

UNITED STATES DEPARTMENT OF EDUCATION

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BORROWER DEFENSES AND FINANCIAL RESPONSIBILITY
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 3

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THURSDAY
FEBRUARY 15, 2018

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

PRESENT

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

STEVAUGHN BUSH, Student, Howard University
School of Law

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

CHRIS DELUCA, Attorney at Law, DeLuca Law LLC

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

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

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

JULIANA FREDMAN, Bay Area Legal Aid

JOSELINE GARCIA, President, United States
Students Association

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

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

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

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

GREGORY JONES, President, Compass Rose
Foundation

AARON LACEY, Partner, Thompson Coburn LLP

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

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

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

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

SUZANNE MARTINDALE, Senior Attorney, Consumers Union

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

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

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

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

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

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

WALTER OCHINKO, Research Director, Veterans Education Success

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

KAREN PETERSON SOLINSKI, Executive Vice President, Higher Learning Commission

LINDA RAWLES, Rawles Law

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

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

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

RONALD E. SALLUZZO, Partner, Attain

ABBY SHAFROTH, Staff Attorney, National Consumer Law Center

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

COLLEEN SLATTERY, Federal Contract and Compliance Officer, MOHELA

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

STAFF PRESENT

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

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(Time not given)

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

1 will be handed out and you will be given an
2 opportunity to review those in their entirety,
3 before we start to go through them.

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

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

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

19 PARTICIPANT: Hello. Good morning.

20 PARTICIPANT: Good morning.

21 PARTICIPANT: I'm just here to read
22 another story. My name is Luvia (phonetic), I'm
23 a student in higher ed. I'm going to read slower

1 this time, because I have my breath.

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

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

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

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

23 My mother, grandfather and I were

1 stunned that my initial college degree, which was
2 projected at \$90,000 had nearly doubled in size,
3 while in school, becoming nearly \$150,000 over two
4 years.

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

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

16 We confirmed with them multiple times,
17 via phone, the total debt owed, which is nearly
18 \$143,000 in full. They asked us to send three
19 separate checks, which were mailed from a total
20 of \$150,000 from us, in the summer of 2011 and 2012.

21 We told them to keep the extra money.

22 After that, we didn't hear anything, until six
23 months later, when they said we were delinquent

1 on our loans for another \$13,000 on both me and
2 my mother's sides for \$26,000.

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

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

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

16 They kept lying to us, redirecting us,
17 changing the department for five-plus years. We
18 only received an answer, five years later, in 2016,
19 only for them to tell us we still owed \$65,000 from
20 both my mother and me, because, in the six years
21 we tried to fix the issue, the loan continued to
22 capitalized, which Navient will not admit to and
23 refuses to fix, hence the additional money we owe.

1 When we kept, when we went to fight it,
2 they kept lying to us, redirecting us and changing
3 the department, for five years. We only received
4 an answer, six years later, only for them to tell
5 us we still owed \$65,000.

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

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

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

19 Not only did they refuse to remedy the
20 problem, after acknowledging the mistakes, more
21 than a dozen times, we are in financial decay, still
22 having nearly \$1,000 of payments, per month, on
23 the home equity loan we had to take out from the

1 separate bank loan that was taken out to help
2 ourselves from being ruined. Now Navient still
3 wishes --

4 MS. CARUSO: You've got minute
5 remaining.

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

10 No student should ever have to make a
11 choice to get another loan, just to avoid getting
12 ruined by another one, especially, when they are
13 18 and 20 years old, before they even get a chance
14 to get their life going.

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

20 We tried to, at least, get Navient off
21 our backs, to deal with a much more forgiving
22 company, and they still have us in a vice grip.
23 Our family is slowly being tapped out. And with

1 how bad the job market has been, I've personally
2 been forced to do anything I can and save anything
3 I can do with this, only to become broke and
4 struggling day-to-day.

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

9 We have been scammed out of having any
10 life at all. Thank you for hearing my story.
11 Travis Williams, Photography Graduate of the New
12 England --

13 MS. CARUSO: Thank you.

14 PARTICIPANT: -- Institute of Art.
15 Thank you.

16 MS. CARUSO: Next, please.

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

21 In the fall of 2004, I was convinced
22 my future was bright. I recently enrolled in the
23 Art Institute of Pittsburgh Online Division

1 Interior Design Bachelor's Program, with assurance
2 from my academic advisor, my high school transcript
3 qualified me to enroll, even though my high school
4 transcripts were not much to be desired.

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

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

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

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

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

23 I see the success that my sons have

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

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

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

17 While you all haggle over it, whether
18 knowingly should be a part of the verbiage, young
19 people are contemplating suicide. Others are
20 waiting tables and hiding tips, so they can pay
21 for housing. More are moving out the country,
22 leaving families behind, to start a life free from
23 this nightmare.

1 These students don't know how the
2 bipartisan policies of this government has failed
3 them. They are suffering in the shadows. Because
4 of all students I have met, I've dedicated my free
5 time to helping them, while I fight for our future.

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

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

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

21 As a taxpayer, I'm convinced it is your
22 job to get it right and reduce the risk to our
23 society. As a victim, I am pleading for maximum

1 forgiveness a.k.a. full refund. Yours truly, Kim
2 Bailey.

3 MS. CARUSO: Thank you. Next.

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

9 Now, the only way for a man, like me,
10 to get into college would be to take these loans.

11 These loans, which are very high, because of the
12 cost of education, these loans, which are, pretty
13 much, predatory in nature, hold individuals back
14 from living the life that they should be able to
15 live, after education.

16 Now, with the loans, the loan payments
17 that I make, I should be able to purchase a BMW.

18 Although, I live the life of someone living in
19 poverty, because I have to pay off these payments.

20 Now, I also want to be able to help out
21 my parents. That is the reason why I went and got
22 educated. That is the reason why I chase the
23 American dream, the American dream that is promised

1 to so many, who are in poverty, so many who are
2 fighting to become a man for them self and women,
3 who can support themselves.

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

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

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

21 Now, if I am in the hospital and I get
22 hurt and a doctor treats me, there are ways that
23 I can be defended, there are malpractice laws.

1 If I buy a vehicle and this thing is brand new,
2 I expect that it should work, and if it's not, I
3 should get a refund.

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

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

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

21 Now, these institutions have not
22 delivered on these promises. And by, these
23 institutions, I mean many of the for-profit

1 institutions, who have, like, used car salesmen,
2 shined up their education and their institutions,
3 although, they haven't been able to deliver on the
4 promises that they said they would be able to.

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

10 MS. CARUSO: One minute remaining.

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

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

23 MS. CARUSO: Thank you. Okay. So

1 before we get into our material for today, I think
2 we've, if we could just take a minute to silence
3 our devices, so that we don't have any distractions,
4 while we get through a lot that we have to get
5 through today. Okay.

6 (Off the record comments.)

7 MS. CARUSO: Anmarie, if you can,
8 begin to take us through the changes in Issue Paper
9 4.

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

14 Our changes that we're working off of,
15 in this paper, will be highlighted in yellow. So
16 looking at the language here, in romanette (ii),
17 class action waiver, means any agreement, or part
18 of agreement, regardless of its form, or structure,
19 between a school, or party, acting on behalf of
20 a school, and a student that relates to the
21 educational services for which the student received
22 Title IV funding and prevents an individual from
23 filing, or participating, in a class action that

1 pertains to those services.

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

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

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

20 MS. CARUSO: Linda.

21 (Off the record comments.)

22 MS. RAWLES: I don't want to hold up
23 discussion on this, but I just ask, if we do a

1 temperature check on this change, we do a
2 temperature check on the elimination of Issue Paper
3 4.

