -- I mean, this is
a, this is a, what you're talking about, it's not
just that, a liability was incurred, in relation
to a determination, but you don't want, you don't
want the amount to be, to be the issue, why they
don't look at it.
But, again, they're looking at this for financial responsibility issues, there are other, other mechanisms for that to happen, without it having to live here.

MS. WEISMAN: Can I add, just add to that? Abby, typically, an institution that's going to be high risk, like, you know, Mike talking about the fact that, if one thing happened, it would close his school, those schools are typically going to have a lower, much lower materiality threshold, simply because of that fact.

So it's not like we're looking at something where somebody's going to have a high materiality threshold that, that could potentially close their school.

MS. SHAFROTH: And I, Michael, I, I hear what you're saying. I wouldn't, but I, you know, I don't, I don't know all this area, I'm not an auditor.

And, to me, this section was saying these are, these are things on which the Department can take a look and decide, if it needs some sort of financial protection, in case of, you know, in
case the school, it might, might close, or it's otherwise, you know, these are, these are signs of potential financial distress, are there other -- what other, what other ways could the Department get that sort of financial security, based on the types of, the types of events I've just described? Maybe the Department can answer, maybe, I don't know.

PARTICIPANT: Well, I mean, I'm -- I'm sure the Department can answer that, but there are a variety of reasons why they can take an LST. That, that -- Limitation, Suspension and Termination Action that don't have to be tripped by, what John mentioned in the one. But that's one of several reasons why a letter of credit could be issued.

A letter of credit could be issued, because the creditor placed him on probation. We see that frequently. I mean, there are, there are -- I'm just suggesting that there are other mechanisms that don't, necessarily, have to do with this.

And, and, and, you know, if, if the
issue here is just about, whether they're going
to close, precipitously, I'm, I'm, I'm not even
really sure whether, whether this gets to that,
one way or another. But requiring it, in every
single instance, I think, is a solution in search
of a problem.

MS. SHAFROTH: I was just hoping to
hear a little bit more from the Department. I mean,
I -- you know, I raise these issues, in part, because
of the, we have the Office of Inspector General's
report saying that the existing triggers were
insufficient to, to protect students and taxpayers
against precipitous closures and other, and, and
other events related to, to school misconduct, but,
but other issues, as well, and the, that report,
you know, it pointed to, pointed to some of the
triggers that were advanced in the 2016 Rule, as,
as triggers that would be helpful.

Those triggers have been, largely, left
out of this proposal. And this was, you know, an
attempt to try to, to try to bring something back
in that would insure that the Department does have
sufficient authority to protect borrowers and
taxpayers.

So I'd love to hear from the Department, itself, as to, sort of, you know, you drafted this language, without a materiality, sort of, what you think, where, where you feel, whether you feel that you have, you know, sufficient authority to, and discretion to, to take the steps necessary to, to protect taxpayers.

MS. WEISMAN: So I think this gets us significantly more than what we had, before we started with this text. I think that, I'm, I'm hearing the balanced needs around the table.

I think that, you know, Aaron is right, we, we don't want every, you know, $5,000-claim. It's, it's generally not going to have a significant impact.

But, if the concern is, while for a smaller school, a smaller claim might, then using a materiality standard is something I would support.

Because, again, it balances out the needs of us getting the information that we need, when it's significant, but not getting every little
thing that could trickle in.

I think that, balancing the needs of getting in information with not getting too much information, is important to the Department. And I think that the language that's proposed with the materiality standard makes a lot of sense. I'd like to take that back for review, with others of the Department.

But, I think, at this point, if we can, we really should continue on with Paper 3, because we would like to finish Paper 3, take a break, and give you Issue Papers 1 and 2 to review and have some time to read.

MS. CARUSO: So if we could hear from William and then, Michael, and then hopefully get a temperature check around, at least, this --

MR. HUBBARD: My comment --

MS. CARUSO: -- language in its current state.

MR. HUBBARD: My comment is very quick. I definitely appreciate Michael's point about the creditors providing additional levels of oversight. That's extremely important.
Unfortunately, not all creditors are as good as my friend, Michael, across the table, but I think their, the ability for the Department to also directly have that interface, is important, for that reason.

PARTICIPANT: My question is just for Kelli, really. Does the, as defined, go after material, or material liability, where is the definition? I think it, I think it, probably, goes after liability. The materiality, as defined, is it material as defined, or material liability as defined?

MS. HUDSON PERRY: It's material, as defined, the way --

PARTICIPANT: Okay.

MS. HUDSON PERRY: -- that it's written.

PARTICIPANT: All right.

MS. HUDSON PERRY: Because you're looking, you're not just looking at your liabilities, as being material, you're looking at the materiality of the institution, itself.

MS. CARUSO: Okay. The language, as
written, in yellow. Let's see a show of thumbs.

Alyssa.

MS. DOBSON: Can we add excluding public institutions to the language? I see it down there, as a suggestion, but I don't see it in the stuff that we're about to vote on.

Excluding public institutions.

Why? The -- The purpose is to protect the taxpayer and, as a trigger for a letter of credit. And we've already determined that public institutions, unless they're subject to past practice, wouldn't be required. So I don't see the, it just seems, sort of, contradictory to other things that are already in the Paper.

MS. WEISMAN: I think the Department, I think the Department would still want to know, though, in case it may spark us to take other action, to, to do other considerations. I think it would be helpful for us to know.

MS. CARUSO: Juliana and then, and then, we have got to move forward.

MS. FREDMAN: So I just want to, quickly, point out and, you know, our concern with
the materiality provision, taking into account everything that's been said here, for example, with the Corinthian, which was a giant publically-traded-corporation, even if the school had, in a lawsuit, had a judgment where they had to return the entire $30,000 or $40,000 in tuition, it probably wouldn't have been material, in light of the total budget of that school.

And I think that's something that the Department might've wanted to know about, if it was related to the kinds of problems with the educational service that we saw.

MS. CARUSO: As written, in highlight, please provide a show of thumbs, whether you can live with this language in the context of a full agreement.

(Pause.)

MS. CARUSO: We have one thumb down.

Can we please hear from you, Abby?

MS. SHAFROTH: Yes. I mean, I've, I've said my peace about material, but Juliana had, had made a proposal that we include the final, final judgments from arbitral proceedings, which, you
know, seems important, to the extent the Department isn't going to ban use of mandatory arbitration by predatory institutions that the Department would want to know about those, as well, and we hadn't had any voter discussion of that.

I also take Alyssa's point that public institutions are backed by, backed by their state and so I, I would be supportive of putting an exclusion, so that this wouldn't apply to public institutions.

MS. CARUSO: Abby, does that get to what you just proposed, from arbitral proceedings?

(No audible response.)

MS. CARUSO: Okay, please review the language, highlight it in yellow, and provide a show of thumbs as to, whether you can live with this language, in the context of a full agreement.

PARTICIPANT: Is, is arbitral proceedings already included under administrative proceedings, or is it separate?

It's separate, okay, thank you.

MS. CARUSO: Thumbs, please.

(Pause.)
MS. CARUSO: Barmak, your thumb is down, can you please provide a proposal that would --

MR. NASSIRIAN: Exclude publics, please. This is either an attempt at, at a causal understanding of potential downstream financial consequences, or it is, as Michael described, an actual attempt at amending the Department's understanding of the financial circumstances of the institution, for the purpose of requiring additional surety to protect the taxpayers.

It is my understanding, based on the conversation we had that the latter was allegedly the purpose here, in which case, the publics ought to be excluded, because it'll make no difference, with regard to their posting of any additional surety and it will inundate the Department with useless communication that, that will eat up resources that would be better deployed somewhere where they make a difference.

MS. CARUSO: Michael, please.

PARTICIPANT: I, I just don't think that all public institutions are the same. And
I don't, I mean, there are several instances where budgets are being stretched very thin and my own agency has experience in accrediting public institutions that are very thinly resourced.

And so we have concerns and we don't treat them differently, we want to see their financial statements, even though they're backed by their state, because we have concerns that the state may choose to not fund that training center any longer and we want to know that and whether or not that's a budgetary consideration.

So I, I don't see the value and the Department's not asking for it, so I would not be supportive of, I'm not going to put my thumb down, but I'm not supportive of making distinctions, based upon ownership, or tax status, this should just apply to all institutions, period.

MS. CARUSO: Barmak, does that address your concern, at all?

(No audible response.)

MS. CARUSO: Kelli, can you address Barmak's concern?

(No audible response.)
MS. CARUSO: You got a gold star yesterday.

(Laughter.)

MS. HUDSON PERRY: Well, I think the concept, I think the question I was asked across the table was, can you determine materiality for a public institution, and, and you can, because they all have individual financial statements, even though it rolls up to, to the state, in most cases.

So with the materiality clause in there, I think you, I, well, I can't say, whether or not you can get there, but with the materiality clause in there, at least, it is not going to require public institutions to do every single, you know, judgment, or things arising.

PARTICIPANT: But they would still have to do an evaluation of whether or not it was material and, in the end, it really doesn't matter. I mean, Pennsylvania's going to pay, if the Department requests money, as is any other state.

MS. CARUSO: All right, let's have a show of thumbs on this and, one way or another, we're going to need to move on. As written,
excluding public institutions, please provide a show of thumbs, as to whether you can live with this in the context of a full agreement.

(Pause.)

MS. CARUSO: All right, we have one thumbs down. We'd like to move on and then reevaluate, based on the entirety of Issue Paper 3.

MS. WEISMAN: So this was a correction to language that we made yesterday. I believe, Kelli made some suggestions, to include the text related to non-profit institutions.

And what this does is, specifies the differences in terms that they would each have, that they would fall under, related to the changes in the composite score.

MS. CARUSO: Any issues with this?

(No audible response.)

MS. WEISMAN: Would it help if I read them? I know some people are not auditory learners, but I can certainly read them for you. So this starts in D, recalculate in the composite score.
It now reads, the Secretary recognizes that the actual amount of the debt, or liability, incurred by an institution, for borrower defense claims, under Paragraph C(1), or the amount the institution is required to pay, under Paragraph C(5), as an expense, and accounts for that expense by, and then, number one is for a proprietary institution.

Romanette (i) is for the primary reserve ratio increasing expenses and decreasing adjusted equity by that amount. Romanette (ii) is for the equity ratio, decreasing modified equity by that amount. And Romanette (iii) is for the net income ratio, decreasing income, before taxes, by that amount.

So then, for the non-profit institution, for the primary reserve ratio, increasing expenses and decreasing expendable net assets, by that amount.

Romanette (ii) is for the equity ratio, decreasing modified net assets by that amount. And Romanette (iii), for the net income ratio, decreasing change in net assets, without donor
restrictions, by that amount.

    (Pause.)

PARTICIPANT: That is correct. If we're going to be very technical, though, where it says in, under one, Roman numerette (i), increase expenses, under the proprietary institutions, it's increasing expenses and losses, by definition.

And then, down in the not-profit section, it's increasing expenses without donor restrictions and losses without donor restrictions.

And then, the only other thing that I will say is that, I really still, truly, believe that it should be the amount of the liability incurred, not debt, or liability, because it -- and I know the Department has two different opinions on what that means, but I think as we're specifically talking about this calculation, it's a liability.

MS. CARUSO: Any other concerns?

(No audible response.)

MS. CARUSO: Can I see a show of thumbs on this section, as proposed in the context of a
whole agreement.

(Pause.)

MS. CARUSO: No thumbs down. Thank you. Moving on.

MS. WEISMAN: So the next change we have is in Number 3 on Page 5, Romanette (i) says, in its notice to the Secretary, under this paragraph, or in its response to a preliminary determination, by the Secretary, that the institution is not financially responsible, because of an action, or event, under Paragraph C of this section. So the change here is to add the word preliminary.

MS. CARUSO: Any issues here?

(No audible response.)

MS. CARUSO: Can we see a show of thumbs on this section, as amended?

Oh, oh, I'm sorry.

MS. WEISMAN: So then we have, on Romanette (ii), the Secretary makes a final determination, after considering the information provided by the institution, under Paragraph C(3)(i) of this section.
So this is where institutions were asking for an opportunity to provide information and that, we have up above in B, for example, show that the action, or event, has been resolved.

This gives the institution that opportunity to do that and then the Secretary would make a final determination, after that information is considered.

Can we scroll down? And then, this is the issue, related to the change in the lease transition period, going from four years to six years. This then removes the zone alternative for three years, after that, so we're just going to a straight six-year period.

PARTICIPANT: Question about the exemption of withdrawals to pay taxes. Were your taxes treated differently, if it's a matter of financial circumstances of the institution, why, why would you exclude withdrawal of equity for payment of taxes from other kinds of withdrawals of equity?

Or, are you targeting, like, prop -- what I'm struggling with is, whether you
are attempting to, sort of, capture the notion of somebody taking profits out, or are you making distinctions on different kinds of expenditures and privileging taxes?

For reasons I conceptually understand, but from the Department of Education's perspective, that's just resources that are -- don't you have exclusionary language up above on withdrawal of owner's equity to pay taxes?

MS. WEISMAN: Yes, we were only reviewing changes, though, right now, from text, from yesterday --

PARTICIPANT: Okay. Okay.

MS. WEISMAN: -- since we --

PARTICIPANT: Good.

MS. WEISMAN: -- discussed those in detail.

So our final change on this Issue Paper, relates to the idea of the offset, as an alternative form of surety, and we've added the text that we discussed yesterday.

In the last line, where, we've already talked about the idea of expanding it from six to
12 months, we now say at the end, the Secretary
uses the fund to satisfy the debts and liabilities,
owed to the Secretary that are not, otherwise, paid
directly by the institution. I see an extra space
there.

And provides to the institution any
funds not used for this purpose during the period
covered by the agreement, or provides the
institution any remaining funds, if the institution
subsequently submits other financial protection
for the amount originally required.

So essentially, if you agree to offset,
and then you change your mind and say no, I don't
want the offset anymore, I'd rather submit a letter
of credit, we would allow you to do that.

MS. CARUSO: Is that -- good. Okay.

Any concerns with the rest of the language, as
proposed?

(No audible response.)

MS. CARUSO: Can we see a show of thumbs
on this last section, in the context of a whole
agreement?

(Pause.)
MS. CARUSO: No thumbs down. Are we at the end of Issue Paper --

(Simultaneous speaking.)

MS. CARUSO: No.

MS. WEISMAN: So we did have changes in, at least, one of the appendixes, related to some text that we had yesterday. Do we need to take a break, at this point, or do we want to finish with that --

MS. CARUSO: We'd like to finish and then --

MS. WEISMAN: Okay.

MS. CARUSO: -- and then break when we, we move over to Issue Papers 1 and 2, pass those out, and then --

MS. WEISMAN: Okay.

MS. CARUSO: -- have a break.

MS. WEISMAN: So the change that we are making is what we talked about deleting yesterday. So we'd already covered it, yesterday, but just to, kind of, re-enforce, on both Appendix A and B, we struck the language about long-term debt, and so that applies to both the for-profit and the
not-for-profit institutions.

And then, also on Appendix B, Kelli had requested that we add parentheses around the words and it's under total revenue without donor restrictions in the first section.

It now would read, total revenue, begin the parentheses, including amounts related from restriction, plus total gains. Oh I see, I'm sorry. We scratched that, so it says, total revenue, including amounts released from restriction, plus total gains, and then the parenthesis begins where it says, investment returns are reported, as a net amount, interest dividends, unrealized and realized gains, and so on.

PARTICIPANT: I, I have a question and I also have, maybe, one additional thing that we could possibly add. With the debt, where we took out the debt, I'm fine with that, but in the, where it starts that definition, where it says, all debt obtained for long-term purposes, can we add, as defined by FASB?

MS. WEISMAN: So our feeling is that,
that changes the way we're currently doing things and that we would feel less comfortable adding that in. We feel we've defined it, as we need to, here, and, and don't wish to qualify it further.

PARTICIPANT: How, how does that change the way that you're doing it? Because the concept behind this is that you're obtaining all long-term debt, so FASB defines long-term debt and all of these definitions are, in essence, defined by FASB.

MS. PEFFER: Rhonda Peffer (phonetic).

Mainly, just because we don't go to FASB on the other ones, we, it's, we would need to, kind of, clarify that, on each aspect, where we're getting our definition from, if we start putting it on one. So for consistency, we don't think we should do it here, either.

PARTICIPANT: Okay. So that's not a hill I'm going to die on, but my second question is, in the supplemental schedule, and I just, I think I saw it, on what was emailed to us, but I just want to make sure that, the concept of long-term lines of credit is a line on the
supplemental schedule, so that if people do have them, they can add them.

MS. PEFFER: Yes, we haven't got to the schedule, yet, but there's a couple of changes that was proposed that we did do.

PARTICIPANT: Okay.

MS. CARUSO: Any other concerns with the document, as amended? Yesterday.

MS. PEFFER: There's a couple more things, like Kelli was talking about that we did change on the Excel spreadsheet. There was the definition in the original one that came out that we read to you, the other day that said what the supplemental schedule would require. In the printed one you got now, it should have that text, so that you could see it, for both the proprietary and the non-profit schools.

And, in addition, we went through and changed the N/A, changed the zeros to N/A, and we also went through and changed from the original spreadsheet to this one, to include, all lines of credit that was for long-term purposes. So the line, in actual, now, has more than just the
long-term, for long-term purposes.

We have the operating ones include, that if you look at the various lines, there should be red strikeout, where we struck it out and then put it in, at second one down that shows that we included the operating ones that are long-term, to be consistent with the change in the definition.

(Pause.)