4 (Off the record comments.)

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

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

20 MS. CARUSO: Kelli.

21 MS. HUDSON PERRY: So yesterday, I
22 think there was some concern from a, a bunch around
23 the table that, they didn't feel that the Department

1 had the ability to do something with this, as it
2 relates to arbitration agreement.

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

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

20 MS. HUDSON PERRY: So I'm not really
21 the right person to respond to that, because I,
22 I don't know why other people were saying that they
23 couldn't, but if there's other people around the

1 table that might add some comment, I think it would
2 be helpful, because I -- I'm hoping that we can
3 get past this, but I'm kind of sensing that, that
4 might not be the case.

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

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

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

20 MS. CARUSO: So, William, I want to
21 hold off on that, just until we know if, if this
22 is not going to help us achieve consensus. So
23 what -- we'll definitely have that discussion.

1 MS. WEISMAN: So I just want to clarify
2 that I'm not saying that we have the ability to
3 regulate how it's being done, I'm saying, we believe
4 we have the ability to have institutions inform
5 students that it is being done, which I see a
6 distinction there. We're not trying to regulate
7 the activity.

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

17 What we're saying is, an agreement
18 between a third party, a student and an educational
19 institution, in order for them to have the right
20 to do something that Congress says they have the
21 right to do, they have to do these other things.

22 That's regulating in the space that Congress
23 regulated in the statute.

1 PARTICIPANT: So I, I respect, Kelli,
2 your question, but I also want to say, this was
3 an issue that was raised by John, also, other
4 members at this table, as to positions against and,
5 I believe, Abby and others have raised arguments,
6 as to why they believe the Department has authority.

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

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

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

23 MS. CARUSO: Aaron and then Linda.

1 MR. LACEY: I mean, I voiced yesterday,
2 I agree with John that, I think there's, at least,
3 a question here, and the Department seems to be
4 acknowledging that there is a question, here, as
5 well.

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

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

21 So institutions and organizations that
22 want to make sure that their arbitration clauses
23 defeat any type of challenge in court, are going

1 to make sure that they are adequately disclosed.

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

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

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

22 So the point I just want to make is,
23 bad actors do not have an incentive to hide

1 arbitration clauses, in waivers like this, from
2 students, because that's going to undermine their
3 ability to enforce the arbitration clause.

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

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

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

20 MS. RAWLES: Yes, I won't repeat what
21 Aaron said, because he covered most of my points,
22 but I'd add another negative. Quick background.
23 My constituency isn't pushing against the

1 disclosures, I mean, it's, it's another disclosure.

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

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

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

18 MS. CARUSO: William.

19 MR. HUBBARD: I think I can, perhaps,
20 help illuminate that point for you, Linda. The
21 thing is, it's been stated several times that good
22 schools don't use pre-arbitration agreements.
23 I've been keeping a tally, it's, it's like over

1 a dozen, at this point, over the series of these
2 negotiations.

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

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

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

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

23 I think, for nothing else, that

1 demonstrates that it's not a burden that the good
2 schools are going to do it anyway. So it's
3 difficult for me to understand why there's, kind
4 of, this, this balance of, this is too much for
5 schools to do, the good ones are doing it anyway.

6 It's a non-unique argument, it's already been
7 done.

8 MS. CARUSO: Joseline.

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

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

19 And I think that knowledge is power and,
20 again, especially, with this really big decision,
21 as some of the students who came up earlier to tell
22 you about what that decision lead them to, I think
23 it's important that they are very informed when

1 making this, and I think just the amount of
2 paperwork is not an argument to not do this.

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

5 (Off the record comments.)

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

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

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

23 Quite honestly, they were frivolous

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

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

12 MR. BLACK: Well --

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

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

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

22 MR. BLACK: Yes I --

23 (Off the record comments.)

1 MR. BLACK: I don't know, I just like
2 the -- I don't like that language in there, for
3 the reason that applied to our schools, so for me,
4 I like the version better, yesterday, and taking
5 out that language that you put in there today.

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

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

18 MS. SHARP: My question is for the
19 Department, on the, the statutory right to do this.

20 I'm not concerned about having to do, schools
21 having to disclosures, but I am concerned that
22 there's real concern in the room about the statutory
23 authority and making sure that we address that

1 concern, before we take the vote.

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

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

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

21 (Off the record comments.)

22 MS. CARUSO: It's 9:46 a.m., we will
23 be reconvening at 9:56 a.m.

1 (Whereupon, the above-entitled matter
2 went off the record at 9:46 a.m., and resumed at
3 9:56 a.m.)

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

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

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

20 And, and the question in my mind became
21 and what I was hoping to discuss with folks was
22 the extent to whether, to which, there's a
23 difference between changing your mind on that point

1 and being willing to consider a compromise, still
2 believing what you believe.

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

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

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

18 So our request, recommendation is that
19 we park IV, with the understanding of the comments
20 that have been made, no promises as to what might
21 happen, but, but the very clear belief, I think
22 that, whether there could be movement on IV, one
23 way or another, is going to, is going to depend

1 on how things turn out with the other Issue Papers
2 and it would be productive then to move on to the
3 others.

4 MS. WEISMAN: So I think I heard Elmo.

5 MS. CARUSO: You did, indeed,
6 Annmarie.

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

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

11 (No audible response.)

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

14 (Off the record comments.)

15 MS. CARUSO: Yes. Okay.

16 (Off the record comments.)

17 MS. CARUSO: Still? Okay.

18 MS. SHAFROTH: Yes, and I'll be, I'll
19 be really quick. I, I just wanted to say, briefly,
20 my understanding now is that the Department is,
21 either, has already, or would put in a severability
22 provision, such that, if the arbitration provision
23 that comes out of this process is, is struck down

1 by a court of law that wouldn't impact the rest
2 of the regulation.

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

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

15 MS. CARUSO: Ashley Harrington.

16 MS. HARRINGTON: I would be more than
17 happy to discuss that, if other people would be
18 willing to discuss it. And piggy-backing on what
19 Valerie, the non-lawyer said, before the agreement,
20 we're just reminding people that, every school
21 signs a program participation agreement, which is
22 a series of requirements for participation in the
23 federal funding program, which is not a right.

1 It's not a right to participate, institutions
2 choose to get access to Title IV money.

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

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

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

16 MS. CARUSO: William.

17 MR. HUBBARD: That also being the case,
18 I mean, I think, fundamentally, I just want to make
19 it clear that, the military and veteran community
20 can't say more strongly, but oppose the fact that
21 arbitration agreements are even included, as part
22 of something that is foisted upon students in, in
23 a tremendously unfair way.

1 But, I think, ultimately, the point
2 stands that, if it will be used, it must be
3 disclosed. I, I'm still having a hard time
4 understanding what the fear of transparency is,
5 it's as simple as that, really.

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

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

16 MS. CARUSO: Okay.

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

22 MS. CARUSO: And can Issue Paper Number
23 3 be --

1 (Off the record comments.)

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

5 (Pause.)

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

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

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

1 of educational services.

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

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

11 (No audible response.)

12 MS. CARUSO: Okay. Aaron.

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

22 I mean, if every time Ohio State gets
23 sued by a student, right, and has any debt, or

1 liability, 100,000 students, major state
2 university, they're going to have to report it to
3 the Department. I mean, I think this is going to
4 require the reporting of thousands of claims a year.

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

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

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

18 You know, I mean, I get the concern on
19 the other side, we want the Department to know
20 about, you know, anything that's material's going
21 to be reported in your financials, every year, if,
22 if the auditor thinks it's material to the
23 institution.

1 I just do not think that's workable.

2 I, it's not about, I, you know, it's not about
3 knowledge, I don't have a -- I just don't think
4 that's administratively workable. I don't think
5 we're clear on the volume of stuff you're going
6 to be getting, from every institution in the
7 country, so I don't know, but I would strike it.

8 MS. WEISMAN: So could I suggest --

9 (Off the record comments.)

10 MS. WEISMAN: Oh, go ahead, Ted.

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

18 MR. LACEY: You know, we could add, I
19 mean, this is a determination the institution would
20 have to make, but you could add something like,
21 any -- I mean, there's a couple of different
22 concepts, there's, sort of, material adverse
23 effect. There is (indiscernible) that are a

1 current liability -- let's put it behind the
2 liability, actually.

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

7 (Off the record comments.)

8 MS. WEISMAN: So I have a suggestion --

9 MR. LACEY: Well, yes, here we go.
10 Help me, help me --

11 (Off the record comments.)

12 MS. WEISMAN: Oh, go ahead. Yes.

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

22 MS. WEISMAN: So the idea here, of the
23 triggers, is to give a more early warning system

1 to the Department, so that it can act before a
2 significant number of claims would be received,
3 and determine if there's a reason to obtain the
4 letter of credit, because they see substantial risk
5 coming.

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

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

18 So then, to the second point, the idea
19 of saying material concerns me, because I think
20 people are going to want to qualify that, to some
21 extent. So what I was thinking is, could we do
22 something with a percentage of the Title IV(a)
23 disbursed in the previous year?

1 MS. HUDSON PERRY: Well, so material,
2 material doesn't really have anything to do with
3 your, the amount of financial aid, material is based
4 on your financial statements, as a whole.

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

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

18 It is, from a financial statement
19 perspective, it is, because, what this is saying
20 is that, they have a final judgment that says they
21 have a liability that they then have to pay, which
22 is the same concept, as the Department saying you
23 have a liability that you have to pay. So there

1 should be a, if this stays, there should be also
2 a recalculation of the score and how it effects
3 that. It shouldn't just be based on the fact that
4 there's a judgement, because it might not have an
5 effect on a composite score that's already defined.

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

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

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

16 PARTICIPANT: Yes.

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

21 PARTICIPANT: It, I don't think it's
22 a trigger, it's just a notice requirement, so the
23 Department's aware of the judgment. And then, if

1 they feel like that's worthy of some sort of further
2 investigation, they can do it. I don't want to
3 require an additional automatic -- right, but, but
4 I think that the point, I totally agree with Kelli
5 that it's got to be materiality relative to the
6 operations and financial, overall financial health
7 of the institution.

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

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

19 PARTICIPANT: I would disagree with
20 calculating the materiality threshold, based on
21 financial aid. We all have independent audits,
22 profit, as well as not-for-profits, and I have seen
23 these thresholds range from \$5,000 and then they,

1 the essence of the University of Alabama, or the
2 Ohio State, it's over a Million Dollars. So I think
3 putting in just a, a statement, without defining
4 how that statement is to be defined, is probably
5 at right.

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

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

14 PARTICIPANT: Could you speak into the
15 mic?

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

21 If you think about it, it's a
22 \$1-Million-Dollar liability material. It's
23 material to us, if it drops the composite score

1 below a 1.0. If it doesn't, it's not material to
2 us.

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

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

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

20 And, if the institution fails and you
21 subsequently fail to notify you and you
22 subsequently determine that they failed, because
23 of something, in your view, was material, then

1 that's on the institution.

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

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

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

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

20 Another thing I wanted to mention is
21 that, when I opened my Google Doc, there was
22 language that said final judgment, or determination
23 in a judicial, or administrative, proceeding, or

1 a settlement, and I don't see that up there, so
2 I just want to make sure that we're, we had the
3 right, that we're talking about the right language.

4 Did you intend to include settlement, because
5 that's what was in what was emailed to me?

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

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

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

20 MS. CARUSO: Abby.

21 MS. SHAFROTH: I'm also supportive of
22 this addition, I appreciate it, from the
23 Department. I, I disagree with Aaron that we need

1 to include a materiality provision here,
2 especially, a sort of financial materiality
3 provision.

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

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

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

23 In light of the, you know, there have

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

13 That might be that, students are going
14 to withdraw. That students aren't going to enroll.

15 That they're, that they, that they might lose their
16 accreditation. That, that, that's an important
17 signal that, that some that that institution, you
18 know, may be, may be in a lot of trouble.

19 Sometimes it's not. You know,
20 sometimes it might just be a small one-off thing
21 and it's not going to, going to matter that much,
22 but this is, that's why this is discretionary, the
23 Department gets to look at it and gets to make that

1 assessment. So I'm strongly in favor of including
2 this provision and of not limiting it by some
3 financial materiality standard.

4 MS. CARUSO: Alyssa.

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

18 MS. CARUSO: Kelli.

19 MS. HUDSON PERRY: Abby, I can totally
20 appreciate what you're saying. But, because of
21 the fact that we're writing this for every
22 institution across the country, we have to, I mean,
23 we have to think about the fact that you could have,

1 in this case, there could be a judgment that's
2 \$10,000 for a school that has a
3 \$500-Million-Dollar-Budget.

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

8 MS. CARUSO: Aaron.

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

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

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

23 So you're talking about a major public

1 university, with a, you know, 90,000 students and
2 50,000 employees. Every time there is a state,
3 or federal, or any kind of agency administrative
4 proceeding and you have a determination in that
5 administrative proceeding, for \$5.95, I have to
6 report it to the Department.

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

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

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

23 So I would propose, arising from a final

1 judgment in a state or federal court proceeding
2 that determined the institution committed fraud.

3 I don't have any issue with that, the Department
4 should know that.

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

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

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

22 And, finally, to the extent that
23 arbitration clauses are not banned, then an

1 arbitration decision should be added to that
2 judicial, administrative, or arbitral proceeding.

3 MS. CARUSO: Kelli.

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

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

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

23 I mean, that's what we're talking

1 about, was there some sort of judgment? Who cares
2 what it was about? Who cares? If, if it's
3 threatening the financial stability of the
4 institution?

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

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

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

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

1 of that proposal?

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

4 MS. CARUSO: Okay.

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

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

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

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

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

22 PARTICIPANT: Right, I mean, this
23 section is about determining financial

1 responsibility. It's not about determining,
2 whether or not fraud has, has happened.

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

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

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

23 If there is a final judgment, then we

1 want to know about it, regardless of when it, what
2 set of financial statements it ends up on, you've
3 got to notify us of that and then we will take a
4 look at it.

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

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

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

23 Now, maybe, now administratively,

1 administrative actions, however, that is the bulk
2 of the, of the types of notifications we get. We
3 get them from the Department, we get program
4 reviews, we get final determinations on that, all
5 the -- and they, as I said yesterday, they can be
6 for \$13.40, or they can be for several million,
7 and letters of credit and everything else.

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

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

19 So if they're not objecting to this
20 language, on those grounds, then I'm taking them
21 at their, at their word that, that they're able
22 to, to handle that and they're not, they're not
23 objecting to it, so.

1 But, for the sake of moving this
2 conversation along, I think that the right place
3 to put this is about materiality and, and, and move
4 on to the next thing.

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

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

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

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

22 MS. HUDSON PERRY: The only thing I
23 would add is, any material, as defined by the

1 institution's auditors, for financial statement
2 purposes, because, then that puts somewhat of a
3 box around material. Every institution has a
4 materiality threshold, for financial statements.