MS. CARUSO: Is that all, Annmarie?

(No audible response.)

PARTICIPANT: Just one other question.

Yesterday, I had mentioned the need for a definition of unsecured related parties, and I know the subcommittee had provided a definition, for it to be included in the appendix, as opposed to in the preamble, was there any consideration given to that?

MS. PEFFER: We did discuss it again and still decided that it was still preamble language and not, did not make a change to that.

MS. CARUSO: Any remaining concerns, before we take an, almost, final check on Issue Paper 3?
(No audible response.)

MS. CARUSO: Okay, so here is what we are doing now, because we do need to move on to Issue Papers 1 and 2, before lunch, we are taking a check, a temperature check, as to whether you can accept Issue Paper 3, temporarily setting aside the question of whether to exclude public institutions, all else in Issue Paper 3, in the context of a full agreement, please, show your thumbs.

(Pause.)

MS. CARUSO: No thumbs down. Thank you. Moving on, for now, to Issue Papers 1 and 2, which will be passed out to the group, in printed form. It's, hopefully, happening now. Thank you, Barbara.

So thanking you, in advance, for your patience, we are going to take 20 minutes, to review Issue Papers 1 and 2, in conjunction with a restroom break and return at 11:30 a.m., to ask questions and provide comments and issues, so that the Department can consider them, which they very much want to do, during the lunch period.
Okay. Folks, before -- Can we settle down, so that we can get our instructions, please?

Thank you. We are going to take 20 minutes to review Issue Papers 1 and 2, in conjunction with a restroom break and return at 11:30 a.m., to provide comments and issues and additional proposals to the Department that they can then consider, during lunchtime --

Folks, silence, please. This is the last day. This is your last opportunity. Everyone, please.

We will return at 11:30 a.m., with comments, questions, and additional proposals for the Department to consider, during lunchtime, which we are told is a hard stop of Noon. Thank you.

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

MS. CARUSO: All right, everyone, we're ready to get started. And, just to kick this off, I believe, we have a couple of clarifications, from the Department, so I'll just kick it over to them, to get us started.

MS. WEISMAN: Thank you. On Page 3,
as you know, we've been doing these very quickly, trying to get real-time edits and doing our shading, but we missed shading something in yellow that should be shaded, in about the middle of the page, it is under Number 2. On Page 3 -- of Issue Paper 1. We struck the text three and we added in five, so that five-year word there, five should be shaded in yellow, to highlight that that is the new item.

And I'm going to play teacher and look for eyes on me, so I know when you've got that one and are ready for the next. Seeing most of the eyes, we're going to go on to the next one.

Right below that, on Number 3, we have two words that we needed to choose one or the other, so on the third line, where it says, addition to the application at a station provided by the borrower, we are going with application and we are deleting the word attestation. And, since that's a change that, also, would, technically, be highlighted in yellow. So we're, we're getting tight on time --

PARTICIPANT: Should the word of corroborating evidence, also be highlighted?
MS. WEISMAN: Yes. Yes, up above that, corroborating, which we struck that word that also should be in yellow.

PARTICIPANT: Just a question then, on 4(i), made with reckless disregard for the truth is highlighted, but it is not a change, it was in the text, previously.

MS. WEISMAN: That is correct. That item is remaining from our prior discussion. That was highlighted, though, however, because it is a key item and we did want to make sure we called it to your attention, for discussion.

So our goal is that, we are trying to look at just information that has changed, so we can get through this fairly quickly. We gave you a little time to read, so that you could then come back with issues, relating to the items that you see, so I'd like to open it up to people for discussion of items that they have questions about, on Issue Paper 1, to get started.

MS. CARUSO: Linda.

MS. RAWLES: Since we're back to the original language of the Department of this
session, for our evidentiary standard, is there, have I missed, or does the Department not have anything in this draft that would make sure that, even though you said orally that you consider that to be between preponderance and clear and convincing, is there anything in this draft that, that records that, for when we all, either, get hit by a bus, or win the lottery? Because, otherwise, I'd be very opposed to the evidentiary standard, as written.

MS. WEISMAN: We thought that the language we had was clear and do not have anything that, specifically, addresses that in the current regulatory draft. I, I didn't hear a proposal for additional language.

MS. RAWLES: My proposal would be that, if it's not clear that it's greater than preponderance of the evidence that we need some language that, either, one, says this is greater than preponderance of the evidence, or two, we go back to clear and convincing.

MS. CARUSO: Linda, are you, specifically, referring to your language,
yesterday, that says it's more likely to be true than not true?

MS. RAWLES: That would be a good starting point, but I'd, certainly, have to see that it is, at least, at least, beyond the preponderance of the evidence.

It would be better to have some language that said it's midway between the preponderance of the evidence and clear and convincing, because that's what the Department said its intent was, but its intent is not reflected in this language, so.

MS. CARUSO: John and then, Ashley Harrington.

MR. KOLOTOS: So recognizing the rush and I had discussed this with the Department, previously, but we had provided some suggested language that I don't see here, regarding the preemption of state law, and I was wondering, if it would be appropriate, at this time, to propose that language for consideration?

MS. HONG: Certainly. If you could, read out loud, if you have language, and then we
can have a short --

MR. KOLOTOS: All right.

MS. HONG: -- short discussion of that.

MR. KOLOTOS: I would propose that language be added, potentially, as a subsection C, nothing in this section shall be construed, or deemed, to preempt, inform, or otherwise modify any right, cause of action, relief, or remedy, arising under any state or federal law, available to the borrower, or to the Attorney General of any state.

MS. HONG: And zoom in, just a bit.

MR. KOLOTOS: Forgive me, if I just can't read it in the paper I'm a --

MS. HONG: You're forgiven, John.

Right, this is not in here. This is language that John, John is putting in, right now, orally.

MS. CARUSO: No, Caroline, it's written up there, already, on the -- it was already there. Okay.

PARTICIPANT: Okay, so it's not in the papers, in your handouts, but it, it is in the Paper,
on the screen.

    MS. HONG:  Sorry, guys, drafting on the
fly here.

    MS. WEISMAN:  So I think what people
are looking for, is a clarification, if they're
trying to follow their Paper, of where that text
goes, here, what page that is and it's getting a
little hard to follow.

    PARTICIPANT:  Yes.

    MR. KOLOTOS:  I would, I would suggest
that it be inserted at the end of all the other
text that, that's going to remain in the Rule.

    MS. HONG:  So I'm told, it's at the end
of where 2-2-2 would end, on Page 6, so just, so
that language is not in your printed copy, but it
would be after -- after Paragraph 5, on Page 6.

    MS. WEISMAN:  That's correct, the
original C was taken out, so this becomes the new
C, and it would be at the bottom of Page 6.

    MS. CARUSO:  So it would be at the end
of the document?

    (No audible response.)

    MS. CARUSO:  Suzanne.
MS. MARTINDALE: I know we're going to have to jump around a little bit in the interest of time, so middle of Page 3, the changes to the statute of limitations, which is now five years from withdrawal, you know, with all due respect, to the Department and to the staff working so hard on this, on this issue, from a consumer advocacy perspective, it is, and I don't say this lightly, it is outrageous, it is utterly outrageous, to apply a statute of limitations to a borrower seeking to raise defenses to a debt that is still collectable.

And, while there is no federal statute of limitations on these loans, which it's not the public policy I would have, you know, gone with, but that is the case, you know, we're talking about people getting their social security offset, to repay these debts.

They can follow you to the grave. So long as the Department can collect against student borrowers, borrowers should be able to raise defenses to repayment.

MS. CARUSO: Aaron and then Abby.

MR. LACEY: Yes, at the risk of being
hyper literal here, I was going to suggest that, substantial weight of the evidence demonstrates, and this follows on Linda, to be replaced with, if the weight of the evidence demonstrates, to a degree of certainty that is at the midpoint, between preponderance and clear and convincing.

I mean that's the express intent of the Department. I think the institutional folks started at clear and convincing. I've heard preponderance clearly articulated on the other side of the table. I don't see why we aren't just literal here.

PARTICIPANT: Aaron, can you repeat that?

MR. LACEY: You bet. Okay, so I'm crossing out everything from substantial weight of the evidence demonstrates that and I'm replacing it with, if the evidence demonstrates to a degree of certainty that is at the midpoint between a preponderance and clear and convincing.

Okay. Sorry, I'll do it again. That -- no, I'm just kidding. The evidence demonstrates to a degree of certainty that is at
the midpoint between preponderance and clear and convincing. Maybe it's a preponderance and clear and convincing. Is that up there?

Yes we could say, at least, at the midpoint, yes. Fair, I apologize, fair enough.

Yes, if it's above the midpoint, it should qualify.

It has to be precisely at the midpoint.

(Laughter.)

PARTICIPANT: I have a feeling you would support that, but --

MR. LACEY: No, it's a good point.

Yes, yes, it's a good point.

I had a couple of other comments, too, should I continue?

Okay. So we lost reasonably, the borrower reasonably relied, but we kept, under the circumstances. I still support reasonably.

I would also note that, under the circumstances, doesn't make sense in this sentence without the word, reasonably, because it, it's modifying that concept. I mean, if you just say --

MS. CARUSO: Where are you?
MR. LACEY: Yes, I'm sorry, in the next section (i), Roman numerette (i), right. So we say, the institution, which the barber enrolled, the barber, the borrower enrolled, made a misrepresentation, related to enrollment at the institution of the provision of educational services, upon which the borrower relied, under the circumstances.

Well, under the circumstances is modifying reasonably. Without the word, reasonably, I mean, it's always going to be the case that the borrower relied under the circumstances.

And I would support inclusion of reasonably. My understanding that, under the circumstances, was a compromise to accommodate the notion that not all borrowers are situated similarly. I support the statute of limitations here. I do not think it's outrageous.

I think that, I'm looking now, on the next page, at what currently is, sort of, a definition, or elucidation of substantial weight of the evidence. First of all that would need to
be changed, to conform with the prior concept that I articulated, the midpoint concept, because we would no longer be using the substantial weight of the evidence standard, if we bought into the other one.

I had suggested, the Secretary may only, because, in my view, this is a, a floor. I'm not sure what we accomplish with may. I think, if the word, only, is not there, I'm just not sure what this, I think this phrase loses meaning.

What we're saying is at a minimum, right, to establish this evidentiary standard, you have to have this application, plus supporting evidence.

I also support the use of the word, corroborating, because I think it, it indicates that the idea is the evidence is supporting what is articulated in the application, it's not just something additional.

On the next page, let's see, I'm going all the way down to J, so I'm now in Roman numerette (i) all the way down to (j), I appreciate the Department's conforming language here.
I believe that it just borrowed text from L, from I, which is fine, but it included a clause that I think needs to be struck, this last clause that may include representations, regarding size, location, facilities.

I don't think that makes sense here, because here we're talking about representations concerning prerequisites for enrollment in a course or program.

Yes. On Page 5, let's see, I'm now at, it's on Page 5, it looks like it's Roman numerette (iii), it's the discussion of financial harm. The Department has excluded opportunity cost.

I have a question for the Department and that is, as a practical matter, how are you going to quantify -- I mean, how does the Department even conceive of understanding, or considering, or quantifying, whether there's been some sort of loss of opportunity cost?

Because, from my standpoint --

MS. CARUSO: Aaron, in the interest of time, I'm going to let them consider the question, --
MR. LACEY: Okay that's --

MS. CARUSO: -- over lunch, we've, --

MR. LACEY: Got it.

MS. CARUSO: -- we've got to get to it.


All right that's my last comment.

MS. CARUSO: Thank you. Abby.

MS. SHAFROTH: Okay, so let's see, what do we have here? On Page 3, Paragraph 2, this time limits. I strongly share Suzanne's concern and I believe this is a line in the sand, for me. That I cannot, I cannot, in good conscience, except a, except a rule that would allow the Department of Education to garnish a borrower's social security payments, if there is sufficient evidence that that borrower, that the debt was taken out, as the result of a fraudulent misrepresentation.

You know, there may be room for negotiation around imposing a time limit on the borrower's ability to get refunds of amounts already paid, but, but it would be devastating to, to my clients and to many borrowers. And I, I think it's unconscionable, to allow for, to, to require
the Department to continue to collect in those circumstances.

So for specific language, and I also note there's a, as a technical matter, I think that in this paragraph the, the reference to Paragraph B1 should, probably, be a reference to Paragraph B1(i), because I assume that, the Department doesn't wish to a time limit borrower defenses that are in the basis of a final definitive judgment that may happen, after five years.

So this would make sure that this only, this, any time limit only applies to the misrepresentation prong, not the final judgment prong.

And I would, I would add to this, I would add to this provision that the, that a borrower may assert a borrower defense against collection of outstanding balances, so long as the loan remains otherwise collectable. Then, on Page 3, Paragraph --

MS. CARUSO: Hang on one second, Abby, so we can get the language, right here.

Go on, Abby.
MS. SHAFFROTH: Okay. Same page, Paragraph 4, Roman numerette (i), the definition of misrepresentation, I see that this says, regarding material fact intention, or law, the language previously, when it was in a different paragraph, said material fact opinion, intention, or law, I would reinsert opinion.

You know, I, I, I would also strike reckless, at, at minimum. I mean, I think I've, I've made clear that I, I would strike all of this, this (inaudible) language, but for the purposes of this discussion, let's strike reckless.

Let's see, then the discussion of financial harm, on Page 5, so that's paragraph, let's see, Roman numerette (iii), I think, is the beginning there. I, I appreciate and support the Department's striking of, or opportunity cost, so I just wanted to note support for that, that change.

In Paragraph B, below that, I think it's, yes, so C(b), but I think, I think it's supposed to be B, now, it says, after completing the program. I would, I would, either, strike that language, or I would say, after completing or
withdrawing from the program, because we know that
that most borrowers, who attend predatory schools
never actually complete the program, they withdraw.

And, I would add a paragraph, another,
another indicia of, of, of financial harm, so we
can make this Paragraph F, at the end of this list.

That would be something along the lines
of, an insufficient increase in earning potential,
to offset the cost the borrower expended to attend
the institution.

So this is getting at the, the schools
that, that failed to, failed to deliver sufficient
value to the borrower, to actually be a worthwhile
investment that, I think, is financial harm.

MS. CARUSO: Okay, Abby, we're going
to come back --


MS. CARUSO: We have -- all right.

Michael.

PARTICIPANT: So I have two ideas.
One, on the substantial weight of the evidence,
I, I would suggest, maybe, to Aaron's suggestion,
and I, I'm not speaking about the language that
he proposed.

But, I might move that up into the introduction and say, for the purposes of this section, substantial weight of the evidence means, and then define it there, however the word, because it's used in more than one place, and, and so I might just suggest moving it into the section where you can define it.

It seems to me that the statute of limitations part of this, as Abby said, is a line in the sand issue that will likely scuttle the efforts, if, if some middle ground compromise is not, not achieved.

So it seems to me, then, that the issue, for some, is that the statute of limitations, a, either, should not be there, or it needs to be much longer, and for others is that, there's far too much liability attached to the opportunity to, to potentially have claims that go on for a very extended period of time.

What if we separated the two? And that is to say, okay, so there's no statute of limitations on when a borrower can bring a claim,
but there is a limitation on when the Secretary can initiate recovery proceedings, so that, okay, if, if a claim is 20 years old, the likelihood of, of actually prevailing on that claim is quite small, anyway, but the opportunity would still exist, if they had that evidence.

So give those, those individuals the opportunity for their, their chance, if they have and can show, with all these other things, substantial weight of the evidence and reckless disregard, or intentionality, whatever it is, give them the opportunity, but for institutions, put a limitation on it.

Only those claims that have come within the last five years, are the ones, in which the Secretary can initiate a recovery action.

That way, you get to protecting the institutions and still providing the borrowers an opportunity to have that chance. And if, if that, that's the kind of compromise that I think, maybe, can move this forward.

I'm hoping both sides can see that, as an opportunity that you're not giving up too much
and, actually, you're retaining quite a bit of what you want.

MS. CARUSO: Okay. At 12:01 p.m., I would point out, I've been instructed that we have a hard stop for lunch, is that the case?

(No audible response.)

MS. CARUSO: We will return to this discussion at 1 o'clock. Can we -- Guys, let's --

MS. WEISMAN: We have a meeting with other Department staff members, so we have to go back and, kind of, reconnect with them on the progress that we've made so far, and any changes that are proposed, so unfortunately we cannot do a working lunch today.

MS. CARUSO: Is 1 o'clock fine for a return?

Okay. Thank you. Feel free to talk amongst yourselves, during lunch. I don't even know why I said that, it's so obvious.

PARTICIPANT: Thank you.

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

PARTICIPANT: Okay. Welcome back.
Just a brief update from the Department, and then we will continue to get feedback on Issue Paper 1.

MS. WEISMAN: So, just to kind of pick up where we left off, I think, because we were not finished hearing all of your feedback about Issue Paper 1, we'd like to hear the feedback on 1 in its entirety. We'll then move on to Issue Paper 2, and then we can start to come back with some additional papers, some of which will be items presented to you on the screen, some of which will be actual paper.

I've been told that our color copier is no longer working, so I think we've, we've used it too much this week, so what we'll be doing this afternoon when we have what we think of as our final proposed language, we'll be giving you new clean copies to use that are paper, and then we'll have Aaron working with the computer, and projecting on the screen the edited copy so you can see where the highlighted changes still are in color.

I know it's a little hard to see some of the screens, but I think by having the clean
copy on paper, we can work in conjunction and still make that all work out, so we'll play that by ear, but I think it can work, and if I need to read something if something is unclear or difficult to see on the screen, I can certainly do that, but for right now, I'd like to pick up with your additional comments on Issue Paper 1.

Our goal would be that we could get through 2 as well before our afternoon break, then take any comments that we need to collect feedback on from others of the Department, and then come back to after that with kind of that final proposed language.

PARTICIPANT: Yes. And just so for planning purposes, our afternoon break will be at three o'clock, okay.

So, I'm going to start to go through the name cards as I have them written both before and after the break, because I'm seeing some changes. Linda, Valerie, and then -- nope, no longer -- Linda, Valerie, and then Mike Busada, and then Aaron.

MS. RAWLES: Brief comment on one
proposed change, and then an alternative change.

On page three, romanette (i), I guess, that's -- I don't know if that's (4), (i), (1), whatever, bottom of three, misrepresentation definition.

There was a suggestion to take out "reckless." I want to point out that if we have intentionally false or misleading or disregard, then that, as I'm sure is known, takes away the intent standard, because you go to the lowest standard when you have a disjunctive word in there, or so it would become a disregard standard, which nobody would know what that means, so I alternatively propose instead of arguing over disregard or reckless disregard, that we strike out, "Or made with a reckless disregard for the truth."

PARTICIPANT: Valerie.

MS. SHARP: One of the questions that I had is we've added back into the financial harmless opportunity cost, and so, I'm trying to understand how -- I guess, this is creating a way for the Department to explore a borrower defense, but the opportunity costs don't fit in the, in the
ability of the Department to consider, because the only thing that can be considered here is the amount of the direct loans, so I think that is the reason the Department gave in a prior session as to why those were included in this list, and now they're excluded, so it appears that the Department's position may have changed on why that should be included, so that is one of my items.

Another question that I have is at the bottom of five where we've added the language under B, the new B, that says, "Or wages that are lower than the borrower had prior to enrollment," there is concern with that language, because often there are people that choose to come back to college and take degrees that will secure a lower wage, maybe they have been a high-powered attorney, and now they decide they want to go into church work or something, and so they make that change, so we're opening up another door there I'm not sure we're intending to open, so I'm a little concerned about that wording.

I'm not sure -- if I had a suggestion, I don't know that I would include it. There may
be other proposals to change that would make me
more comfortable with that.

The other one is at the top of page six
under the new D. There is -- that is -- the language
in that is rough, it's repetitive, so we talk about
the tuition and the nature of the tuition fees
charged two different times in that paragraph.

And the way it reads now is, "A
significant difference in the actual amount or
nature of the tuition and fees charged by, or...," and there maybe should be a comma there that would
make it read easier, "...or the amount or nature
of financial assistance provided by the institution
for which the Direct Loan was disbursed, and the
amount or nature of the tuition and fees," so I
think that language needs to be cleaned up.

PARTICIPANT: Annmarie, did you want
to respond in whole or in part to --

MS. WEISMAN: So, for the first item
you mentioned, the striking in romanette (iii) of
opportunity costs, unfortunately, that was an error
in editing and drafting. That should not be
deleted, and should still be within the paper.
I apologize for that.

The item that you listed in B, the idea of wages lower than the borrower had prior to enrollment, when we talk about looking at financial harm, these are items that can be considered, and I think that when reviewing each claim, there is the opportunity to consider, does that apply in this circumstance?

So, if you have somebody who, as you mentioned, was in a very high paying career, and then went to do what one might expect to be lower paying types, a type of occupation, that could be noted when reviewing that, so I don't know if it would help to say up above in romanette (iii), "Evidence of financial harm may include, but is not limited to," instead of includes.

So, again, that final sentence of romanette (iii) to say, "Evidence of financial harm may include, but is not limited to," so add the word, "may," and strike the "s" from the end of includes. I think that then would, that would show that it is more discretionary to look at these items and determine if it's applicable.
And, then regarding your other change on the next page in D on page six, first, I'll note that we have to renumber here, because we added back in D, we had crossed out E and F, and I think we need to go back to where they were. And I do think that inserting the comma may get us to where we need to go, but we can look at that language.

MS. SHARP: Yes, I think we need to insert the comma, and then delete where we talk about tuition and fees the second time, because it's repeated twice in the paragraph.

MS. WEISMAN: So, can we just spend a minute looking at that now since there seems to be some disagreement over whether we need to take a piece out or not?

So, what I was thinking might work is to put a comma before and after the gray text, so to say, "A significant difference in the actual amount or nature of the tuition and fees charged by, or the amount or nature of financial assistance provided by, the institution for which the Direct Loan was disbursed," and continuing on.

PARTICIPANT: I can see why there might
be concern, because in the second line where you repeat nature of tuition and fees, you've added the sentence, or the statement that the tuition, institution represented. There might be a way to do that without repeating, "Nature of tuition and fees," because you'd also have that in nature of financial assistance in there, so you'd be repeating everything twice.

Let me see if I can find a suggestion.

MS. SHAFROTH: Why not separate the two and have a D, and then an E?

PARTICIPANT: Yes, that might work.

MS. WEISMAN: So, I think that would be cleaner is to make D the one that relates to tuition and fees, and to make E the one that relates to amount and nature of financial assistance, because I think trying to get them to agree and line up is going to be cumbersome, so let's try to split those out and see if the language then works.

MS. SHAFROTH: I think that what was separated were two different things, so I think the first one should read, "Significant difference
in the actual amount or nature of the tuition fees represented to, or charged by, the institution," and take out, "Or the amount of nature." That -- what's highlighted in gray should go down below, and it should be, "A significant difference in the amount or nature of tuition and fees," or, I'm sorry, "The nature of financial assistance," so take out the highlighted, the red part. Take out "Tuition and fees."

So, the second one, "A significant difference in the amount or nature," take that out. There you go. "Significant difference in the amount or nature of financial assistance provided by the borrower -- provided to the borrower," and then take out the rest of -- and add, "For which the Direct Loan was."

MS. WEISMAN: So, we need to take out the word, "By," that's still shaded in gray. We need to renumber after or re-letter after that.

PARTICIPANT: Okay. Alyssa and Jay, are you trying to comment on this wording here precisely?

MR. O'CONNELL: Yes.
MS. DOBSON: Yes.

PARTICIPANT: Okay. Yes, go ahead.

MS. DOBSON: So, financial assistance provided by the school to the borrower really has nothing to do with the Direct Loan being disbursed, so I don't think that we need that phrase at the end. It seems -- it's just odd wording to have together.

PARTICIPANT: All of it?

MS. DOBSON: No, just the, just the last -- yes.

PARTICIPANT: Jay, did you have something to add?

PARTICIPANT: So, in D, it's saying, "Tuition and fees represented to the borrower or charged by the institution," I don't think we mean to say, "Represented to the institution."

MS. SHAFROTH: In E, did we want to also add, "The financial assistance represented to the borrower or provided by?" Yes.

MS. WEISMAN: This is where I really do wish I had eyes in the back of my head.

So, I'm going to read those two
statements now that they've been redrafted. So, the new D is, "A significant difference in the actual amount or nature of the tuition and fees represented to the borrower and charged by the institution for which the Direct Loan was disbursed."

E then reads, "A significant difference in the amount or nature of financial assistance represented to the borrower and the amount or nature of financial assistance provided by the institution."

PARTICIPANT: Kim.

Maybe, "A significant difference in the actual amount or nature of the tuition and fees represented to the borrower and those actually charged by the institution for which the Direct Loan was disbursed."

Yes, it's in the prior -- sorry. I'm up at the prior one.

I think -- I don't even know if you need the "actual" in the first one. I think what we're saying is, "A significant difference in the amount or nature of the tuition and fees represented to
the borrower and those actually charged by the institution for which the Direct Loan was," so I would take "actual" out of the first sentence, and then I would say, "And those actually charged." Yes, I think that's what we're trying to get at, because those represented would not be actual.

And, then let's see, "A significant difference in the amount or nature." And I think at the very end of the next of E, "In the amount or nature of financial assistance actually provided by the institution."

MS. WEISMAN: So, Aaron, if we could see final version instead of final showing markup, and I think I might be able to see it a little better to read it out. Okay.

So, D now reads, "A significant difference in the amount or nature of the tuition and fees represented to the borrower and those actually charged by the institution for which the Direct Loan was disbursed," so we have two commas to take out, but otherwise, that is the new D.

We would then have E that reads, "A significant difference in the amount or nature of
financial assistance represented to the borrower and the amount or nature of financial assistance actually provided by the institution."

PARTICIPANT: Alyssa.

MS. DOBSON: I -- financial aid folks in the room were discussing, we don't necessarily know or feel that you need, or would want to have, "For which the Direct Loan was disbursed," on there. It's a little bit technical, but there are many instances where we are applying financial aid on a student-by-student basis where they may have a last dollar scholarship award that requires us to apply that award to tuition and fees. Therefore, the Direct Loan would actually be intended for room and board or for a different cost of attendance component. It just adds some strange linkage that we don't know should be there.

PARTICIPANT: Any further comments on D and E at this time?

(No audible response.)

PARTICIPANT: All right. In that case, I'm going to Mike Busada.

MR. BUSADA: And I just want to go back
and add just a little bit different perspective, again, on the statute of limitations. I've talked about why just from a philosophical standpoint I think that, you know, over 2,000 years of jurisprudence using the statute of limitations there's a reason for it.

And I don't presume to know more than, than those over the last 2,000 years as to why that is so important, but from another standpoint, I've heard all week, and really all session, from people that have said -- and I understand this, but they've said, you know, "If you were a small school doing the right thing, then strong regulations shouldn't hurt you, they should help you," and I think that is a legitimate argument.

When I first started practicing law, that was something that I very much agreed to. It was an argument that I made. It wasn't until I got into business and working with the school that I realized that that is not necessarily true.

And I'll give you one example when it comes to statute of limitations. This morning, I got a call from two, two association presidents
for small schools in states, and they heard that
we were talking about going from a three-year to
a ten-year, and just that, they were terrified,
and so over the last two days when they saw this
come out, they talked to their IT companies, and
they talked to their insurance companies.

Just to expand statute of limitations
from three years to ten years, they determined it
would cost them on average an extra $10,000 for
the document maintenance that they would have to
contract out with their private IT company. They
would then be responsible for -- the IT company
said, "In the event that you are hacked --

PARTICIPANT: Please be brief. Be
brief, Mike, please.

MR. BUSADA: Okay. All right.

"In the event that you are hacked, you
now not only have to pay restitution to 300 students
if you have a 100 a year, now you have an additional
700."

The insurance company is not going to
provide you insurance to cover that, and they're
especially not going to provide you the insurance
to cover something that is in perpetuity, and so if this happens, or if we extend it, keep in mind that every institution will have to purchase additional insurance, purchase additional space, additional IT resources whether you're a good school, a bad school, and for small schools, that is almost impossible, so it does affect us tremendously.

PARTICIPANT: Okay. All right.

Aaron.

MR. LACEY: So, I wanted to follow up on what Michael said the other day, and I wanted to propose a solution --

PARTICIPANT: This morning.

MR. LACEY: -- to the -- I'm sorry, this morning, to the statute of limitations issue. I mean, my, you know, in my mind, the challenge here is you've got, on the one hand, the understandable borrower interest if you've been wronged in being able to bring a claim without regard to when that happened, and on the other hand, you've got institutions, as Michael has said, they're very concerned about maintaining data over periods of
And in addition, I made the point yesterday, and it's important to note, you know, and are being directed by the federal government and others under privacy and related plans and regulations not to keep that data --

PARTICIPANT: Aaron, can we, can we get to your proposal, please?

MR. LACEY: Yes, sure.

So, the -- under the existing law, right, the Department bears some risk, okay, so the idea is borrowers can bring that claim, right, under the 95 Regulations, but after three years, the Department can no longer recover from institutions, right, so you solve that issue by limiting the institution's risk -- and by the way, that three years is explicitly tied to, to data maintenance requirements, right, so I believe that the Department should seriously consider -- and I understand the statement has previously been made that they are not necessarily interested in taking on any risk, but I think the Department should seriously consider whether or not, and to what
extent it can accept some risk in this scenario, because if we could say, for example, borrowers can bring a claim for the life of the loan, but the Secretary is limited on recovery action five years from the date of graduation, withdrawal, etc., right, you've limited the institution's exposure, and confined the time period they have to retain records to defend themselves, etc., and you also have still created an outlet.

And in that space, that 5 to 20-year, the life of the loan, assuming the typical 20 years, there is some risk, it's going, it's going to be reduced as time goes on presumably, the Department also could limit its exposure in that period. You know, Abby, or someone, I apologize who it was suggested earlier, for example, to amounts not yet paid, I mean, if they wanted to further limit, but the point is there would be some mechanism for borrowers after the five years to continue to seek some sort of relief, while at the same time, institutions would be able to limit their exposure.

And I think that the exposure -- and I'm a taxpayer, but I think the exposure to the
Department here would be within the limits of reason, so that's a specific proposal, and I would strongly encourage the Department to give it consideration.

PARTICIPANT: So, I just want to jump in as a facilitator. The Department can continue to confer, but this is our last day. In fact, this is our last afternoon, so the facilitators are going to be hard on you about making proposals, so you can go ahead and get upset with us now, but we have to get through this by five o'clock. Thank you.

PARTICIPANT: While we're waiting, Aaron, could you just give us a sense of what that would look like wording-wise?

MR. LACEY: There are two places. One for loans made prior to July 1, 2019, and one for loans made --

PARTICIPANT: I'm sorry. What?

MR. LACEY: There are two spots, and I'm not -- I don't have them right in front of me, so someone else feel free to jump in, where the Secretary is limited -- the Secretary's ability to three years following the resolution of the
And what I would do is I would adjust those to say that the Secretary is limited to bringing recovery action against the school to five years from the date that the student graduated, withdrew, etc., and then I would change on page three to where we currently have the statute of limitations we've been discussing to say, "That a borrower must file a borrower defense claim under paragraph (b)(1) of this section, you know, prior to determination of the loan," or however the smart way to say that is, "Prior to the, you know, end of the life of the loan."

I mean, these are obviously a package deal from my perspective. And then I think that you -- I assume the Department might want to include some language that would -- well, I shouldn't assume, but they may want to include some language that would limit what they're willing to pay back in that 15-year period, or post 5-year period where the borrower would still have a potential to bring a claim.

PARTICIPANT: Can you restate the
first part?

MR. LACEY: Yes. I don't know where those two spots are.

PARTICIPANT: One's in Issue Paper 2.

MR. LACEY: Are they both in Issue Paper 2?

PARTICIPANT: No, just 1.

MR. LACEY: Where's the first one?

PARTICIPANT: I don't know what other one you're talking about besides this.

MR. LACEY: It's in two places. Let me see.

PARTICIPANT: I only see it in --

PARTICIPANT: Caroline, can you --

Caroline, can you weigh in for us?

MS. HONG: Sure. I just have a thought since we have limited amounts of time. And when Annmarie stated that we have a hard stop at three, it's really because we do want to be able to take proposals back to talk about, and constructively bring them back to reach consensus, so maybe, especially, on the statute of limitation issue, because clearly language is going to be something
worked out, but just the concept, I think, about --

MR. LACEY: Okay. You --

MS. HONG: -- the time frame, maybe if we could get more --

MR. LACEY: Yes, sure.

MS. HONG: -- talk about the concept, then not worry about the language specifically yet.

PARTICIPANT: All right. William.

MR. HUBBARD: I'd like to go back to the reckless disregard section, and make a proposal to strike reckless noting that there's been some concerns about getting rid of that quote changes the standard. I fully disagree with that.

Since reckless is a modifier of disregard, I don't agree that it changes any standard, and I think if there's been disregard for the truth that's, that's sufficient reason. I'd be hard-pressed to see anyone defend disregarding the truth as being acceptable, but I would leave that to the group.

Additionally, I propose striking opportunity cost as it was previously erroneously
struck. I propose intentionally striking it.

PARTICIPANT: Juliana.

MS. FREDMAN: So, I have two proposals. One is about C where it talks about misrepresenting the transferability of credits, or the cost of obtaining nontransferable credits. One thing we saw a lot in some of the big college explosions was that the credits might be transferrable, but only to another for-profit, (inaudible) students could transfer, but only to ITT, so we would change that to the cost of obtaining credits that are not widely transferrable where the institution represented to the students that the credits would be widely transferrable, or something like that.

And I would propose an additional financial harm that is incurring a federal student loan to attend a school that the student would not have enrolled in, but for the school's misrepresentation to the student. That's a new one.

PARTICIPANT: Michael.

MS. FREDMAN: Okay, I can read it again.
PARTICIPANT: Like I said, could you restate your second --

MS. FREDMAN: So, that's a -- yes, the second one is a new factor, and it would be incurring a federal student loan for, to attend a school that the student would not have enrolled in, but for the, the school's misrepresentation to the student. You know, that's the essence. That may not be the exact wording, but --

PARTICIPANT: Thank you for being quick, Juliana, but --

MS. FREDMAN: I'm trying to be so fast. Okay.

Incurring a federal student loan to attend a school that the student would not have enrolled in, but for the misrepresentations by the school to the student. That one? Got it?

PARTICIPANT: By the school for the student?

MS. FREDMAN: To the student.

PARTICIPANT: To the student.

MS. FREDMAN: School to the student.

PARTICIPANT: We're good?
(No audible response.)

PARTICIPANT: Okay.

Michael.

MR. BOTTRILL: So, on the, on the statute of limitations thing just as you're thinking about the options, one of those options, I think, I heard was also if you're looking to align things, maybe part of that alignment is that they can bring the claim within the first five years for, for relief of both amounts paid and amounts unpaid, and then after five years, it would only apply to amounts unpaid.