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

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

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

20 I mean, that's what, what Mike Busada's
21 been telling us, this week, that there's real, real
22 threats to institutions being able to, that, that
23 his, basically, he said that if there's a successful

1 borrower defense against his school, his school
2 would probably close.

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

13 PARTICIPANT: And I understand that.
14 But, this is not the mechanism, necessarily, for
15 that to happen. There are other mechanisms, within
16 the triad, for information sharing that will give
17 the Department knowledge, either, through the
18 relationship with their state -- I mean, this is
19 a, this is a, what you're talking about, it's not
20 just that, a liability was incurred, in relation
21 to a determination, but you don't want, you don't
22 want the amount to be, to be the issue, why they
23 don't look at it.

1 But, again, they're looking at this for
2 financial responsibility issues, there are other,
3 other mechanisms for that to happen, without it
4 having to live here.

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

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

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

20 And, to me, this section was saying
21 these are, these are things on which the Department
22 can take a look and decide, if it needs some sort
23 of financial protection, in case of, you know, in

1 case the school, it might, might close, or it's
2 otherwise, you know, these are, these are signs
3 of potential financial distress, are there other
4 -- what other, what other ways could the Department
5 get that sort of financial security, based on the
6 types of, the types of events I've just described?

7 Maybe the Department can answer, maybe, I don't
8 know.

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

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

23 And, and, and, you know, if, if the

1 issue here is just about, whether they're going
2 to close, precipitously, I'm, I'm, I'm not even
3 really sure whether, whether this gets to that,
4 one way or another. But requiring it, in every
5 single instance, I think, is a solution in search
6 of a problem.

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

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

1 taxpayers.

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

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

13 I think that, you know, Aaron is right,
14 we, we don't want every, you know, \$5,000-claim.

15 It's, it's generally not going to have a
16 significant impact.

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

21 Because, again, it balances out the
22 needs of us getting the information that we need,
23 when it's significant, but not getting every little

1 thing that could trickle in.

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

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

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

17 MR. HUBBARD: My comment --

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

20 MR. HUBBARD: My comment is very quick.

21 I definitely appreciate Michael's point about the
22 creditors providing additional levels of
23 oversight. That's extremely important.

1 Unfortunately, not all creditors are
2 as good as my friend, Michael, across the table,
3 but I think their, the ability for the Department
4 to also directly have that interface, is important,
5 for that reason.

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

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

15 PARTICIPANT: Okay.

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

18 PARTICIPANT: All right.

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

23 MS. CARUSO: Okay. The language, as

1 written, in yellow. Let's see a show of thumbs.

2 Alyssa.

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

7 Excluding public institutions.

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

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

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

22 MS. FREDMAN: So I just want to,
23 quickly, point out and, you know, our concern with

1 the materiality provision, taking into account
2 everything that's been said here, for example, with
3 the Corinthian, which was a giant
4 publically-traded-corporation, even if the school
5 had, in a lawsuit, had a judgment where they had
6 to return the entire \$30,000 or \$40,000 in tuition,
7 it probably wouldn't have been material, in light
8 of the total budget of that school.

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

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

17 (Pause.)

18 MS. CARUSO: We have one thumb down.
19 Can we please hear from you, Abby?

20 MS. SHAFROTH: Yes. I mean, I've,
21 I've said my peace about material, but Juliana had,
22 had made a proposal that we include the final, final
23 judgments from arbitral proceedings, which, you

1 know, seems important, to the extent the Department
2 isn't going to ban use of mandatory arbitration
3 by predatory institutions that the Department would
4 want to know about those, as well, and we hadn't
5 had any voter discussion of that.

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

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

13 (No audible response.)

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

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

21 It's separate, okay, thank you.

22 MS. CARUSO: Thumbs, please.

23 (Pause.)

1 MS. CARUSO: Barmak, your thumb is
2 down, can you please provide a proposal that
3 would --

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

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

21 MS. CARUSO: Michael, please.

22 PARTICIPANT: I, I just don't think
23 that all public institutions are the same. And

1 I don't, I mean, there are several instances where
2 budgets are being stretched very thin and my own
3 agency has experience in accrediting public
4 institutions that are very thinly resourced.

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

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

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

20 (No audible response.)

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

23 (No audible response.)

1 MS. CARUSO: You got a gold star
2 yesterday.

3 (Laughter.)

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

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

16 PARTICIPANT: But they would still
17 have to do an evaluation of whether or not it was
18 material and, in the end, it really doesn't matter.

19 I mean, Pennsylvania's going to pay, if the
20 Department requests money, as is any other state.

21 MS. CARUSO: All right, let's have a
22 show of thumbs on this and, one way or another,
23 we're going to need to move on. As written,

1 excluding public institutions, please provide a
2 show of thumbs, as to whether you can live with
3 this in the context of a full agreement.

4 (Pause.)

5 MS. CARUSO: All right, we have one
6 thumbs down. We'd like to move on and then
7 reevaluate, based on the entirety of Issue Paper
8 3.

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

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

17 MS. CARUSO: Any issues with this?

18 (No audible response.)

19 MS. WEISMAN: Would it help if I read
20 them? I know some people are not auditory
21 learners, but I can certainly read them for you.

22 So this starts in D, recalculate in the composite
23 score.

1 It now reads, the Secretary recognizes
2 that the actual amount of the debt, or liability,
3 incurred by an institution, for borrower defense
4 claims, under Paragraph C(1), or the amount the
5 institution is required to pay, under Paragraph
6 C(5), as an expense, and accounts for that expense
7 by, and then, number one is for a proprietary
8 institution.

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

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

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

1 restrictions, by that amount.

2 (Pause.)

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

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

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

20 MS. CARUSO: Any other concerns?

21 (No audible response.)

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

1 whole agreement.

2 (Pause.)

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

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

14 MS. CARUSO: Any issues here?

15 (No audible response.)

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

18 Oh, oh, I'm sorry.

19 MS. WEISMAN: So then we have, on
20 Romanette (ii), the Secretary makes a final
21 determination, after considering the information
22 provided by the institution, under Paragraph
23 C(3)(i) of this section.

1 So this is where institutions were
2 asking for an opportunity to provide information
3 and that, we have up above in B, for example, show
4 that the action, or event, has been resolved.

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

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

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

22 Or, are you targeting, like,
23 prop -- what I'm struggling with is, whether you

1 are attempting to, sort of, capture the notion of
2 somebody taking profits out, or are you making
3 distinctions on different kinds of expenditures
4 and privileging taxes?

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

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

13 PARTICIPANT: Okay. Okay.

14 MS. WEISMAN: -- since we --

15 PARTICIPANT: Good.

16 MS. WEISMAN: -- discussed those in
17 detail.

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

22 In the last line, where, we've already
23 talked about the idea of expanding it from six to

1 12 months, we now say at the end, the Secretary
2 uses the fund to satisfy the debts and liabilities,
3 owed to the Secretary that are not, otherwise, paid
4 directly by the institution. I see an extra space
5 there.

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

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

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

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

19 (No audible response.)

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

23 (Pause.)

1 MS. CARUSO: No thumbs down. Are we
2 at the end of Issue Paper --

3 (Simultaneous speaking.)

4 MS. CARUSO: No.

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

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

12 MS. WEISMAN: Okay.

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

16 MS. WEISMAN: Okay.

17 MS. CARUSO: -- have a break.

18 MS. WEISMAN: So the change that we are
19 making is what we talked about deleting yesterday.

20 So we'd already covered it, yesterday, but just
21 to, kind of, re-enforce, on both Appendix A and
22 B, we struck the language about long-term debt,
23 and so that applies to both the for-profit and the

1 not-for-profit institutions.

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

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

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

23 MS. WEISMAN: So our feeling is that,

1 that changes the way we're currently doing things
2 and that we would feel less comfortable adding that
3 in. We feel we've defined it, as we need to, here,
4 and, and don't wish to qualify it further.

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

11 MS. PEFFER: Rhonda Peffer (phonetic).
12 Mainly, just because we don't go to FASB on the
13 other ones, we, it's, we would need to, kind of,
14 clarify that, on each aspect, where we're getting
15 our definition from, if we start putting it on one.
16 So for consistency, we don't think we should do
17 it here, either.

18 PARTICIPANT: Okay. So that's not a
19 hill I'm going to die on, but my second question
20 is, in the supplemental schedule, and I just, I
21 think I saw it, on what was emailed to us, but I
22 just want to make sure that, the concept of
23 long-term lines of credit is a line on the

1 supplemental schedule, so that if people do have
2 them, they can add them.

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

6 PARTICIPANT: Okay.

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

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

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

1 long-term, for long-term purposes.

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

8 (Pause.)

9 MS. CARUSO: Is that all, Annmarie?

10 (No audible response.)

11 PARTICIPANT: Just one other question.

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

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

21 MS. CARUSO: Any remaining concerns,
22 before we take an, almost, final check on Issue
23 Paper 3?

1 (No audible response.)

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

11 (Pause.)

12 MS. CARUSO: No thumbs down. Thank
13 you. Moving on, for now, to Issue Papers 1 and
14 2, which will be passed out to the group, in printed
15 form. It's, hopefully, happening now. Thank you,
16 Barbara.

17 So thanking you, in advance, for your
18 patience, we are going to take 20 minutes, to review
19 Issue Papers 1 and 2, in conjunction with a restroom
20 break and return at 11:30 a.m., to ask questions
21 and provide comments and issues, so that the
22 Department can consider them, which they very much
23 want to do, during the lunch period.

1 Okay. Folks, before -- Can we settle
2 down, so that we can get our instructions, please?

3 Thank you. We are going to take 20
4 minutes to review Issue Papers 1 and 2, in
5 conjunction with a restroom break and return at
6 11:30 a.m., to provide comments and issues and
7 additional proposals to the Department that they
8 can then consider, during lunchtime --

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

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

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

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

23 MS. WEISMAN: Thank you. On Page 3,

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

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

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

22 PARTICIPANT: Should the word of
23 corroborating evidence, also be highlighted?

1 MS. WEISMAN: Yes. Yes, up above
2 that, corroborating, which we struck that word that
3 also should be in yellow.

4 PARTICIPANT: Just a question then, on
5 4(i), made with reckless disregard for the truth
6 is highlighted, but it is not a change, it was in
7 the text, previously.

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

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

21 MS. CARUSO: Linda.

22 MS. RAWLES: Since we're back to the
23 original language of the Department of this

1 session, for our evidentiary standard, is there,
2 have I missed, or does the Department not have
3 anything in this draft that would make sure that,
4 even though you said orally that you consider that
5 to be between preponderance and clear and
6 convincing, is there anything in this draft that,
7 that records that, for when we all, either, get
8 hit by a bus, or win the lottery? Because,
9 otherwise, I'd be very opposed to the evidentiary
10 standard, as written.

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

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

22 MS. CARUSO: Linda, are you,
23 specifically, referring to your language,

1 yesterday, that says it's more likely to be true
2 than not true?

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

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

13 MS. CARUSO: John and then, Ashley
14 Harrington.

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

22 MS. HONG: Certainly. If you could,
23 read out loud, if you have language, and then we

1 can have a short --

2 MR. KOLOTOS: All right.

3 MS. HONG: -- short discussion of that.

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

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

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

15 MS. HONG: You're forgiven, John.

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

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

22 PARTICIPANT: Okay, so it's not in the
23 papers, in your handouts, but it, it is in the Paper,

1 on the screen.

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

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

9 PARTICIPANT: Yes.

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

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

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

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

22 (No audible response.)

23 MS. CARUSO: Suzanne.

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

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

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

22 MS. CARUSO: Aaron and then Abby.

23 MR. LACEY: Yes, at the risk of being

1 hyper literal here, I was going to suggest that,
2 substantial weight of the evidence demonstrates,
3 and this follows on Linda, to be replaced with,
4 if the weight of the evidence demonstrates, to a
5 degree of certainty that is at the midpoint, between
6 preponderance and clear and convincing.

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

13 PARTICIPANT: Aaron, can you repeat
14 that?

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

21 Okay. Sorry, I'll do it again.
22 That -- no, I'm just kidding. The evidence
23 demonstrates to a degree of certainty that is at

1 the midpoint between preponderance and clear and
2 convincing. Maybe it's a preponderance and clear
3 and convincing. Is that up there?

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

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

8 It has to be precisely at the midpoint.

9 (Laughter.)

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

12 MR. LACEY: No, it's a good point.
13 Yes, yes, it's a good point.

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

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

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

23 MS. CARUSO: Where are you?

1 MR. LACEY: Yes, I'm sorry, in the next
2 section (i), Roman numerette (i), right. So we
3 say, the institution, which the barber enrolled,
4 the barber, the borrower enrolled, made a
5 misrepresentation, related to enrollment at the
6 institution of the provision of educational
7 services, upon which the borrower relied, under
8 the circumstances.

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

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

20 I think that, I'm looking now, on the
21 next page, at what currently is, sort of, a
22 definition, or elucidation of substantial weight
23 of the evidence. First of all that would need to

1 be changed, to conform with the prior concept that
2 I articulated, the midpoint concept, because we
3 would no longer be using the substantial weight
4 of the evidence standard, if we bought into the
5 other one.

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

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

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

20 On the next page, let's see, I'm going
21 all the way down to J, so I'm now in Roman numerette
22 (i) all the way down to (j), I appreciate the
23 Department's conforming language here.

1 I believe that it just borrowed text
2 from L, from I, which is fine, but it included a
3 clause that I think needs to be struck, this last
4 clause that may include representations, regarding
5 size, location, facilities.

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

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

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

20 Because, from my standpoint --

21 MS. CARUSO: Aaron, in the interest of
22 time, I'm going to let them consider the
23 question, --

1 MR. LACEY: Okay that's --

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

3 MR. LACEY: Got it.

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

5 MR. LACEY: Understood. Understood.

6 All right that's my last comment.

7 MS. CARUSO: Thank you. Abby.

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

18 You know, there may be room for
19 negotiation around imposing a time limit on the
20 borrower's ability to get refunds of amounts
21 already paid, but, but it would be devastating to,
22 to my clients and to many borrowers. And I, I think
23 it's unconscionable, to allow for, to, to require

1 the Department to continue to collect in those
2 circumstances.

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

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

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

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

23 Go on, Abby.

1 MS. SHAFROTH: Okay. Same page,
2 Paragraph 4, Roman numerette (i), the definition
3 of misrepresentation, I see that this says,
4 regarding material fact intention, or law, the
5 language previously, when it was in a different
6 paragraph, said material fact opinion, intention,
7 or law, I would reinsert opinion.

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

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

19 In Paragraph B, below that, I think
20 it's, yes, so C(b), but I think, I think it's
21 supposed to be B, now, it says, after completing
22 the program. I would, I would, either, strike that
23 language, or I would say, after completing or

1 withdrawing from the program, because we know that
2 that most borrowers, who attend predatory schools
3 never actually complete the program, they withdraw.