Maybe that makes it more palatable to the taxpayers' angle, and then aligns with what Aaron had suggested in terms of the five years after that, the Secretary would not initiate an action, so there's some alignment amongst those things.

With regard to Valerie's concern, on page five about lower wages, I'm having a real struggle between A and B, and I understand why Abby asked for this, but I still think that you have to -- wage is lower than what, and I think that lots of folks go to school for lots of different
reasons, and that doesn't always mean to increase their earning potential. It could just be to increase their happiness quotient.

So -- so, borrowing language from A, move that, move that down as well into B, "Or wages that are lower than the borrower had prior, had prior to enrollment, and which represent a significant difference from the earnings listed in the borrower's program, blah, blah, blah, as is, as is in A above."

Aaron, did you get that?

(No audible response.)

MR. BOTTRILL: Okay. Thank you.

And I don't agree that you need the modifier, "Widely transferrable." I just -- Juliana, my experience with that was they were not limited the way that you characterized that they were in many cases, so -- and I say that having helped transition lots of students through that process. I understand you may have a different experience, but -- so.

PARTICIPANT: Chris.

MR. DELUCA: So, I have a proposal, but
then also, I must confess, I'm kind of confused with what's going on in the sense of this, because, so Will suggested that he wanted to strike "Opportunity costs and reckless," and now I get on here and I say, "I want to add opportunity costs and reckless," and then somebody else puts their comment, and says, "Well, I want to delete it," and somebody else puts their comment, and says, "I want to add it."

And, then, so, to what end at some point so eventually we stop, but is it just -- are we just on kind of like who stops at the end, and whoever was the last one to speak gets to get that, those words on the board, and then that's how we vote? Or, what's -- I'm not -- I'm confused.

MS. WEISMAN: Okay, then let me clarify.

PARTICIPANT: Sure.

MS. WEISMAN: If you want to clarify, you're welcome to.

PARTICIPANT: Maybe we can both clarify, Annmarie.

MS. WEISMAN: Okay.
PARTICIPANT: So, from our perspective, we are going to be taking our next consensus vote on this after the next round of edits provided by the Department, and the Department is hearing the preferences of the group at this time, not necessarily as a whole.

MS. WEISMAN: Okay, and so if I can add to that?

MR. DELUCA: Okay.

MS WEISMAN: My goal at this point would be that we're not introducing a lot of new text, and sometimes I hear people kind of going with what that last round of changes look like, and then other times I hear people inserting a lot of new.

The clock is ticking, and we're running out of time to add new things, so ideally, we'd be commenting on things that we've already discussed that we had changes from the last session to this session, that as with usual, we don't need five people to weigh in the same way on the same issue, that's it's really if you feel differently than you've already heard expressed to give us some
flavor of that, but, you know, we heard certain things.

The Department intends to keep reckless. The Department intends to keep the opportunity cost text in here. I mentioned that it was in advertently struck, and so we've added it back in, so that is our intent at this time.

We will bring you new paper. We'll have clean copies this afternoon for you in black and white, and then we'll have the shaded on the screen, and we'll go over it all, kind of one more time, and that's when we'll actually be voting, so this is just really to give us some last ditch information in terms of where people are, give us a chance to take language that is still kind of up in the air to a quick meeting that we have at three o'clock, which is why we have the hard stop for the break.

MR. DELUCA: So, then just so I'm clear on this, so then it's -- so, you know, we're commenting on what's here, you're going to take it back, then, you know, it doesn't matter if Will's the last person, or I'm last, or Aaron, or Michael.
MS. WEISMAN: The person who was last is insignificant, but what I will say at this point --

MR. DELUCA: That's fine. So --

MS. WEISMAN: -- is it's 1:50.

MR. DELUCA: That's not what they told me in church. They told in church, "Last will be first," but --

(Laughter.)

MS. WEISMAN: I haven't heard that, but what I will say is it's now 1:51, and we still have Issue Paper 2 that we've not touched, so I think we need to make sure we have any last comments on Issue Paper 1 that we have not already heard, and then move on.

PARTICIPANT: Okay. With that, I'm going to John, and then Abby.

PARTICIPANT: And I respect the hard work that's being done to reach a compromise on the statute of limitations, and it's not something that I've taken a stand on, but I would just note us taking explicit action to let the alleged wrongdoers off the hook while keeping the taxpayer
on it gives me some pause. I'm not saying necessarily I would, I would actively oppose it, but that, that gives me a good deal of pause.

PARTICIPANT: Abby.

MS. SHAFROTH: Going back to the, the list of examples of misrepresentations, I think that there should be something in here regarding job placement or career services. That's a common misrepresentation that I hear about from borrowers that their school represented that they would, that they had a terrific job placement service's office that would work with them to ensure that they find good placement, and then they show up, and there's one person in the basement who's unwilling to take appointments.

MS. WEISMAN: Can you tell me what page you're on?

MS. SHAFROTH: Yes. So, this is -- it would be, you know, adding something to the list that ends on page four in what the version I'm looking at, so, so misrepresentation examples. We have in here, misrepresentation regarding educational resources, but those are that are
necessary for completion of the student's educational program. This is a different type of resource that is relevant.

Go ahead.

PARTICIPANT: Well, Abby, I had made a note in the margin, because you had mentioned this before, and I didn't want to kind of confuse this, but under B where it says, "Actual employment rates," I think to Abby's point, it's --

MS. SHAFROTH: Or resources?

PARTICIPANT: -- or resources, or employment assistance resources, where you could just put it there, and that would get to your issue, because you had brought that up two sessions ago, so I think that --

MS. SHAFROTH: Thank you.

PARTICIPANT: -- that's where it goes is in B.

MS. SHAFROTH: Thank you for listening. I appreciate it.

I -- I just sort of put a question mark for myself by -- oh, okay, it looks like, it looks like maybe we fixed J.
And, then I don't have specific language for this, unfortunately, but, but just for the Department's consideration. Another, another issue that we commonly come across is, is a recruiter tells, tells the borrower that they have to make a decision to enroll sort of on the spot or within 24 hours.

Basically, they falsely represent that, that, that, that it's the last day to decide to enroll, or they're going to have to wait another year or something when that's not true, and it's just a way to put undue, undue pressure on the borrower to sign up before they've had a chance to really think things over. That's a really important one, so something regarding a representation regarding the urgency of enrollment or urgency of decision-making regarding enrollment, or taking out loans that is not, that is not supported by the circumstances.

And if we could scroll then to the examples of financial harm? I'm looking at the one regarding borrower's inability to secure employment, which is D on my list, but I think it's
getting renumbered. I would -- I would strike the
language, "For which the program expressly
guaranteed employment."

I think the borrower suffered harm even
if the institution didn't expressly guarantee
employment, but, for example, represented that the,
that it had 90 percent job placement rate. The
borrower doesn't, doesn't get a job, they've still
suffered harm as a result of that, so you could
just say, "The borrower's inability to secure
employment in the field of study, or in the field
of study for which the program was designed to
prepare students."

PARTICIPANT: Sorry. Could you say
that?

MS. SHAFROTH: Yes. "For which the
program was designed to prepare students," or some
-- that can be wordsmithed I'm sure, but that gets,
gets at the idea.

PARTICIPANT: Just a question on that
to clarify to make sure I understand what you're
saying. So, in other words, if your placement rate
was 80 percent, you said it was 80 percent, the
student came, everything turned out to be true, and then the student graduated and didn't get a job?

MS. SHAFROTH: No, because this is, this is not an example of misrepresentation. This is an example of financial harm, so if the institution made a misrepresentation, so the institution say falsely represented their job placement rate, said it was 80 percent, but really, it was 40 percent, --

PARTICIPANT: Right.

MS. SHAFROTH: -- the student, the student completes the program, and doesn't get a job, then they would -- they suffered harm as a result you would say.

PARTICIPANT: Okay. I mean, I understand. I thought that was covered, but maybe not.

PARTICIPANT: Okay.

MS. SHAFROTH: That's all for now.

PARTICIPANT: All right.

Annmarie.

MS. WEISMAN: So, my understanding is
that these are all new items that we’re introducing, and I think our goal here was that we were going to look at language that changed from the last session to this one, especially given the late hour, we really want to cover Issue Paper 2.

PARTICIPANT: Thank you.

Kelli.

MS. HUDSON PERRY: On the first page under (a)(1), we added, "As it relates to the making of a Direct Loan or the making of a loan that was repaid by a consolidated loan." That's not continued throughout this document, and I don't know if it should be, so when you get to the bottom of page two where under (b)(1), it talks about the borrower's obligation to repay a Direct Loan, should that say, "A Direct Loan or making of a loan."? Should that be carried out throughout the entire document? Or, why did we add it in the first part and not the rest?

MS. WEISMAN: So, the thinking was that, first of all, just to make it more streamlined, that we included it here, and kind of gave the overall tone of it, and then where we
introduced the information about the consolidation loan that would cover it, but we can certainly look at that one more time.

MS. HUDSON PERRY: Yes, maybe it's just in the introduction, you put in parentheses something that you're going to refer to the combination throughout the entire document.

PARTICIPANT: Chris, and then Aaron.

MR. DELUCA: So, I want to make a comment on the language for the statute of limitations, and getting back to -- I mean, there's been a lot of back-and-forth on it, but just -- and I don't think this has been said today, I know I said it earlier, or earlier in the week, that I think that the language that was, as originally written, "That the borrower must file a borrower defense claim under paragraph (b)(1) of this section within three years of the date the borrower discovered, or reasonably should have discovered, the misrepresentation."

It's for all the reasons why we have statute of limitations that's important, but I also think that by having the qualifier where the, where
the student or the borrower discovered, or reasonably should have discovered, gives an out, and I don't mean an out, but an option I should say, for a student who for good cause did not know that he or she had a claim, and so it's not a hard stop, you know, under special circumstances or certain circumstances for a student borrower to bring a claim, so we've got the benefit for most cases of having a statute of limitations, a recognition for those times where there are special circumstances where, you know, where it would not be justice to deny the student the claim, or the opportunity to at least bring the claim.

We don't have the issue that John raised there where, you know, we're creating a bifurcated system where the school might not, you know, the taxpayer might be on the hook for it, because of, you know, some limitation that the Secretary has of the time limit that she can collect, so I just want to -- again, as you're considering, consider what you had in here originally.

PARTICIPANT: Aaron.

MR. LACEY: Yes, a couple of comments.
I noticed -- Abby, you introduced a concept about a false urgency, and I will start by saying, I have no problem with the notion that school should not be permitted to misrepresent the timing or availability of enrollment.

I mean, if you tell someone, "We've only got three slots left or you have to enroll by next week or you can't get a slot," and that's a misrepresentation, it should be -- I agree.

My concern is the language that was put up there was high pressure sales tactics, which is, I think, an unenforceable concept. I mean, I don't -- I have no -- that's way too broad, so, so --

(Off mic comments.)

MR. LACEY: Okay. Thank you, because I -- if we can get something concrete along those lines, I get it if it's measurable, but I would, I would be opposed to a vague statement like that.

The other question I had was you had added the financial harm, "The borrower's inability to secure employment." I mean, I have in D already under financial harm -- and maybe the numbering
has been all changed up since what I had this morning. Let's see.

I mean, I have that standard almost already there. Let's see. Where's the financial harm section? What do you have for D under financial harm? Oh, I can't look at that while it's scrolling. A -- let's see. Is that the new list? Okay, well, that's not -- yes, it's not what I have in front of me, so --

PARTICIPANT: I know it's really hard to (simultaneously speaking) --

MR. LACEY: Well, the --

PARTICIPANT: -- what we're talking about.

MR. LACEY: Yes, so the prior standard that I have in my draft is, "The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment." I would be comfortable with that.

It's a higher standard in my view for financial harm, because this doesn't have any component of representation on the part of the institution.

PARTICIPANT: Okay.
MS. WEISMAN: So, are we ready to move on to Issue Paper 2?

PARTICIPANT: We are.

MS. SHAFFROTH: I wanted to respond briefly too. If we scroll up a little bit, Michael had made a suggestion, I think, regarding concern that, you know, a borrower might choose a lower earning occupation, and that shouldn't count as financial harm.

My understanding is that we wouldn't need to put the language in the list there, because then -- because the, the paragraph defining financial harm says it has to be as a consequence of the misrepresentation, so if the student just chooses that they want to become a, you know, a public servant, and they're going to earn less money, that's not a -- they're not earning less as a consequence of the misrepresentation, so I don't -- so I would, I would oppose the additional language (simultaneous speaking) the list.

PARTICIPANT: Okay. Thank you.

Moving on to Issue Paper No. 2.

MS. WEISMAN: So, as we begin with
Issue Paper No. 2, I'd like to bring you to page seven for some amended text that occurred after your copies were made.

So, in section A on page seven, where it says, "The borrower's financial harm as related to the cost of attendance to attend the school," on page seven --

PARTICIPANT: Midway down page seven?

MS. WEISMAN: Under -- under numeral seven relief section if that helps you to follow it.

A currently reads, "The borrower's financial harm as related to the cost of attendance to attend the school." A would stand as is.

B would be replaced by text that says, "The benefits to the borrower from the educational services provided by the school." We would then strike what says, "The value of the education the borrower received."

And the reason behind that is because the concern was that it would be very difficult to value the borrower's education. We had some significant discussion around that.
PARTICIPANT: Annmarie, can you just -- what was captured was, "The benefits to the borrower from the educational provided by the school." I think there's another word there.

MS. WEISMAN: Educational services provided by the school?

PARTICIPANT: Okay. Educational services, Aaron. Thank you.

MS. WEISMAN: So, it then reads A and B with the new B, and we strike the prior B, C, and D. Again, with the feedback we received, the concern was that it was very difficult to value these items, and that by just saying, "The value of," didn't really lead us anywhere.

I'll read it one more time. So, A is, "The borrower's financial harm as related to the cost of attendance to attend the school," and then the new B is, "The benefits to the borrower from the educational services provided by the school."

So, just as a reminder, these become the factors that the secretary would consider. And, again, that's not to say that there might not be other factors. We're saying they include, so
we're striking the prior B, C, and D.

PARTICIPANT: Abby, is your tent still up or do you have something for Issue Paper 2?

(No audible response.)

PARTICIPANT: Thank you.

All right. Any additional proposals for the department to consider for Issue Paper 2?

Linda.

MS. RAWLES: I have two questions first just for clarification, and then one suggested change. First of all, on the top of page seven, "The secretary may reopen a claim when the evidence becomes available to support a previously denied claim." I may have missed this along the way, so I'll apologize in advance, but is there a limit on that? Am I missing something, or is that just open-ended forever?

MS. WEISMAN: That became an open-ended item. If we receive significant evidence later that gave merit to claims that we had previously denied, there was a request to allow for the secretary to reopen a claim.

MS. RAWLES: Would that be forever or
within this original statute of limitations or forever, forever?

MS. WEISMAN: So, the statute of limitations relates to the borrower's ability to bring a claim. This would be the secretary's ability to revisit a previously initiated claim, so the borrower initiates the claim, we deny it, because there's no evidence, for example, and then later, the department receives significant evidence that shows something occurred.

I believe it was Joseline who had asked that we have the ability to go back in and reopen that, so this would not be the borrower reapplying. It would be the secretary having the ability to go back through those other claims.

MS. RAWLES: Okay. Then, I would like to propose that this is limited in some way. Once we decide the statute of limitations' issue, perhaps it can be limited by the statute of limitations, but I'll come back with some language on that, or one of us can.

PARTICIPANT: Could you explain why?

MS. RAWLES: Why? Because I don't
think that the secretary should be able to reopen a claim 20 years later.

    MS. WEISMAN: So, the school would still have the limitation on when we would recover under the language that we have right now, so we would not be saying that the ability to go after the school for recovery is unlimited.

    MS. RAWLES: Okay. All right. Let me think about that one. That might change my mind, but --

    PARTICIPANT: So, Annmarie, just a question on that then, because in the recovery language with the limitation, it says, "Once a final determination has been made," but if you've reopened the claim, there'll be a new date for a final determination that you'll have three years from that time to come back after the school, because there'll be a new final determination, so I think that's where the question is coming in, because the limitation on the school is from the final determination decision, not on whether the claim was the original one or the reopened one.

    MS. RAWLES: Thank you.
PARTICIPANT: Maybe the way to resolve that is to just, in those provisions that, that place the statute of limitations on recovery actions to tie it to the initial adjudication of the claim, or the --

MS. WEISMAN: Perhaps if we cited this paragraph --

PARTICIPANT: Something like that.

MS. WEISMAN: -- where we talk about the decision that might get us there, but we'll take that back as well.

MS. RAWLES: Yes, if you take that back, then we could consider that when they come back, so --

MS. WEISMAN: There was one other item for this Issue Paper that we had mentioned before the break, but I think is important to actually bring to your attention again. It's a little difficult to read.

PARTICIPANT: There's been requests to remove the blue, change the color of the blue, so that --

PARTICIPANT: Just for reading.
MS. WEISMAN: So, we can -- we can try to do something with that shading, but the idea of the shading right now, and I know I'm struggling to read it as well, but it's really to show that the text in blue is to give an option where it's kind of like pick one of the two sections, so we want to make sure that there's still -- maybe we can italicize them or something for the purpose of reading them, but the idea, as I mentioned before, the break, was to give the option of, if you're going to do the ADR process, that we wouldn't have a reconsideration.

MS. HONG: So, this is being presented as an either/or deal, so the yellow language or the blue language.

PARTICIPANT: Okay.

PARTICIPANT: Could we just -- understanding the either/or situation, could we just maybe make the blue just something that's higher contrast than the --

MS. HONG: Wait. I might have something. Give me one second.

PARTICIPANT: Should I pause?
(Laughter.)

MS. HONG: Sorry. So, Mike, this is an attempt -- we did this in an attempt to be more clear, but clearly, it's caused less clearness, if that's a thing, so -- so generally from the department's -- the department's intent here with the rainbow colors is to say that last, yesterday, there was a lot of discussion about exchange of evidence between the school and the borrower with the 45, 30, and 15-day periods, and you'll see that captured here in the language.

However, as was pointed out by, I believe, Abby yesterday, with reconsideration, we had conditioned this upon newly discovered evidence, and that's from the department's perspective. That's similar to what we had hoped would sort of allow for an exchange of evidence after -- if it was determined necessary or desired from the parties after a decision was made. So from our perspective, from an, for administrability, and the burden on the Department to move through these claims expeditiously, hopefully, for the borrower and for the school to get resolution.
Our thought is that we can keep the time frames, but then given that it gives multiple opportunities for the borrower and the school to exchange information in response to each other, then if we do that, then that decision is final.

Otherwise, we would support going back to our original language where we have adjudication without the time frame listed here, but then have a reconsideration process.

That's probably as clear as mud, but, but that, that's, that's our intent.

PARTICIPANT: Is the and, not the or, correct?

MS. HONG: And something else that we inserted that was not there yesterday in response to what we heard around the table, but keeping in mind our issues with being able to commit resources at this time, we did include a provision. I don't know exactly where it is, but I will tell you that there is a provision in allowing for a voluntary resolution process.

PARTICIPANT: (Inaudible.)

MS. HONG: Page five for voluntary
resolution process, so, that, that's separate from what I was just talking about, about from our perspective that we'd like to hear discussion about whether people prefer a reconsideration process versus a more fulsome evidentiary exchange in the initial process but have that be final, so we were thinking ADR, and then either the 30 -- no, 45, 30, 15 time frame evidentiary process, the final decision resulting from that, or a AD -- sorry, a dispute resolution process, then, then going to a 45-day process by which the borrower to -- by which the school submits a response to the borrower's claim, a decision from that, but then consideration, reconsideration.

PARTICIPANT: So, are there thoughts on this?

Okay. Ashley Harrington.

MS. HARRINGTON: So, we would strike all the language about the voluntary resolution process. The fact that there's no department involvement, we think it's right for abuse process for students. This -- and it's basically what arbitration is anyway, so we would strike all
language in reference to that, and we would want it that the process should be within the department and governed by the department and not going outside of that process, and we like the time frames as listed.

PARTICIPANT: Linda, I don't believe you were finished.

MS. RAWLES: I had one -- I have two more, but I would have to wait (inaudible).

PARTICIPANT: Okay.

PARTICIPANT: Other thoughts on this section?

Abby, and then Kelli, do you also?

PARTICIPANT: Wait, hang on. So, this was on the voluntary mediation?

PARTICIPANT: (Inaudible.)

PARTICIPANT: Okay. I just want to get back to Linda if she has other --

PARTICIPANT: Why don't we finish --

PARTICIPANT: Yes. Why don't we finish with Linda, and then, and then we're going to pick up with Abby?

MS. RAWLES: All right. One more
quick question for the department, and then my proposal. On page eight, number ten, I certainly appreciate including a provisionally certified. If I had time to research this myself, I would, but when you say, "Provisionally certified," are you including month-to-month, temporary? Would those also be provisional?

MS. WEISMAN: Yes, if you're on month-to-month, you're on provisional.

MS. RAWLES: Okay. Thanks for that. Makes me satisfied on that.

The only change I had was on ten, recovery from the school. We had talked about putting the affirmative defenses back in. Unless I'm -- I call them affirmative defense. Unless I'm missing them, those did not come back in, I want to propose that again. Those were in Issue Paper 1 on page 6, 4, romanette (i) through (iv).

I know the department says that if we go with an intent standard, we don't need those affirmative defenses, but I'm not -- you know, we can agree here that the intent, we'd be looking at intent to the school, and not a rogue employee,
but then when, you know, a few years down the line
where we're going through this that may not hold,
and so I think we have to have the protections for
the schools of making sure that if they make every
good faith effort to correct, etc., that that would
be a bit of a safe harbor, so, again, on Issue Paper
6, 4, romanette (i) through (iv) would go in under
item number 10.

PARTICIPANT: Okay. Abby.

MS. SHAFROTH: I would -- I would join
Ashley in striking the voluntary resolution process
if the department isn't going to be involved in
a mediation role. I think -- I think we've been
-- our position has been that we're open to such
a process, but the department must be involved in
a mediation role to protect the interest of
unrepresented students, so the department should
correct me if I'm, if I'm misunderstanding the
proposal, but it looks like they're saying they
would not, not be involved.

The department asked for feedback on
whether we prefer a reconsideration process versus
a sort of back-and-forth exchange of information
prior to the decision. I am, you know, I'm open
to the, to the reconsideration process.

   I think there is benefit to the borrower
of seeing sort of what the secretary thinks is,
or the decision-maker the department thinks is
relevant, but, but if we do do the reconsideration
process instead of the back-and-forth prior to
decision, I would want to change the language about
requiring the need for newly discovered, newly
discovered evidence, and it has to be just
additional evidence that the, you know, the
borrower can say they didn't understand was
relevant or wasn't previously available prior to
the decision to get that concern.

   PARTICIPANT: To clarify, so more like
response of evidence?

   MS. SHAFROTH: Yes. Yes. Yes,
something along those lines.

   And just to keep, keep ticking things
off as quickly as I can in this lighting round,
should I discuss something somewhere else?

   (No audible response.)

   MS. SHAFROTH: Okay. On page four,
this is about the minimum threshold for consideration of a borrower defense claim. It looks like the department has changed the language to say that, that the borrower's application will only meet the minimum threshold if the department has evidence that's supports the borrower defense claim.

I want to make sure that that -- get clarification from the department whether evidence would be inclusive of the, the borrower's statement. If the borrower's statement testimony under penalty of perjury would be sufficient evidence to get past this threshold, because if not, I would have significant concerns with that since at this point the department hasn't even gathered any information from the school that could potentially support the borrower's claim.

MS. WEISMAN: So, we've said that the evidence would -- that the application -- what we would need to meet the standard to get through this is that you would have an application plus some other evidence, so if we're going to say application plus, then any evidence that we have in our
possession at that time would be considered, as well as anything that the borrower submits.

PARTICIPANT: Okay. Aaron, Kelli, and then Chris.

MR. LACEY: So, I, you know, I've said previously, I think the -- I call it "Voluntary claim resolution," is really an important concept, and I would like to note for the record that the proposal we provided for the department included engagement.

I mean, we understood that that was a critical point, and we think that's very important too. This seems to be a concern about cost and resources. I get that, but I continue to believe that this would be an incredibly important concept, and, for all parties, and I would have liked to have seen something much closer to the proposal that we provided with respect.

I also don't understand when you're talking about either/or. I mean, if we went with voluntary resolution, and then we included a voluntary claim resolution process, and then the parties declined, does that mean they get neither,
right? So, let's say we don't include a reconsideration, and you include a voluntary claim resolution, and one of the parties says, "No, we don't want to do it," --

MS. WEISMAN: So, the choice was between the idea of the back-and-forth with evidence on the front end, and the idea of a reconsideration process. The concern that the department has is that those time frames, the 45, 30, 15, all of that, when you add up the number of days that we would have an application, plus putting it on hold for a period of time while we potentially considered an ADR process, makes for a very long process, and then if you're going to have reconsideration as well on the back end, that just seems like a lot of time to process one application to leave it potentially open, so the feeling was we would have the ADR process available -- again, our plan is without department involvement, but we would have that available, but the other two are what you're choosing between. You're choosing between the idea of all that time frame up-front versus reconsideration on the back
MR. LACEY: Okay. I apologize. I misunderstood. Well, I would certainly prefer to have the built-in time frames up-front. I think that's very important leading up to the thinking you'd exchange the information before the decision is made.

The other -- I actually have the same note that Abby made from a slightly different perspective, but on page four, in C, regarding the department's note, I was going to suggest the clarification that the department has evidence in addition to the application that supports the borrower defense claim.

PARTICIPANT: Kelli.

MS. HUDSON PERRY: I actually like the way that this is worded with this ADR process, and then the ability to submit the evidence. The one thing that I would say, and I don't know if maybe this will help some of the students, because I can understand student group is where you're coming from is in B, and there's actually a lot of Bs at the top of this page, on page five, it says, "The
secretary will place the borrower's claim application in advance for 60 days or until the secretary is informed by both the borrower and the school that the resolution process has concluded."

I would propose changing "and" to "or," because if the student says, "No, I don't want to do this," the school shouldn't have to agree with that. It should just be simply, "No, I don't want to do this."

And I can understand the concern for the number of days, so maybe we shrink this advance to 30 days as opposed to 60, because I think if you're offering this opportunity, which is in essence a letter that says, "You have the opportunity to do this."

If the student gets the letter and say, "No, I don't want to do this," they're going to know that immediately, so maybe it's an advance for 30 days or until notification has been received from the student or the school.

MS. WEISMAN: So, we actually made a change to this that did not get reflected in the paper that I think might clarify some of that.
First of all, I thought I had made these edits before, but maybe I missed that.

We have borrowers claim application, and so we're deleting the word "claim," because otherwise it's redundant, but also at the end, we had whichever is less. The idea that we would put the application in advance for 60 days or until we get word back that the resolution process is over, but whichever is left, less, so it gives them basically up to 60 days.

Does that help with what you were suggesting?

MS. HUDSON PERRY: Yes. I still think I would change it to 30, and I definitely would make it an "or," because it shouldn't -- both of them shouldn't have to agree. It should be -- if somebody says they don't want to do it, they shouldn't have to do it.

PARTICIPANT: Chris, and then William.

MR. DELUCA: So, again, with the, with the voluntary dispute resolution process, I mean, I agree with Abby, and I agree with, with Ashley.

The department has to be involved in some way with
this, otherwise, it just -- it would never work.

    My proposal from a language standpoint is, and I said this earlier on too, is just to have a placeholder for the concept, and recognize that the secretary is going to -- they need to develop a process here that works with the resources, you know, at the department, so my suggestion for A is simply under B, romanette (ii)(a), "The Secretary will develop procedures to govern the VDR process, for the voluntary dispute resolution process."

    And let's just keep just the secretary's discretion to develop internal processes for how this is going to work, but the secretary -- it's -- realistically, it's not going to work, and I get that.

    The other thing I think is important -- again, and this is part of the whole concept of this, the idea that this is a process that is going to streamline, and, hopefully, reduce resources is that under C, under the VDR process, we've got, "If the borrower and the school resolve the borrower defense claim through the resolution
process, the borrower waives any right to further pursue the borrower defense claim."

I think we need to have an "and," and the school waives any right to contest reimbursement to the secretary. And the whole idea is that this is the way to resolve it, so if the parties have a resolution, then the borrower says, "I'm good," school says, "I'm good," and, you know, school shouldn't have an opportunity to then, you know, challenge the secretary on a, on a collection action. The whole idea is that this resolves it.

PARTICIPANT: Caroline, are you going to --

MS. HONG: Just to clarify, Chris. Our thought here was that if a claim is resolved, there just wouldn't be any liability to the school?

MS. DELUCA: Well, no. If the claim -- well, I guess my thought on this is the borrower defense claim, so if the student has got a claim that says, you know, "I took out $15,000 in loans," and in -- so the parties get together and say, "You know what, we agree that, you know, it's not 15,000 worth of harm, it's 10,000 worth of harm," but the
harm is that students got a $15,000 loan.

I mean, procedurally, isn't it going to be that the parties would agree that okay the student is going to accept reducing their loan from 15 to -- or from 15 to 5, and with that reduction, the school is going to have to pony up the 10, so -- but that whole process is that the school, the school -- we've got a bifurcated system right now where there's -- where you're going after -- it's the student decision first, and then the secretary has the option, which she's going to exercise to go after the school to recover it, so all I'm saying is that if there's a resolution that -- I mean, that gets into the whole thing of why there needs to be just a placeholder for how this process works.

I mean, we're talking about NSLDS, we're talking about loans, we're talking about balances. I mean, there's details that we never had the time to get into over here.

The idea is just that rather than going through a process where you do this big investigation and going back-and-forth and all this to -- and that part of that too is, you know, you've
got a determination of how much -- you know, you got partial relief too, so you've got the whole damages' phase of it too, right, if you want to put it in those terms.

This is just an idea of let's, you know, let's have an idea here and allow there to be a process where we can streamline that all, the parties, student and the borrower agree with the Department facilitating in some manner so that we get to a number and say, "Okay, so the discharge is going to be ten, and then what are the repercussions for that?"

PARTICIPANT: Thank you.

Okay. William.

MR. HUBBARD: Thanks, Moira.

Well, regarding six, the affirmative defense so to speak, I would propose maintaining this text as stricken, and applaud the department's thorough and well-reasoned interpretation of intent as it applies to the text being removed.

Rogue employees, this continued rogue employees' argument is a total strawman. Harm is still had in this case, and the avoidance of
accountability in this case is simply stunning. Respectfully, I would strongly encourage school's concern about rogue employees to be more careful about who they hire.

PARTICIPANT: Joseline.

MS. GARCIA: Thank you. I'll make this brief. So, on page five, just echoing some of the comments that people made. I appreciate the efforts that Kelli and Chris have made. However, I'm going to have to back up Ashley.

Without the department's involvement, I don't think I can support that language.

And, Chris, again, I appreciate what you were saying. However, I don't know what that process is yet that you were talking about, so I don't know -- I don't feel comfortable voting for it.

And, then if we go to page seven, part four, I wanted to appreciate the department for including the language that I had recommended yesterday, "The secretary may reopen a claim when evidence..." I would suggest changing the word "may" to "shall." I think that it should be
automatic that if you find new evidence later in the future, you should automatically open up these borrower defense claims that could be impacted by this new evidence that you found.

PARTICIPANT: Valerie.

MS. SHARP: Two questions. Number one, would it be possible to -- it's been mentioned that the language was different that was proposed on the voluntary dispute resolution than what we see. Would it be possible just to see what they submitted if that would allay any of the concerns?

MS. WEISMAN: We're going to see if we can email it out to the negotiators.

MS. SHARP: My other question was, so we have the either/or now on the up-front claims process or the reconsideration process, and when we started our discussion, there was a different time line, but it did afford for the exchange of information up-front and a reconsideration process, so does the committee have the option -- just for sake of understanding if, if we wanted to make this, do we now have to pick either the up-front exchange or the reconsideration or could
we choose as a committee to go back to the original language proposed by the department that allowed for both of those processes to occur on a different time line?

Because the original wording from the department had the 45 days, I think, in the 45 days, and then had a reconsideration process, and then the committee kind of talked more about, "Let's change that up," so we changed your original wording, which did allow for both pieces of that process to occur.

MS. WEISMAN: So, it had, it had some of both, but it didn't have such a long back-and-forth on the front end.

MS. SHARP: Exactly. So, is that --

MS. WEISMAN: And the concern was that that just got too unworkable.

MS. SHARP: So, is there an option to go back where you have some on the front and some on the back versus having to pick front or back?

MS. WEISMAN: The offer right now on the table is that we would do one or the other.

MS. SHARP: One or the other, okay.
So, we don't have the option to vote to go back?

(No audible response.)


MS. HONG: I'm sorry. So, the offer is to use the original language prior to our discussion yesterday, or to go with the discussion language yesterday without reconsideration, and I've been told that the language that Chris came up with with Aaron about the -- I'm sorry, my mind is fritzing, but about the mediation process was emailed to everyone, and is being resent.

PARTICIPANT: Ashley Harrington.

MS. HARRINGTON: Appreciate all of the suggestions for improving the voluntary process. None of those suggestions really alleviate my concerns just to put that out there. And while seeing the language would be helpful, it's not helpful in the, in the space where the department is telling us they're not going to be involved in the process, and they won't commit to it, and so if department is not committing to be a part of the process, we would not, we would prefer not have any of that language in here, and have that not
be an option if there's no commitment from the
department to manage it in some way.

    But I also wanted to go back to, for,
to the minimum threshold for consideration, C that
Abby was talking about. Yesterday, it felt like,
when we asked about this, you were saying the
minimum threshold really was alleging a claim that
reads as a misrepresentation as based on the
standard that was articulated earlier.

    Now, it seems you were saying that
alleging a claim that would fall under this and
alleging it correctly and showing that this, one
of these things that has occurred, whatever, was
not enough. There has to be some other evidence,
so this creates another bar to entry for a claimant.

    If you don't have -- if they don't have
any evidence, and you don't have any evidence yet
for them to even get their claim looked at, and
so I'm concerned, because -- and, also, that just,
that does not jive of what she said yesterday from
my understanding.

    PARTICIPANT: Caroline.

    MS. HONG: So, just to respond to that.
You brought up a really great point yesterday, Ashley, and so we took it back and thought of it, and really part of this minimum threshold consideration is, you know, as everyone has repeatedly reminded us, inside this process and outside this process, we have a large volume of claims that we need to work with.

We don't anticipate that going down, doing down into the future if everyone does their job of informing people about this, so our thought was that things that we're seeing in the initial intake of a claim really not -- I mean, it sounds trivial, but it really is a lot of claim where we just don't see the filling out completely of an application, but also that, you know, they just don't allege misrepresentation at all, and that, you know, based upon what we have -- and, admittedly, it's because right now a lot of the claims that we're looking at we have a lot of claims that pertain to the same situation, such as the Corinthian claims.