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

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

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

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

17 MS. SHAFROTH: Oh, oh -- oh yes. Sure.

18 MS. CARUSO: We have -- all right.
19 Michael.

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

1 he proposed.

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

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

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

21 What if we separated the two? And that
22 is to say, okay, so there's no statute of
23 limitations on when a borrower can bring a claim,

1 but there is a limitation on when the Secretary
2 can initiate recovery proceedings, so that, okay,
3 if, if a claim is 20 years old, the likelihood of,
4 of actually prevailing on that claim is quite small,
5 anyway, but the opportunity would still exist, if
6 they had that evidence.

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

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

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

22 I'm hoping both sides can see that, as
23 an opportunity that you're not giving up too much

1 and, actually, you're retaining quite a bit of what
2 you want.

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

6 (No audible response.)

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

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

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

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

20 PARTICIPANT: Thank you.

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

23 PARTICIPANT: Okay. Welcome back.

1 Just a brief update from the Department, and then
2 we will continue to get feedback on Issue Paper
3 1.

4 MS. WEISMAN: So, just to kind of pick
5 up where we left off, I think, because we were not
6 finished hearing all of your feedback about Issue
7 Paper 1, we'd like to hear the feedback on 1 in
8 its entirety. We'll then move on to Issue Paper
9 2, and then we can start to come back with some
10 additional papers, some of which will be items
11 presented to you on the screen, some of which will
12 be actual paper.

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

22 I know it's a little hard to see some
23 of the screens, but I think by having the clean

1 copy on paper, we can work in conjunction and still
2 make that all work out, so we'll play that by ear,
3 but I think it can work, and if I need to read
4 something if something is unclear or difficult to
5 see on the screen, I can certainly do that, but
6 for right now, I'd like to pick up with your
7 additional comments on Issue Paper 1.

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

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

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

23 MS. RAWLES: Brief comment on one

1 proposed change, and then an alternative change.

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

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

17 PARTICIPANT: Valerie.

18 MS. SHARP: One of the questions that
19 I had is we've added back into the financial
20 harmless opportunity cost, and so, I'm trying to
21 understand how -- I guess, this is creating a way
22 for the Department to explore a borrower defense,
23 but the opportunity costs don't fit in the, in the

1 ability of the Department to consider, because the
2 only thing that can be considered here is the amount
3 of the direct loans, so I think that is the reason
4 the Department gave in a prior session as to why
5 those were included in this list, and now they're
6 excluded, so it appears that the Department's
7 position may have changed on why that should be
8 included, so that is one of my items.

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

22 I'm not sure -- if I had a suggestion,
23 I don't know that I would include it. There may

1 be other proposals to change that would make me
2 more comfortable with that.

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

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

17 PARTICIPANT: Anmarie, did you want
18 to respond in whole or in part to --

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

1 I apologize for that.

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

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

17 So, again, that final sentence of
18 romanette (iii) to say, "Evidence of financial harm
19 may include, but is not limited to," so add the
20 word, "may," and strike the "s" from the end of
21 includes. I think that then would, that would show
22 that it is more discretionary to look at these items
23 and determine if it's applicable.

1 And, then regarding your other change
2 on the next page in D on page six, first, I'll note
3 that we have to renumber here, because we added
4 back in D, we had crossed out E and F, and I think
5 we need to go back to where they were. And I do
6 think that inserting the comma may get us to where
7 we need to go, but we can look at that language.

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

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

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

23 PARTICIPANT: I can see why there might

1 be concern, because in the second line where you
2 repeat nature of tuition and fees, you've added
3 the sentence, or the statement that the tuition,
4 institution represented. There might be a way to
5 do that without repeating, "Nature of tuition and
6 fees," because you'd also have that in nature of
7 financial assistance in there, so you'd be
8 repeating everything twice.

9 Let me see if I can find a suggestion.

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

12 PARTICIPANT: Yes, that might work.

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

21 MS. SHAFROTH: I think that what was
22 separated were two different things, so I think
23 the first one should read, "Significant difference

1 in the actual amount or nature of the tuition fees
2 represented to, or charged by, the institution,"
3 and take out, "Or the amount of nature." That --
4 what's highlighted in gray should go down below,
5 and it should be, "A significant difference in the
6 amount or nature of tuition and fees," or, I'm
7 sorry, "The nature of financial assistance," so
8 take out the highlighted, the red part. Take out
9 "Tuition and fees."

10 So, the second one, "A significant
11 difference in the amount or nature," take that out.

12 There you go. "Significant difference in the
13 amount or nature of financial assistance provided
14 by the borrower -- provided to the borrower," and
15 then take out the rest of -- and add, "For which
16 the Direct Loan was."

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

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

23 MR. O'CONNELL: Yes.

1 MS. DOBSON: Yes.

2 PARTICIPANT: Okay. Yes, go ahead.

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

9 PARTICIPANT: All of it?

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

12 PARTICIPANT: Jay, did you have
13 something to add?

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

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

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

23 So, I'm going to read those two

1 statements now that they've been redrafted. So,
2 the new D is, "A significant difference in the
3 actual amount or nature of the tuition and fees
4 represented to the borrower and charged by the
5 institution for which the Direct Loan was
6 disbursed."

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

12 PARTICIPANT: Kim.

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

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

20 I think -- I don't even know if you need
21 the "actual" in the first one. I think what we're
22 saying is, "A significant difference in the amount
23 or nature of the tuition and fees represented to

1 the borrower and those actually charged by the
2 institution for which the Direct Loan was," so I
3 would take "actual" out of the first sentence, and
4 then I would say, "And those actually charged."
5 Yes, I think that's what we're trying to get at,
6 because those represented would not be actual.

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

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

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

22 We would then have E that reads, "A
23 significant difference in the amount or nature of

1 financial assistance represented to the borrower
2 and the amount or nature of financial assistance
3 actually provided by the institution."

4 PARTICIPANT: Alyssa.

5 MS. DOBSON: I -- financial aid folks
6 in the room were discussing, we don't necessarily
7 know or feel that you need, or would want to have,
8 "For which the Direct Loan was disbursed," on there.

9 It's a little bit technical, but there are many
10 instances where we are applying financial aid on
11 a student-by-student basis where they may have a
12 last dollar scholarship award that requires us to
13 apply that award to tuition and fees. Therefore,
14 the Direct Loan would actually be intended for room
15 and board or for a different cost of attendance
16 component. It just adds some strange linkage that
17 we don't know should be there.

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

20 (No audible response.)

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

23 MR. BUSADA: And I just want to go back

1 and add just a little bit different perspective,
2 again, on the statute of limitations. I've talked
3 about why just from a philosophical standpoint I
4 think that, you know, over 2,000 years of
5 jurisprudence using the statute of limitations
6 there's a reason for it.

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

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

21 And I'll give you one example when it
22 comes to statute of limitations. This morning,
23 I got a call from two, two association presidents

1 for small schools in states, and they heard that
2 we were talking about going from a three-year to
3 a ten-year, and just that, they were terrified,
4 and so over the last two days when they saw this
5 come out, they talked to their IT companies, and
6 they talked to their insurance companies.

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

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

16 MR. BUSADA: Okay. All right.

17 "In the event that you are hacked, you
18 now not only have to pay restitution to 300 students
19 if you have a 100 a year, now you have an additional
20 700."

21 The insurance company is not going to
22 provide you insurance to cover that, and they're
23 especially not going to provide you the insurance

1 to cover something that is in perpetuity, and so
2 if this happens, or if we extend it, keep in mind
3 that every institution will have to purchase
4 additional insurance, purchase additional space,
5 additional IT resources whether you're a good
6 school, a bad school, and for small schools, that
7 is almost impossible, so it does affect us
8 tremendously.