We do have evidence in our possession that we're using to corroborate the claims, and
we anticipate that situation continuing into the future for other claims, so our thought is that here, you know, borrowers can reapply, but then we will in the initial cut just for streamlining the process and making sure that all borrowers who submit a claim will not, you know, will be able to get considered, that there has to be something in addition to the application. It can come from our records or not.

And we do understand that we said that we set forth here that we're consider our records. The borrower is not going to know what's in our records, so as part of that, you know, taking note Joseline's requests that we have that the secretary may reopen a claim, that was part of the reason why we also included a section that we were referencing where the secretary can reopen a claim when evidence becomes available, or if when, when the evidence becomes available to support a previously denied claim, and that's to sort of accommodate that situation where we later on find that there is a number of claims that do support a claim under the intentional, intentional misrepresentation or
reckless disregard standard that, that point, then
we can, we can return to that.

MS. HARRINGTON: So, I understand what
you're saying about the issue with incomplete
applications. For us, C does not address that
concern. You can still get an incomplete
application.

I think you, you say, "A fully complete
-- alleges -- is a fully complete application that
alleges a misrepresentation that would state a
claim under the standard." Having it based on
other evidence that the borrower doesn't even know
that they need yet seems a really high bar, as I
said before, but also it makes, it makes the time
period even longer for the borrower. It doesn't
show concern for the borrower and the barrier to
enter that the borrower has.

So, if you send them back a letter when
they send a claim in that was fully complete, and
you send them back a letter saying that you're not
even going to consider their claim, why would they
want to continue to engage in a process that they're
already distress, they already are not getting
access to when they did the part of completing the form, and now they just want you to consider it and let them submit evidence or find evidence.

It just seems like the problem that you are saying that you are trying to address is not being addressed by C, and it's also putting another burden on a borrower in a process that is already extremely burdensome given the high standard that you've articulated already.

PARTICIPANT: Okay. Abby.

MS. SHAFROTH: I don't want to belabor this point, but I agree with Ashley. This is a huge, huge problem for borrowers. If -- if a borrower statement under penalty of perjury explains in detail how they were defrauded by a school, the ways that it has harmed them, and satisfies, you know, like their testimony under penalty of perjury manages to meet, meet this high standard that the department is proposing that they would still get their application thrown back at them and told that the department won't even consider their claim and won't even go to the school to ask, to look for any evidence, that's -- that's
deeply concerning to me.

I think it's going to hurt a lot of borrowers that are going to, you know, stop, stop having any faith in the process or even bothering to apply, so doing it, doing it in the name of speeding the application processing for borrowers, I don't, I don't think that is in the interest of borrowers.

Just as a quick example, you know, if a borrower's claim is that the school falsely advertised job placement rates, but that borrower hasn't kept all of their records, they don't have the paper documentation showing, you know, that some school said 90 percent job placement rates, but they remember it, and they applied to the department and say that, you know, "I remember that this, that the school's recruiting materials said 90 percent job placement rates, but I didn't keep those papers, I threw them out after I enrolled."

To say the department wouldn't even go to the school then and say, "I would like to see, you know, your recruiting materials from two years
ago, "I don't know why we would want that. I mean, why -- that really stacks the deck against borrowers.

MS. WEISMAN: So, just to clarify. The point here was to weed out applications and reduce burden of asking for information when what we had was very vague. So, for example, a borrower who writes in and says, "My school lied to me, my school stinks," there's nothing -- there's not a there there, so they're not alleging anything, and the thought was rather than go back to the school and have everything, you know, in process, we could, we could stop that one right there and say, "There's nothing here."

MS. SHAFROTH: Can I respond really quickly? So, Annmarie, what you're describing to me sounds like a sort of dismissal for failure to state a claim standard that if the, that if the borrower's testimony under penalty of perjury by itself is insufficient to set forth the elements of the claim, then you would say, "No, sorry, you don't have a claim here."

That's -- I'm -- you know, I can -- I
can understand that. I can appreciate where you're coming from on that.

What I can't understand is if their testimony is sufficient to, to state a claim to show that they meet those elements, but they just don't have additional evidence at this time beyond their testimony, why, why we would throw out their claim off the bat rather than having the department do some, do some inquiry and check whether the school has any of that evidence that could corroborate the claim.

PARTICIPANT: Juliana, and then Mike Busada.

MS. FREDMAN: So, switching gears a little bit back to the time lines. I kind of -- maybe I misunderstood this, but I thought the either/or provision was partly because of the insertion of the ADR process, which could then extend the time even longer.

And I wondering that if, if the department is not going to be involved in ADR and it's a non-runner for many people, and that part is stricken, you know, even the 45, 30, 15, that's
90 days plus some time for determination, I mean, honestly, 90 to 120 days is typical slash short for determinations on closed school, TPD, false -- I mean, that's pretty standard, and those decisions all do have a period that you can have reconsideration based on evidence that wasn't considered, so I would ask the department to reconsider having both an exchange of information and a reconsideration period if there's no ADR process. I don't think it's that long given other, other federal discharges of student loans in my experience.

PARTICIPANT: Mike Busada.

MR. BUSADA: Not to belabor the issue, but I just -- I want to say that -- and just want to make sure it's very, very, very clear on the record, and I note there's not resources, there's not resources, but out of everything we've done in the last three months, again, this is one issue, one concept that, you know, everybody thought would be significantly helpful to the overall process, and so what I would ask, one, I'd ask that we, that we do keep it in, and the department is involved,
but at the very least, I would just ask that we
don't, we don't preclude that ability.

I think that it would be helpful if the
department would have, take the opportunity, if
possible, to look into it and do a full evaluation,
because like Aaron, I really think that when you're
talking about the process against the original,
the first discharge process, and then the
additional process that comes with going after the
school for reclaiming, and you're talking about
being able to get rid of all of that and fix all
of that through a mediation process, I have to think
that that would save resources, so I just ask again
just for the record, and also since we're on a public
forum, you know, impress upon Congress for funding
to make sure that we have these type of programs.

PARTICIPANT: Aaron.

MR. LACEY: I was just going to -- Abby,
thinking through, you know, the concerns with C
and the department, what the department had to say.
I mean, just from a practical standpoint, I was
-- you know, it occurred to me that there could
be value to the extent it was left this way, you
know. C reads, "The department has supporting evidence that supports the borrower's defense claim."

So, if a borrower supplies a claim and just has their application, but no supporting evidence, in the process of certifying the claim, the department would still have to do a review of its own records and any other information it had to determine whether or not this criterion was satisfied, in which case, there is value -- I would think there could be value to the, to the borrower, or to whoever may be working with the borrower, because it prompts the department to tell you whether or not they have in their position possession, what I'll call corroborating, or other evidence that would support the claim.

And the other thing I would point out, I understand it's a two-step, but because there is no barrier to entry meaning, I mean, this is a matter of filling out an application, if the department didn't certify the claim and it came back, one, now you have the additional information that they don't have evidence that supports that
claim, which is useful for the borrower to have as a data point, but also, I mean, correct me if I'm wrong, but the dismissal is without prejudice, so the borrower, knowing that -- I mean, it's not like they can never bring the claim again. The next day, they could just resubmit the application in theory, so I'm just sort of thinking about the practical stakes here.

I mean, if they're sophisticated enough to submit the application the first time, upon receiving that feedback, it would be very easy for them to resupply it, and now they would know that the department at least has taken the view that it doesn't have any supporting evidence.

I just don't know that it's -- I understand your point, but as a practical matter, I think it could be a useful way to prompt feedback from the department, and I don't know that it creates a huge issue for the student, because they could literally 24 hours later just submit the same application again presumably over and over and over and over again.

PARTICIPANT: Ashley Harrington.
MS. HARRINGTON: So, I appreciate that to you this sounds reasonable, right, like, because we can sit here from nine to five and hash this out. We have time. Our jobs allow us to do this. Our family allows us to do this.

We were talking about most of the time low income borrowers with very little time who have already been drug around by the system struggling, and now they've taken the time, they've correctly completed the application, they've alleged a claim that meets this high intent standard and bar that is articulated earlier, and then they are told, "But this is not enough."

What you're saying about the department saying, "We do have this evidence," they should do that regardless if they get a claim that states a claim. They should -- they should say, "Okay, we have some evidence, that's fine," but to deny a claim that is properly alleged under penalty of perjury that meets all this other stuff just because they didn't provide anything else, and department maybe doesn't have anything yet, that's a non-starter.
PARTICIPANT: So, the time is 2:48.

Are there any other comments, proposals, suggestion on Issue Paper 2?

(No audible response.)

PARTICIPANT: Okay. Abby.

MS. SHAFROTH: Again, without belaboring the point, I just want to make clear on the record that I have strong opposition to a process that does not include a group discharge process. I raised the example in session two of the ACI students who were, who were scammed by their school, and who have been able to get relief in my state Massachusetts.

We’re talking about low income vulnerable borrowers who are abused by the system, and they -- the granting of group discharge to these borrowers who probably otherwise would have gone into default and suffered enormous devastating consequences to their lives is hugely valuable and not, not allowing for that is part of this would be significantly weakening, weakening protection for students and hurting student borrowers as compared to both the 1994 regulation under which
the department has said it has this authority, and
the 2016 regulation that explicitly spelled out
this authority.

PARTICIPANT: All right. There are no
tags up. We are going to move towards our afternoon
break. Can the department let us know how long
we might need?

(No audible response.)

PARTICIPANT: Okay.

MS. WEISMAN: So, I'd like to request
that we come back at 3:30, and at that point, our
plan is to bring you new paper. Again, black and
white will be the paper on the screen in color.

And I'd just like to thank everyone
again for the hard work again today so far.

MS. HONG: I just -- I just want to echo
Annmarie. Thank you guys so much. I understand
this last rush is very difficult, but we appreciate
you guys hanging in there. Thank you.

PARTICIPANT: Thank you.

Please come back at 3:30. We have
requested for the temperature to be adjusted.

(Whereupon, the above-entitled matter
went off the record for a break and resumed at 3:30 p.m.)

MR. BANTLE: Okay. We'll turn it over to the Department.

MS. WEISMAN: So, our goal was to bring you back paper. But because we were still writing up paper, we didn't want to keep you waiting here.

We wanted to get started and present to you some of the concepts. We can follow up with language as soon as it's available. We'll end up doing that paper by paper.

There was one other thing I meant to mention earlier. There was a question earlier, and I believe it was Suzanne, but correct me if I'm wrong, who had asked a question about the GE disclosures.

And then I got another question about it. People were looking for more information about what was in those disclosures. What I was trying to communicate, and I may not have said as eloquently as I could have, their work is still in progress.

So yes, we do have the information
available in terms of what their last proposal looks like. They are a little behind us. They're last session. Their session three occurs next month.

   So, for the negotiators and the alternates, Barbara either already has or will be emailing you a copy of the GE disclosures as they stand now, with the information that is in their last proposal.

   So, we again want to bring you the concept information back on Issue Paper One. So we have in our most recent proposal that we will be bringing to you shortly, a change in the standard in Issue Paper One to preponderance of the evidence.

   And then keeping the idea of at a station plus. So the borrower would need to have a completed application with some additional evidence to go along with that.

   For the statute of limitations, we are bringing to the table a proposal with five years for the borrower to file the application. And that would be a straight five years, not including discovery. Five years for that.

   But to also include in there that it
would be up to ten years if there is an affirmative defense. So basically if the borrower is in collection activity. If they're in default, if they're having wage garnishment. At that point that would be a ten-year period.

With that however, we would not be changing the amount of time that the secretary would have to go and pursue the school for recovery actions. So that would mean that the school would still be pursued for up to three years after the outcome of the borrower's case.

And then there is no change to the intent piece.

MR. BANTLE: Just yeah, I'm hearing some questions on the slide five and the ten years if affirmative defense. Could we kind of maybe circle back to that?

MS. WEISMAN: Yes. It would still keep the language from the date of graduation, termination, or withdrawal.

PARTICIPANT: Annmarie, I am so sorry. Could you explain again the affirmative defense piece? I'm not sure that I'm quite following it.
MS. WEISMAN: So if the borrower is being pursued by the Department with collection activity, if we are garnishing the borrower's wages, if the borrower is in default, they can make an affirmative defense within a ten-year period.

And again, that ten-year period, the clock would start ticking from the great date of graduation, termination, or withdrawal.

MR. BANTLE: Alyssa, a question?

MS. DOBSON: Statement. Can I make a statement? Is the Department concerned that that may perhaps incentivize students to fall delinquent or default?

PARTICIPANT: Not really. Because the consequences of default are quite severe. You have to really -- hum?

MS. DOBSON: I would think, trying to wear my student hat, the consequences of being delinquent would not be as terrible as the prospect of perhaps getting my loans discharged.

PARTICIPANT: You have to remember, combined with the significant standard for getting your loans discharged here. Preponderance of the
evidence, plus attestation, plus to get in the door
that's a pretty significant standard to meet.

And we've found over the years that most
-- while there's always been a concern about giving
borrowers an incentive for going into default,
while we've changed the program a lot over the many
years I've been involved, it hasn't really -- that
hasn't been a factor in the increase in the default
rate.

It's not intentional default. It's
changes in the economy or other factors. So we
really haven't seen it.

I understand the concern. But you've
got to -- you would have to assume that the borrower
is very intentional about it.

And we just don't see that as a matter
of practice.

MR. BANTLE: Noting the cards up. Are
there other additional items on Issue Paper One?

MS. WEISMAN: That's all I have for
One.

MR. BANTLE: Okay. Would the
Department prefer to go through the other Issue
Papers as well and discuss in total? Given the time left?

MS. WEISMAN: I think it's fine if people have comments about this information to start here. Again, we're still anticipating getting text soon.

MR. BANTLE: Oh, Wanda then Barmak.

MS. HALL: Yeah, just Alyssa, I think one of the things also for the borrowers if they start going delinquent, it's going to ruin their credit. I mean, in a lot of instances some of them may already have that happen because of other things.

But, credit, default, and because we have the IDR/IBR programs, I mean that, a lot of them qualify for those lower payments as well. We're able to work with them, so.

MR. NASSIRIAN: This is more of a question. Could you explain what the rationale is between this sort of bifurcated statute of limitations?

What's your thinking that -- what makes you think that an affirmative defense should have
a longer shelf life than somebody who's not in default or in wage garnishment?

The assumption, I assume, if I may just sort of speculate, my assumption is that you're imagining a case where somebody has been paying for five years. So they must not have been a problem.

That the act of payment is a sort of a reaffirmation of the thing being legit. Is that your thinking?

Because I can also see somebody getting three years of deferment and three years of forbearance, and the first moment when they are confronted by an actual bill becomes the -- the light goes on that well, wait a second, this was repayable. Well, you know, I didn't quite understand and I was ripped off.

So, I'm trying to understand what the differential is, cause of it.

MS. WEISMAN: So, I don't think we saw the idea of paying on the debt as reaffirming the debt in that way. Certainly one might take it that way.
But that was not part of the discussion.

I think that really the discussion bore out of the idea that we were hearing the case for a longer statute of limitations or no statute of limitations.

And we were trying to find a way to find a middle ground.

MR. NASSIRIAN: It can't just be random. It has to have some -- there has to be some logical explanation as to why you're staggering it that way.

You know, or maybe we could do other solutions, let's approve every other one. I mean, that's also a way of dividing the difference.

But that's not the way you adjudicate something on the basis of the merits. To, you know, don't want to be accused of quoting Anglo-Saxon law, but for as long as somebody taps you on the shoulder and says you owe me money, you should have the right to say no, I don't because.

Now you're breaking with that tradition. And if you want to break with that tradition, there has to be some basis.
Some sort of a policy justification.

Some explanation that says there really isn't a problem here.

The claim just -- the claim doesn't even merit a review. That's what you're doing. So, I just want to know why that -- why that difference?

PARTICIPANT: We're balancing that tradition with the fact that we're relying in this case on records that a school will have to have.

And we're trying to find a period in which we're not overburdening the schools too much. While giving the borrower a longer period then we initially proposed to assert the claim as a defensive measure.

MR. NASSIRIAN: But you're not --

PARTICIPANT: Let me --

MR. NASSIRIAN: Um-hum.

PARTICIPANT: It maybe not be perfect. But, we're trying to balance those interests.

MR. NASSIRIAN: You are in the mode of thinking about recovery before you actually adjudicated the claim. If there are no records, that's the case that I suspect, it isn't going to
go anywhere.

Right? The student can't really produce sufficient proof if there is really no evidence. Because the, you know, if the elixir of time has just sort of completely eradicated all evidence, and it happens, of course it happens.

But that's -- that would be the definition of an unsuccessful defense. So, we are talking about cases where the borrower actually is sort of putting forth a fairly compelling case that you don't want to hear because it's outside the window.

Because surely if it's a completely meritless claim with no evidence to back it up, there would be no trouble to look at it and say, you know what? You don't have enough here for me to act.

MS. WEISMAN: Can I get a minute to confer?

MS. MILLER: We're ready to move on.

Okay. So Barmak, I think the Department has heard your concern and your question. So I'm going to move to Aaron.
MR. LACEY: So, I articulated in Session One and Session Two that one of my significant concerns with a bifurcated process was that we were not insulating these determinations to the extent we should be, or we should be striving to insulate them from the political processes.