9 PARTICIPANT: Okay. All right.

10 Aaron.

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

14 PARTICIPANT: This morning.

15 MR. LACEY: -- to the -- I'm sorry, this
16 morning, to the statute of limitations issue. I
17 mean, my, you know, in my mind, the challenge here
18 is you've got, on the one hand, the understandable
19 borrower interest if you've been wronged in being
20 able to bring a claim without regard to when that
21 happened, and on the other hand, you've got
22 institutions, as Michael has said, they're very
23 concerned about maintaining data over periods of

1 time.

2 And in addition, I made the point
3 yesterday, and it's important to note, you know,
4 and are being directed by the federal government
5 and others under privacy and related plans and
6 regulations not to keep that data --

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

9 MR. LACEY: Yes, sure.

10 So, the -- under the existing law,
11 right, the Department bears some risk, okay, so
12 the idea is borrowers can bring that claim, right,
13 under the 95 Regulations, but after three years,
14 the Department can no longer recover from
15 institutions, right, so you solve that issue by
16 limiting the institution's risk -- and by the way,
17 that three years is explicitly tied to, to data
18 maintenance requirements, right, so I believe that
19 the Department should seriously consider -- and
20 I understand the statement has previously been made
21 that they are not necessarily interested in taking
22 on any risk, but I think the Department should
23 seriously consider whether or not, and to what

1 extent it can accept some risk in this scenario,
2 because if we could say, for example, borrowers
3 can bring a claim for the life of the loan, but
4 the Secretary is limited on recovery action five
5 years from the date of graduation, withdrawal,
6 etc., right, you've limited the institution's
7 exposure, and confined the time period they have
8 to retain records to defend themselves, etc., and
9 you also have still created an outlet.

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

22 And I think that the exposure -- and
23 I'm a taxpayer, but I think the exposure to the

1 Department here would be within the limits of
2 reason, so that's a specific proposal, and I would
3 strongly encourage the Department to give it
4 consideration.

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

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

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

18 PARTICIPANT: I'm sorry. What?

19 MR. LACEY: There are two spots, and
20 I'm not -- I don't have them right in front of me,
21 so someone else feel free to jump in, where the
22 Secretary is limited -- the Secretary's ability
23 to three years following the resolution of the

1 claim.

2 And what I would do is I would adjust
3 those to say that the Secretary is limited to
4 bringing recovery action against the school to five
5 years from the date that the student graduated,
6 withdrew, etc., and then I would change on page
7 three to where we currently have the statute of
8 limitations we've been discussing to say, "That
9 a borrower must file a borrower defense claim under
10 paragraph (b) (1) of this section, you know, prior
11 to determination of the loan," or however the smart
12 way to say that is, "Prior to the, you know, end
13 of the life of the loan."

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

23 PARTICIPANT: Can you restate the

1 first part?

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

4 PARTICIPANT: One's in Issue Paper 2.

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

7 PARTICIPANT: No, just 1.

8 MR. LACEY: Where's the first one?

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

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

13 PARTICIPANT: I only see it in --

14 PARTICIPANT: Caroline, can you --
15 Caroline, can you weigh in for us?

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

1 worked out, but just the concept, I think, about
2 --

3 MR. LACEY: Okay. You --

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

6 MR. LACEY: Yes, sure.

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

9 PARTICIPANT: All right. William.

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

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

22 Additionally, I propose striking
23 opportunity cost as it was previously erroneously

1 struck. I propose intentionally striking it.

2 PARTICIPANT: Juliana.

3 MS. FREDMAN: So, I have two proposals.

4 One is about C where it talks about misrepresenting
5 the transferability of credits, or the cost of
6 obtaining nontransferable credits. One thing we
7 saw a lot in some of the big college explosions
8 was that the credits might be transferrable, but
9 only to another for-profit, (inaudible) students
10 could transfer, but only to ITT, so we would change
11 that to the cost of obtaining credits that are not
12 widely transferrable where the institution
13 represented to the students that the credits would
14 be widely transferrable, or something like that.

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

21 PARTICIPANT: Michael.

22 MS. FREDMAN: Okay, I can read it
23 again.

1 PARTICIPANT: Like I said, could you
2 restate your second --

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

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

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

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

18 PARTICIPANT: By the school for the
19 student?

20 MS. FREDMAN: To the student.

21 PARTICIPANT: To the student.

22 MS. FREDMAN: School to the student.

23 PARTICIPANT: We're good?

1 (No audible response.)

2 PARTICIPANT: Okay.

3 Michael.

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

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

18 With regard to Valerie's concern, on
19 page five about lower wages, I'm having a real
20 struggle between A and B, and I understand why Abby
21 asked for this, but I still think that you have
22 to -- wage is lower than what, and I think that
23 lots of folks go to school for lots of different

1 reasons, and that doesn't always mean to increase
2 their earning potential. It could just be to
3 increase their happiness quotient.

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

11 Aaron, did you get that?

12 (No audible response.)

13 MR. BOTTRILL: Okay. Thank you.

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

22 PARTICIPANT: Chris.

23 MR. DELUCA: So, I have a proposal, but

1 then also, I must confess, I'm kind of confused
2 with what's going on in the sense of this, because,
3 so Will suggested that he wanted to strike
4 "Opportunity costs and reckless," and now I get
5 on here and I say, "I want to add opportunity costs
6 and reckless," and then somebody else puts their
7 comment, and says, "Well, I want to delete it,"
8 and somebody else puts their comment, and says,
9 "I want to add it."

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

16 MS. WEISMAN: Okay, then let me
17 clarify.

18 PARTICIPANT: Sure.

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

21 PARTICIPANT: Maybe we can both
22 clarify, Annmarie.

23 MS. WEISMAN: Okay.

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

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

9 MR. DELUCA: Okay.

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

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

1 flavor of that, but, you know, we heard certain
2 things.

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

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

19 MR. DELUCA: So, then just so I'm clear
20 on this, so then it's -- so, you know, we're
21 commenting on what's here, you're going to take
22 it back, then, you know, it doesn't matter if Will's
23 the last person, or I'm last, or Aaron, or Michael.

1 MS. WEISMAN: The person who was last
2 is insignificant, but what I will say at this point
3 --

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

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

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

9 (Laughter.)

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

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

18 PARTICIPANT: And I respect the hard
19 work that's being done to reach a compromise on
20 the statute of limitations, and it's not something
21 that I've taken a stand on, but I would just note
22 us taking explicit action to let the alleged
23 wrongdoers off the hook while keeping the taxpayer

1 on it gives me some pause. I'm not saying
2 necessarily I would, I would actively oppose it,
3 but that, that gives me a good deal of pause.

4 PARTICIPANT: Abby.

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

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

18 MS. SHAFROTH: Yes. So, this is -- it
19 would be, you know, adding something to the list
20 that ends on page four in what the version I'm
21 looking at, so, so misrepresentation examples.
22 We have in here, misrepresentation regarding
23 educational resources, but those are that are

1 necessary for completion of the student's
2 educational program. This is a different type of
3 resource that is relevant.

4 Go ahead.

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

10 MS. SHAFROTH: Or resources?

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

16 MS. SHAFROTH: Thank you.

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

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

21 I -- I just sort of put a question mark
22 for myself by -- oh, okay, it looks like, it looks
23 like maybe we fixed J.

1 And, then I don't have specific
2 language for this, unfortunately, but, but just
3 for the Department's consideration. Another,
4 another issue that we commonly come across is, is
5 a recruiter tells, tells the borrower that they
6 have to make a decision to enroll sort of on the
7 spot or within 24 hours.