By introducing a preponderance of the evidence standard, what we have done, is we have put decisions in the hands of staff who respectfully are going to be highly subject to the political whims of the day, whichever way they may be blowing.

And a preponderance of the evidence standard is a, what did you have for breakfast standard. It is a, what do you think when you look at what's in front of you?

Fifty-one percent. Fifty point zero one percent. It's a toss-up standard. Right?

The Department previously articulated that it felt a standard between preponderance and clear and convincing was appropriate.

We previously articulated, meaning the institutional side, that we liked clear and convincing. The preponderance was advocated by
the other side of the house.

So we proposed a midpoint. Which is exactly the definition of compromise. And now we are seeing at four o'clock on the last day, preponderance of the evidence.

That's a major problem for me. I'm also concerned that the statute of limitations represents an erosion from the -- not only the initial proposal of three years, but what we proposed as a compromise of a fixed five years.

Compromise as I understand it, means you give a little and you take a little. I cannot entertain an erosion of both of these standards.

I am willing to entertain a discussion about the proposed statute of limitations if we get clear and convincing. It's a trade-off.

MS. MILLER: Abby?

MS. SHAFROTH: I want to respond to the characterization of preponderance as a toss-up standard. Preponderance of the evidence is the standard that is used in almost all civil litigation.

It is the normal standard when we're
dealing with anything other than criminal cases. It is not a toss-up. It is looking at the evidence and deciding what the evidence most likely demonstrates.

Anything else is really putting the thumb on the scale in favor of institutions and against borrowers.

So, I'm appreciative that the Department seems to be working towards -- back towards a preponderance of the evidence standard that we think is appropriate.

The Department is proposing preponderance plus corroborating evidence, which is above preponderance. It is harder to satisfy because it is saying that as a per se matter that a borrower's testimony is insufficient to be compelling in any case.

So, I still have some concerns about that. But, I did want to sort of recognize the Department for, you know, for trying to find something here.

I do share Barmak's concerns about the -- this ten year limit applicable to defenses to
collections. Aaron is saying, you know, we need to find compromise on time limits.

I was putting forth a compromise and saying that I would be, you know, I don't believe that there should be any limitations period. But, that I'm open to a compromise on a limitations period applicable for refunds of amounts already paid so long as there are not limitations periods on outstanding balances.

That does represent very much a compromise. I'm also open to a compromise suggested by other negotiators at the table of a limit on how long the Department can go after the schools for recoupment versus when the Department should discharge.

So, I think that there are good faith efforts at compromise here from both sides. And we're trying to figure out what that is.

MR. MILLER: Mike Busada and then Linda.

MR. BUSADA: I just want to point out, and I think Abby kind of made the point that a lot of us are trying to make though. You're right.
Preponderance of the evidence is what you use in a judicial setting.

This is not a judicial process. It does not have the checks and balances and the due process procedures that going to court would have.

If we had those things, I would say absolutely. But we don't have those things. This is an express lane to help ease the process.

It's an administrative express lane, which I think is good. But we don't have those things.

And so you can't say we want -- only want half of what a court system would give, but we don't want the other half of the protections. It's not a fair balance.

At the end of the day I just want to have a fair opportunity to make sure that we are heard. And that what we're trying to do is recognized.

Because at the end of the day, when we leave here, there will still be waiting lists at colleges and technical colleges and universities across the country because there's not enough
seats.

And this is only going to help make it -- make fewer and fewer and fewer seats out there.

MS. MILLER: Thank you. So we've heard quite a bit about the preponderance of evidence from both sides. Linda and Joseline, do you have comments on the other concepts presented by the Department?

Okay. Linda and then Joseline.

MS. RAWLES: Well, as a prelude, I agree completely with what Aaron and Michael said. Especially Aaron's position on how these things would have to relate in a bargaining situation.

Also, I want to add that in other parts of the Federal government they've encouraged schools to go to clear and convincing as opposed to preponderance, such as in Title IX cases.

Last, I have two questions for the Department. I had heard you say before that you were trying to find a middle ground between preponderance and clear and convincing.

Did you not come back with that middle ground because you couldn't define it? Or because
I'm really shocked that we didn't get that original middle ground back. Not that I'm saying I support it, I still support clear and convincing. But, I was disappointed not to see that. And I'm wondering why we didn't get it?

PARTICIPANT: Combination of two points. One, it's difficult to define. Second, we're trying to reach a compromise here between the borrowers and the advocates on the students' side who are concerned about the standard, the attestation plus standard, and the school side, which I understand wants the clear and convincing standard.

We're trying -- we were trying to make a proposal to try to find a middle ground. We understand people may not agree with it. But that was part of the intent.

Plus, as I said, it's hard to define the middle ground between preponderance and clear and convincing.

MR. RAWLES: Okay. Thank you. The middle ground between preponderance and clear and
convincing isn't preponderance.

It's the thing we're having a hard time defining. But, just because it's hard doesn't mean we shouldn't do it.

My other question is because these things relate too much to Issue Paper Two, and I know we're not there yet, but how I feel about these things really depends on whether those affirmative defenses have come back.

So, could the Department tell me if they've come back while I'm thinking about Issue Paper One?

MS. WEISMAN: The list of the items that you had requested did not come back.

MR. RAWLES: Okay. Well, then I -- it's very hard to support these changes.

PARTICIPANT: Potentially it would be beneficial to at least get the concepts on Issue Paper Two. Knowing that we don't have the document.

MS. WEISMAN: We actually do have the document now. Issue Paper Two is on the screen behind me.
PARTICIPANT: Yes. I'm looking at it.

MS. WEISMAN: I have received a request if we could make the font size bigger. The view section, Aaron. Sure. We'll go with that.

We may struggle a little bit as we get into some of the changes. Especially with the shading. But, we'll try to work with this as best we can.

No, you don't have to do that.

So, for Issue Paper Two, the comments that we heard around the table were that if the Department was not going to have involvement in an ADR process, that people were not very satisfied with the idea of ADR.

There would be nothing in the regulations that would prohibit parties from engaging in ADR. But, we have removed the text that included references to ADR.

Including the idea of putting the application on hold while that process occurs. The Department is not able to commit to involvement in ADR at this time.

Also, with the initial screening, the
idea of including evidence, because it is attestation plus, we would expect to see evidence attached to the application.

The other major change here is that we talked about the idea of what some of us referred to as the ping pong, the back and forth at the beginning with the 45/30/15 terms of the time frames for the application period.

With the collection of evidence, and then sending those copies to the other party on the front end. And the idea of reconsideration of the application on the back end.

So, we retained the time frame, the back and forth. The idea of the 45/30/15. And we removed the language that talked about reconsideration.

MS. MILLER: Joseline and then Kelly.

MS. GARCIA: Thank you. I have a question for the Department and also the facilitators. Considering the time restraint that we have, how do we make this hour productive?

Because I'm trying to think of how to frame my comments. And I don't really know what
we're doing.

Like, are we still negotiating on these changes that you all proposed? Or are we voting? Can I just get some more clarification as to what we're doing now?

MR. BANTLE: So, I will jump in as the facilitator here. And accepting all suggestions on how to best use this time. I'll start off with that.

I think what I am hearing is from many individuals at the table, regardless of constituency, disagreement with the documents as they have been presented here. Is that fair to say?

I've heard comments from people around the table that they felt some of the discussions we were having earlier may have gotten us — maybe on a path to getting us or the group to where they needed to be. Not certainly that they were there at that stage.

I think what we need is some agreement from the group as a whole of what will work. We've identified numerous things that will not work.
So, obviously, you know, we are focusing on consensus. And Aaron had mentioned compromise. I think that's something we all, or you all, need to think about.

What gets us there? And obviously the Department is an important factor in that.

Annmarie?

MS. WEISMAN: Just a quick question. Did we find out if we have anybody who would like to make public comment this afternoon?

Because if we do have anybody, then that takes us only to 4:45. Giving us really, just over about 35 minutes left.

MR. BANTLE: Can we see a show of hands of anyone who intends to give a public comment? Okay. So that is two public comments.

MS. MILLER: You'll stay until 5:30?

MS. CARUSO: I heard emphatic noes about that.

MR. BANTLE: Okay. So --

MS. WEISMAN: I believe our concern with that would be that people have flights already booked. And we want to make sure that everybody
is still able to stick to the schedule that we have, because we did outline that it would be five o'clock.

So, to change it now could impact someone's ability to be here.

MR. BANTLE: Okay. So with that in mind, I think we have to look at our 4:45 traditional break point. Barmak?

MR. NASSIRIAN: I want to make a plea to everybody, including those of you who are sort of diametrically opposed to where I sit, to take a step back and think about how much you've accomplished here in terms of gaining protections that you did not have in the previous iteration of this regulation.

And understand that failure to come to consensus here leaves the Department to its own devices. That all of the stuff that you think may be in the bag could be lost.

And that it's in all of our collective interests to be as accommodating of things as possible. And walk away with something instead of nothing.
I am very dissatisfied with this rule. I think this rule significantly erodes protections for borrowers.

But I'm willing to say that we are sort of 90 percent of the way there. That I'd much rather take lots of specific black ink protections I see here rather then walk away from a deal and leave it to the Department and its devices.

And I'm not sure that it would be these nice folks who are going to make the final rational decision. It could be people that none of us have actually set eyes on.

So, we ought to be very careful here. And you know, if we need to work some more on issues that can accommodate each other, we should do that.

MS. MILLER: Kelli?

MS. HUDSON PERRY: One, I don't know if there was enough copies. Because it didn't make it all the way around. But, that wasn't my point. Okay.

If I could make a recommendation just because I -- I've been sitting here kind of watching the back and forth on all of these topics.
Can we use the screen maybe to just bullet point list what the real contentious points are? So that there actually can be some conversation on specific items of maybe compromise?

Because I feel we're -- like we're kind of jumping around where one person says I don't want this. The other person says, I don't want that.

And there's no real -- we're not compromising because the things that people have issue with, aren't listed up there.

MR. BANTLE: So, in that vein, I would suggest that we look at the concerns. I'm going to use that term kind of in the context Kelli did, in Issue Papers One and Two concurrently.

MS. WEISMAN: So, I can update you and let you know that they are copying Issue Paper One right now. So, you will have a copy of this shortly.

But, I think that if we can get started with this list, that might be very helpful. I am certainly willing if others are.

MR. BANTLE: And I think we are looking
at your primary concerns. And I believe a number
of -- you know, although we do have countervailing
positions on them, they are similar issues that
we're focusing on here.

So, accepting nominations from the
group for our new list. If you -- if it's not on
the list, we're assuming it's not a --

MS. HUDSON PERRY: I'll start just
because I've heard them around the table. The
intent -- or clear and convincing versus
preponderance is one.

The statute of limitations is another.
And then on and on. I don't -- I'm not sure what
the other ones exactly are. But those are two
definite ones that we've been talking about.

MR. NASSIRIAN: You trade those off
right now and be done with those.

MS. HUDSON PERRY: No. Let's get the
whole list. Because this whole concept of
compromise, we need to see everything that's up
there, I think.

Because there maybe one point that
someone feels very strongly about that they're not
going to get passed. But if there's something else that it may give on a different one, there may be some compromise there.

So, I think we need the whole list.

MR. BANTLE: One and two.

MS. HUDSON PERRY: Everything really.

I mean, even, you know.

MS. MILLER: Okay. Aaron, your card was up. Are you ready to list your concerns? Or --

MR. LACEY: No. I probably shouldn't.

MR. MILLER: Linda, do you have concerns that you want to put up on the list? Yeah.

MS. RAWLES: If I forget to list it doesn't mean I'm waiving it. Just want to say that.

The two that Kelli said. I think that was the statute of limitations and the evidentiary standard. Also, on Issue Paper Two, it would be the lack of the affirmative defenses.

And also the point I mentioned before, on -- try to help me find, it's on page five now.

When the Department can reopen.

It's the middle of page five now. The
Secretary may reopen a claim when the evidence becomes available. That not having any time limitation.

So, to me those four as written are non-starters at least. And we still have Issue Paper Four and Six that there are issues with.

MR. BANTLE: So, --

MS. HUDSON PERRY: Well Linda, if there's issues with Four and Six, I think we need to put those up there was well. Because we're trying to come to consensus on this whole thing, so.

MS. RAWLES: Oh well you told me just One and Two. All right.

MS. HUDSON PERRY: I'm sorry. The whole thing.

MR. BANTLE: Yeah. My focus just as a facilitator note, was let's get -- so we're not jumping back and forth, let's -- we'll get out -- before we discuss, we'll have everything up there.

But, are there any other, for lack of a better term, non-starter issues on One and Two? In concept?
MS. MILLER: Joseline?

MS. GARCIA: I mean, Ashley went into this a lot. But for Issue Two, the minimum threshold for consideration, Part C, just like having to acquire more evidence with the borrower defense application.

MR. BANTLE: Okay.

MS. MILLER: Aaron, your concerns?

MR. LACEY: Yeah. Voluntary claim resolution process.

MS. MILLER: Abby?

MS. SHAFROTH: I'm concerned about intent standard. And I don't know where -- that I don't know where things landed on the list for the intent standard, or on the list of things that would demonstrate financial harm.

MS. MILLER: Other concerns for One and Two? John?

MR. ELLIS: Recognizing that we talked about language. And we haven't seen whether the language is there or not.

I continue to have concerns about whether or not the rule still allows an appropriate
role for state law.

MR. BANTLE: Okay. Issue Papers Four and Six?

MS. MILLER: Linda, are you heading up?

MS. RAWLES: Oh, no.

MR. BANTLE: Just the general concerns from our earlier discussions.

MS. MILLER: Aaron?

MR. LACEY: Well, I had the concern with Six regarding the absence of a knowledge qualifier around false certification based on high school diploma.

MR. BANTLE: And this is understanding we do not have the latest documents. John?

MR. ELLIS: I still have the concern that the Department doesn't have authority to regulate in the area of Issue Paper Four.

MR. BANTLE: Okay. Abby?

MS. SHAFROTH: I still have a concern that the Department does have authority to bar from dispute application --

MR. BANTLE: Okay. Can we just make that authority to regulate on the issue? And it
covers --

MS. SHAFROTH: I don't know if that covers. But, I firmly believe we -- that the Department should bar use of forced arbitration.

MR. BANTLE: At least I'm viewing these as just the topics. Not proposals on them. Is that --

MS. SHAFROTH: That's fair. But I do think it's a different --

MR. BANTLE: Okay.

MS. SHAFROTH: It's a different issue.

MR. BANTLE: Can we pause just on that one for a quick second. This is an example that I'd like to talk about with regard to negotiation.

So, Abby's saying that's a non-starter, right? That you definitely want that thrown out. Is that correct or not? Am I misunderstanding?

MS. SHAFROTH: So, I think we're making a list of things that are highly important to us that there's a possibility that we might --

MR. BANTLE: Understood.

MS. SHAFROTH: Be willing to move on
one thing if we get other things.

MR. BANTLE: Understood. Is that a non-starter for you, is what I'm trying to understand?

(Off mic comment)

MR. BANTLE: Sure. Is that a non-starter for you? I'm trying to understand that.

MS. SHAFROTH: Yeah. I don't have -- I don't think I'm in a position to identify, you know, I'm still in a place where if I got other things that I wanted -- if I got everything else that I wanted, then I would be willing to move forward with that, so.

MR. BANTLE: That's helpful. Thank you.

MS. MILLER: Other concerns or issues on all of the Papers? Linda?

MS. RAWLES: We missed this one. I was going to bring it back up when we got to Issue Paper Four.

But I believe in Issue Paper Three we added, Abby can help me, she added the word
arbitration. Does the arbitral -- yeah, which to me if we put that in Issue Paper Three, we've stepped on the same legal limitations as Issue Paper Four.

So, if we go back to Issue Paper Four about arbitration, we have to address arbitration now in Issue Paper Three.

MR. BANTLE: Okay. So we have a substantial list of items here.

Do -- does the group, or does anyone in the group have a proposal that touches upon these items that they think would be acceptable to the group?

And we're just talking in concept. We don't need language here. An overall proposal.

I think we need to look at these in not necessarily all subjects, but -- identifying some of the major concerns is how I'm saying it.

It doesn't need to address every single one of these.

MR. NASSIRIAN: Could we try to resolve some of them by trading them off for each other?

Aaron mentioned that he was of the opinion that the first and the second, I understand you want
both of them your way.

But, potentially one could see an arrangement where we take the lower threshold for the standard of evidence in exchange for accepting a limitation, a statute of limitation on claims.

MR. LACEY: No. The problem is the presumption there is that both of the proposals I previously made are the way that I want those things.

And those reviewed in my -- those were compromises that I was offering. Does that make sense?

And there have been other compromises throughout this process that we've already made.

MR. NASSIRIAN: All moved from where we start from. And we are where we are. So now this is what is in black ink on paper.

And I'm suggesting that -- because that's not where we would be either. Right?

I mean, we would be somewhere else. So, forget the past. Those are all some costs.

At the moment, can we trade those two off and think that's a reasonable walk away for
both of -- for both sort of sides?

MR. LACEY: I would accept the
Department's proposal on statute of limitations
for a clear and convincing standard.

MS. MILLER: Okay. Let's think about
--

MR. NASSIRIAN: How is that a
compromise?

MS. MILLER: Hang on Barmak. Let's
think about that for a minute. Valerie, you have
a question. And then Linda.

MS. SHARP: Okay. So,
notwithstanding any discussion that's taking place
that might have overridden what I just was going
to ask, it sounded like earlier today that we had
had a discussion on the statute of limitations that
might be moving all of us in the same direction.

At least on that topic. And then the
Department did not include that.

So, helping us understand what might
be an option, is that something the Department just
is not willing to consider where there is the
extension for the student to forgive the loan, you
know, as long as they owe it. But the school still
has a statute that they can come back after them.

It seemed to be something that the two
sides were really forming together. So, I -- and
it's not in there.

So, I just wondered if that's because
it's not acceptable to the Department?

MS. WEISMAN: That was not acceptable
to the Department because of the concern about
leaving the taxpayer on the hook for the amounts
of money then that would be discharged.

MR. LACEY: Yeah. And so Barmak, just
to answer your question, I mean, I -- so I had
proposed a flat five on statute of limitations.
That was my position.

So, I'm willing to go up to increase
potential exposure for institutions to ten years
in exchange for clear and convincing.

MR. NASSIRIAN: The problem with that
is of course, that again, you're incremental.
You're trying to drag us back positionally to where
you started from.

We are all -- we are all past --
MR. LACEY: Wait a minute. Just a -- no we started with three years.

MR. NASSIRIAN: Understood. And we started with eternity. So that's --

(Laughter)

MR. BANTLE: Okay. Barmak, can you turn off your microphone just so we don't get feedback. And Kelli?

MS. HUDSON PERRY: So, since this was my idea, I'll tell you what the next step of the idea is.

(Laughter)

MS. HUDSON PERRY: The next step would be to take the issues and put them on sides. There's obviously things that the institutions want. There's things that the student groups and advocacies want.

And rank them in order of priority. What is the most important to you? To see if we can start to knock them off the list and compromise on the positions.

MS. MILLER: Linda?

MS. RAWLES: You may yell. You may
gnash your teeth. But I just have to make this statement. And I'm going to finish it.

This is no way to do a rule. We have a half an hour. These are hugely important issues for everybody at this table.

I don't think any of us should be pressured that we have to reach consensus when we have this list up here of extremely important parts of a regulation that are going to affect this entire industry and many, many students, and the taxpayer for potentially years to come.

So, you know, I have some faith in the Department to write a rule. If we get to the point where we are horse trading off our hip, to me, that's malpractice as an attorney.

And I will not participate in it. So, we need to calm down here a minute. And not feel like we have to reach consensus if we're going to reach consensus in this way.

MR. BANTLE: Michael?

MR. BUSADA: So, I appreciate the caution around not wanting to put the taxpayer on the hook for the idea that I floated before. So,
I'll float another one.

And that is, number one, as part of that consideration, even though the Department may not pursue a -- or initiate a repayment claim, it does not mean that either any member of the triad could not pursue some enforcement action, the state, the accreditor, or the Department, for violation of any law or regulation related to that claim.

Just as a matter of point of clarity.

But number two, I guess for me, if it's a one off, if it's de minimis, it's one student, it's two students ten years into their loan, I guess I'm not so concerned about those things as a taxpayer.

And I guess my community of interest now is my household. And you know, how I think about those things.

But, so what if we were to say if the amount of the borrower defense claim is -- or four amounts less than five percent, one percent of the total amount of Title IV distributed in the preceding year, you won't initiate claims.

So that gets to the point of, I don't have to worry about the one offs and the onesies,
twosies, but I will initiate a claim for any big deal. For any large size. For any kind of 10, 20, 30, 40 student kind of claim.

But the ones -- the onesies, twosies, we're not going to worry about. Is that anything that the Department would consider? Or anybody else in terms of that?

PARTICIPANT: That's the kind of prosecutorial discretion that the Department exercises. We've got to decide what to put our resources into.

But, we would not put that in the regulation.

MR. BANTLE: Joseline?

MS. GARCIA: Sorry. I was shuffling through papers. Could we add reckless disregard for the truth to the list to Issue Paper One and Two?

To the Department, could you all give us some guidance as to how we can move forward? Or -- because we do have limited time and yeah.

I'm just trying to make sure we're productive.
MR. BANTLE: Michael?

MS. MILLER: Mike? Okay.

MR. BUSADA: So, here's where I'm a bit stuck as well. With regard to the true definition of negotiation, let's use the three-year rule that was originally proposed in the work papers.

Is that correct? So, three years. That's the ball in the game. Three years.

So what Aaron is saying, is he's moving back and forth. Do we ask for less? Do we allow for more?

That's negotiation. Saying I don't want any of it, I want no statute of limitations, that's a whole new ball.

That's not the ball you're negotiating anymore. That's a completely different ball. We're never going to get there.

We've got to get back to the root of the original paper. For each of these topics, what was the proposal? And move back and forth on that proposal.

That's the ball.

MR. BANTLE: Aaron?
MR. LACEY: Since no one else is speaking, I will just say a couple of things. The first is, I very sincerely appreciate that everybody is here. And I mean that as seriously as I can say it.

It is hard and meaningful work. I know we don't always agree. But I would not want anyone to think otherwise.

Everyone is here to advocate on behalf of their constituencies. And I think everybody has done that to the best of their ability. So, I appreciate that.

The second thing I will say is, after the proposed rules are issued, there will be a period of commentary. The Department can take that into consideration whether we reach consensus or not, and think about revisions.

I want to strongly encourage the Department during that period to give serious consideration to a voluntary claim process. I think the Department should do a full sum cost analysis and try to determine whether or not a process as outlined in the proposal that was
provided by Chris DeLuca, would make sense.

Because I think again, and I've said this before, of all the things that have been proposed, that concept, which incorporates the notion of a departmental representative assisting borrowers and institutions to find resolution prior to this entire thing, I think that is the most important concept.

So, I just want to go on the record as saying, please, please, please Department, include that in your takeaway. And give it its due consideration.

Because I really think at the end of the day, of all the things we have attempted to do here that is the most likely to help borrowers and institutions figure things out quickly.

PARTICIPANT: Since we're sort of moving into general statements, you know, I mean, you know, I was thinking the same thing that Linda said about, you know, I mean, I have worked on negotiated rulemaking committees before. I've never been at this point in the day on the last day, doing this.
So, when you don't have actual language that you're hashing out. So, you know, it feels like the sands of time are running out here.

You know, so just -- I appreciate what Aaron said. Share that view. You know, the goal is to achieve to negotiate in good faith, to achieve consensus if you can, while representing your communities of interest.

So that's what we're here to do. And that is the balancing act that we've all had to -- had to entertain throughout this process.

I would also say that, you know, whatever we walk away with today, I would urge the Department to remember that bad stuff really happens to students, and continues to happen. And it hits them every single day.

I hope that no one has ever felt that my comments were directed at any individual in this room. I know that there are educators in this room who believe in what they do and who care about their students.

Those of us who receive calls from borrowers are not -- now those aren't the schools
that they went to, right? I mean, we're talking about almost a different species of school.

The harm is real. People have been waiting too long for their debts to be discharged.

The delay of the 2016 rule and all the uncertainty that continues going forward while we're doing this, this is -- I mean, this is costing people's health.

I mean, this is psychologically damaging, not just pocketbook damaging. It really is so serious.

And so many of the students' stories that we've heard throughout this process I think really bear that out. And absolutely deserve to be heard.

So, appreciate all of the work that the current career staff at the Department have been doing. We -- I can't tell you how much we appreciate what you do every single day.

We certainly hope that the leadership of this agency takes its job, you know, seriously.

And really seeks to correct what is a very real, well-documented problem that was also, you know,
reasonably discussed in the 2016 regulations.

So again, there's a real problem. Students can't wait any longer.

MR. BANTLE: Okay.

MR. NASSIRIAN: Am I correct in my understanding that because we obviously are headed for non-consensus and the Department will exercise its right to produce an MPRM that it will publish for comment.

But, am I correct in my understanding that there will be no ex parte communication with any interest group while that process is ongoing?

Do we have an assurance that there won't be any further conversations with a subset of affected interest until an MPRM is published?

PARTICIPANT: There are certain requirements that we are covered by when we are doing a regulation. Including making a record of any contact relating to that regulation.

We have complied with that rule in the past. And we will do so.

MR. BANTLE: Okay. I want to jump in here. We have eight minutes until our traditional
public comment time.

Understanding the comments that have been made and the limited time we have left, are there any of -- any issues that are on the screen that the group thinks an agreement can be reached on?

Or that a proposal can be made on? That is, a proposal we have not heard thus far?

William?

MR. HUBBARD: I mean, this is not a new proposal, but in terms of reckless disregard for the truth, I think if we pull out reckless, I know there's been some intent on that.

But, given where things are at, perhaps sticking with disregard for the truth is something that folks can come to the table on.

MS. WEISMAN: That is something that the Department already discussed and declined to take.

MR. BANTLE: I would reaffirm my question. And we can look at any of the Issue Papers here. I know we do have other concerns on Issue Papers Three and Four. Or Three, Four, Six.
PARTICIPANT: I have a quick question. Should that one come off the list then if you're not inclined to change that?

(Off mic comments)

MS. WEISMAN: That's up to the group to determine if they'd like to remove it from the list. We also are not able to commit to an ADR process.

So again, if that's something that would be better to take from the list, you can certainly do that.

MR. BANTLE: I, you know, in the next statement it's -- I think probably the group can remember those two limitations.

We had discussion on kind of the combination of the evidence standard and the statute of limitations. We had numerous proposals kind of packaging those two.

Are there any additional proposals? New concepts that we can think about? On the package of those two.

Mike?

MR. BUSADA: Just an idea, and this
will obviously take some more time, but just
something to think about, going back to the early
adjudication process and mediation process if you
will.

And I understand the constraints that
were discussed. I do think it would be
advantageous to look at potentially whether or not
it would make sense and it would be feasible and
institutions would be willing to.

I think the biggest issue is you have
to have a neutral party. I know that the fine
gentlemen in their agency do that, you know, for
other government agencies and private sector
interests.

And so I think that at least from a small
school standpoint, and I'm not committing to this,
but to me just looking at it, it seems to me that
for a small school that, you know, most of them
don't have lawyers -- yeah.

Basically I'd rather pay, you know,
their cost as an institution and have a mediation,
then hire a high-priced lawyer and have to fight
it out.
MS. WEISMAN: And I would just repeat that nothing would preclude you from offering to a borrower who filed a claim. You would certainly be able to do that.

PARTICIPANT: Another challenge is, you know, if I'm one of the student advocates, I mean, I'm not going to want somebody that the institution hired. I'm going to want the Department.

And I think what Mike is offering here is that the Department should consider whether or not if they put a mechanism in place, and institutions were willing to fund it, but it would be representatives from the Department or some other neutral party.

I think Mike's point is, a lot of schools would prefer to spend a hundred dollars an hour or whatever, on someone to work on a voluntary resolution process then to have to hire an attorney at several hundred dollars an hour, and risk reputational harm.

So, if cost is the concern, we are suggesting that the Department should consider
whether or not that riddle can be solved by placing the cost burden, potentially, at their, you know, at their discretion on institutions who would be willing to take that on.

MS. WEISMAN: Not in the least to sound critical, but it's like oh, a new idea at 4:42. I appreciate it.

(Off mic comments)

MS. WEISMAN: I do appreciate the suggestion. Thank you.

MR. BANTLE: Yes. And I am asking for new ideas at this point. William and then Linda.

MR. HUBBARD: I have a new old idea. I would like to, certainly with all due respect to the Department, but formally propose that given the process that was carried out in 2016 with all folks at the table, would like to propose rolling back to the 2016 negotiated rule making rule.

MR. BANTLE: Linda?

MR. RAWLES: Just a suggestion. If the Department does revisit the line of credit issue and the composite score, I would just encourage us to have that as a separate process and not do
that through this rulemaking.

And then since I have become the poster child for the predatory schools, I want to tell all the folks on the other side that if you would like to talk about any of these issues, or visit any of my schools, or have any kind of chance to break the stereotypes and have a meeting of the minds, contact me.

MR. BANTLE: Okay. It is 4:45. As usual, this is the time we open the floor up to public comment.

I think the suggestion was from Will that he had two comments. Is that correct? One comment? Okay, two.

As usual, we will be limiting public -- do we have any additional individuals from the public that would like to make a comment?

Okay. That is two. I guess, Will, are you making the comments? Or --

WILL: Yes. And these are two. They'll each be less than a minute or two.

MR. BANTLE: Okay.

WILL: I'm reading these statements on
behalf of two student veterans. The first one was a Brown Mackie, a college student from 2015. His statement reads as such:

I was misled by the recruiter about the accreditation of Brown Mackie's nursing program.

I had been misled by a recruiter at ITT the year before.

I enrolled and I knew about -- I knew to ask about accreditation. But the recruiter just lied to me.

Six months after I enrolled, I found out that the school was under provisional accreditation with the state and was under review.

Before each Board of Nursing accreditation visit, school officials would warn students that if they didn't pass the licensing exam, the school would lose its accreditation.

Students were afraid to be honest about problems at the school with the Board of Nursing officials for the fear that the program would be killed. Brown Mackie consistently changed academic standards in an attempt to save its nursing program.
But is now being taught out and shut down. Fortunately, I graduated before that happened.

When I enrolled, I asked about being able to work at places like the VA when I graduated. And they said, a license is a license.

I graduated in 2015 and applied to the VA. I was told that because Brown Mackie does not have a regional accreditation, I'm not eligible for work at the VA.

The school had promised to pay for my nursing licensure exams, and then just before I graduated, it changed its policy. It would only pay if we got a certain grade on our exit exam. Brown Mackie justified this change by citing a clause in the enrollment agreement.

The next statement is from a student at -- who attended Colorado Technical University from 2011 to 2014. And it reads as follows.

I enrolled at CTU to earn an Associate's Degree in business management. Over the next two years I kept asking why I wasn't taking more business courses.
I had also found that the teachers were hit and miss. Some were so unprepared that they just read from the textbook.

I was told that I could teach at CTU once I graduated. Really? This says something about the quality of the education they provide.

It turns out however, that CTU didn't have an Associate's program in business management after all. CTU had enrolled me in a general study's program with a focus on business.

This didn't cut it with two large employers who were interested in hiring me. They required degrees in business management. All I got from CTU was a sorry that I had been misinformed.

The following year I earned an Associate's Degree in accounting. But that didn't qualify me for jobs I wanted either.

So, CTU talked me into going for my BA in business administration with a concentration in finance. Which would give me my business management degree and move me further along in the accounting world.

They told me I still had enough left
on my GI Bill benefits to earn a BA. I was misled, because when I had one year more of classes left, my GI Bill benefits ran out.

I would never have enrolled in the BA program had I only known my benefits would run out before graduating. Now I have two Associate's Degrees that aren't in the field I wanted, and an unfinished BA degree, and no more GI Bill benefits, and 65 thousand dollars in federal student loans.

That concludes the statement.

MR. BANTLE: Annmarie?

MS. WEISMAN: Thank you. There's so much that I would like to say, and so little time.

As I think we all feel.

We came together here to work as a committee. And we came together in good faith. I believe we each did that. And I would like to thank so many people.

We all worked really hard. And the lack of consensus as someone said to me earlier today, if we got there, to be mindful that it is not representative of failure.

So, we worked really hard here and made
some really good progress. You have given the Department a starting point as we move forward.

Because as you know, our work does not end today. But it's kind of like what you hear at graduation speeches. It's commencement. It's the beginning for us.

It's the beginning and we kind of hit the reset button again. And what we do is we move forward with writing more.

We still have our original goals in mind. We are here to support borrowers who were wronged, and seriously wronged.

We are mindful of those borrowers. And we first want to acknowledge that as our primary goal.

We also want to balance the needs of institutions as well as the taxpayer. And the Department commits to working toward that effort and supporting all of them.

So we continue our work in the best interest of all. And we'll work to provide regulations.

As was alluded to earlier, our next step
is that we will produce a notice of proposed rulemaking. We will have a public comment period. And I expect that we'll be seeing comments from many of you in this room right now. And that you will be encouraging others to provide your comments in support of the things that you already brought to us today.

We expect to publish final regulations by November 1, 2018 to be effective on July 1, 2019.

So, I want to thank our facilitators, our negotiators and alternates. I want to thank the Ed officials who worked so hard with me, as well as others that we brought in to help to support us in this effort of having our rulemaking.

I want to thank all who made public comments or read public comments on behalf of people who could not be here with us today. And to the members of the public that stayed here as our audience.

Anyone else that I forgot, I just want to say thank you for being part of this and supporting us and the effort. It's been my pleasure to work with each of you.
And I hope that we have the opportunity
to do again the same someday on a different topic.
But, most of all I just again I want to say thank
you for everything.

And we certainly respect the
conversations that we've had here. And we will
be mindful of them as we continue our writing.

MR. BANTLE: Thank you Annmarie.

Mike?

MR. BUSADA: And I think I can speak
on behalf of all of us, or I hope so, in thanking
you, Annmarie, for doing a phenomenal job in a very
difficult situation. And all the Department of
Ed staff, we really, really appreciate everything
you all have done.

When we leave, you all are still
working. And we appreciate that tremendously.

MS. WEISMAN: Well, we're working for
you and for the students in this country. So, thank
you.

MR. BANTLE: Not to delay more than
necessary. I want to reaffirm the thanks that have
been presented by everyone.
Thank you for allowing federal mediation in. We know we're probably not -- actually, you all were probably not happy with us at certain times. And that's our jobs as facilitators.

But that being said, thank you very much. And for the last time, please pick up your garbage.

(Laughter)

MR. BANTLE: Thank you.

MS. MILLER: If you'd like it as a memento, you can take it. But, if you don't want them, just leave them on the table and we'll recycle. Thank you.

MR. BANTLE: Safe travels everyone. And thank you very much for your time and the passion you put into this.

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