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

20 And if we could scroll then to the
21 examples of financial harm? I'm looking at the
22 one regarding borrower's inability to secure
23 employment, which is D on my list, but I think it's

1 getting renumbered. I would -- I would strike the
2 language, "For which the program expressly
3 guaranteed employment."

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

14 PARTICIPANT: Sorry. Could you say
15 that?

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

20 PARTICIPANT: Just a question on that
21 to clarify to make sure I understand what you're
22 saying. So, in other words, if your placement rate
23 was 80 percent, you said it was 80 percent, the

1 student came, everything turned out to be true,
2 and then the student graduated and didn't get a
3 job?

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

11 PARTICIPANT: Right.

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

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

19 PARTICIPANT: Okay.

20 MS. SHAFROTH: That's all for now.

21 PARTICIPANT: All right.

22 Annmarie.

23 MS. WEISMAN: So, my understanding is

1 that these are all new items that we're introducing,
2 and I think our goal here was that we were going
3 to look at language that changed from the last
4 session to this one, especially given the late hour,
5 we really want to cover Issue Paper 2.

6 PARTICIPANT: Thank you.

7 Kelli.

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

20 MS. WEISMAN: So, the thinking was
21 that, first of all, just to make it more
22 streamlined, that we included it here, and kind
23 of gave the overall tone of it, and then where we

1 introduced the information about the consolidation
2 loan that that would cover it, but we can certainly
3 look at that one more time.

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

8 PARTICIPANT: Chris, and then Aaron.

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

21 It's for all the reasons why we have
22 statute of limitations that's important, but I also
23 think that by having the qualifier where the, where

1 the student or the borrower discovered, or
2 reasonably should have discovered, gives an out,
3 and I don't mean an out, but an option I should
4 say, for a student who for good cause did not know
5 that he or she had a claim, and so it's not a hard
6 stop, you know, under special circumstances or
7 certain circumstances for a student borrower to
8 bring a claim, so we've got the benefit for most
9 cases of having a statute of limitations, a
10 recognition for those times where there are special
11 circumstances where, you know, where it would not
12 be justice to deny the student the claim, or the
13 opportunity to at least bring the claim.

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

22 PARTICIPANT: Aaron.

23 MR. LACEY: Yes, a couple of comments.

1 I noticed -- Abby, you introduced a concept about
2 a false urgency, and I will start by saying, I have
3 no problem with the notion that school should not
4 be permitted to misrepresent the timing or
5 availability of enrollment.

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

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

15 (Off mic comments.)

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

20 The other question I had was you had
21 added the financial harm, "The borrower's inability
22 to secure employment." I mean, I have in D already
23 under financial harm -- and maybe the numbering

1 has been all changed up since what I had this
2 morning. Let's see.

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

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

12 MR. LACEY: Well, the --

13 PARTICIPANT: -- what we're talking
14 about.

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

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

23 PARTICIPANT: Okay.

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

3 PARTICIPANT: We are.

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

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

21 PARTICIPANT: Okay. Thank you.

22 Moving on to Issue Paper No. 2.

23 MS. WEISMAN: So, as we begin with

1 Issue Paper No. 2, I'd like to bring you to page
2 seven for some amended text that occurred after
3 your copies were made.

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

8 PARTICIPANT: Midway down page seven?

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

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

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

20 And the reason behind that is because
21 the concern was that it would be very difficult
22 to value the borrower's education. We had some
23 significant discussion around that.

1 PARTICIPANT: Anmarie, can you just
2 -- what was captured was, "The benefits to the
3 borrower from the educational provided by the
4 school." I think there's another word there.

5 MS. WEISMAN: Educational services
6 provided by the school?

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

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

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

20 So, just as a reminder, these become
21 the factors that the secretary would consider.
22 And, again, that's not to say that there might not
23 be other factors. We're saying they include, so

1 we're striking the prior B, C, and D.

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

4 (No audible response.)

5 PARTICIPANT: Thank you.

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

8 Linda.

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

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

23 MS. RAWLES: Would that be forever or

1 within this original statute of limitations or
2 forever, forever?

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

11 I believe it was Joseline who had asked
12 that we have the ability to go back in and reopen
13 that, so this would not be the borrower reapplying.

14 It would be the secretary having the ability to
15 go back through those other claims.

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

22 PARTICIPANT: Could you explain why?

23 MS. RAWLES: Why? Because I don't

1 think that the secretary should be able to reopen
2 a claim 20 years later.

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

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

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

23 MS. RAWLES: Thank you.

1 PARTICIPANT: Maybe the way to resolve
2 that is to just, in those provisions that, that
3 place the statute of limitations on recovery
4 actions to tie it to the initial adjudication of
5 the claim, or the --

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

8 PARTICIPANT: Something like that.

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

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

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

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

23 PARTICIPANT: Just for reading.

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

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

16 PARTICIPANT: Okay.

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

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

23 PARTICIPANT: Should I pause?

1 (Laughter.)

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

12 However, as was pointed out by, I
13 believe, Abby yesterday, with reconsideration, we
14 had conditioned this upon newly discovered
15 evidence, and that's from the department's
16 perspective. That's similar to what we had hoped
17 would sort of allow for an exchange of evidence
18 after -- if it was determined necessary or desired
19 from the parties after a decision was made. So from
20 our perspective, from an, for administrability,
21 and the burden on the Department to move through
22 these claims expeditiously, hopefully, for the
23 borrower and for the school to get resolution.

1 Our thought is that we can keep the time
2 frames, but then given that it gives multiple
3 opportunities for the borrower and the school to
4 exchange information in response to each other,
5 then if we do that, then that decision is final.

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

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

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

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

22 PARTICIPANT: (Inaudible.)

23 MS. HONG: Page five for voluntary

1 resolution process, so, that, that's separate from
2 what I was just talking about, about from our
3 perspective that we'd like to hear discussion about
4 whether people prefer a reconsideration process
5 versus a more fulsome evidentiary exchange in the
6 initial process but have that be final, so we were
7 thinking ADR, and then either the 30 -- no, 45,
8 30, 15 time frame evidentiary process, the final
9 decision resulting from that, or a AD -- sorry,
10 a dispute resolution process, then, then going to
11 a 45-day process by which the borrower to -- by
12 which the school submits a response to the
13 borrower's claim, a decision from that, but then
14 consideration, reconsideration.

15 PARTICIPANT: So, are there thoughts
16 on this?

17 Okay. Ashley Harrington.

18 MS. HARRINGTON: So, we would strike
19 all the language about the voluntary resolution
20 process. The fact that there's no department
21 involvement, we think it's right for abuse process
22 for students. This -- and it's basically what
23 arbitration is anyway, so we would strike all

1 language in reference to that, and we would want
2 it that the process should be within the department
3 and governed by the department and not going outside
4 of that process, and we like the time frames as
5 listed.

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

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

10 PARTICIPANT: Okay.

11 PARTICIPANT: Other thoughts on this
12 section?

13 Abby, and then Kelli, do you also?

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

16 PARTICIPANT: (Inaudible.)

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

19 PARTICIPANT: Why don't we finish --

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

23 MS. RAWLES: All right. One more

1 quick question for the department, and then my
2 proposal. On page eight, number ten, I certainly
3 appreciate including a provisionally certified.
4 If I had time to research this myself, I would,
5 but when you say, "Provisionally certified," are
6 you including month-to-month, temporary? Would
7 those also be provisional?

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

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

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

19 I know the department says that if we
20 go with an intent standard, we don't need those
21 affirmative defenses, but I'm not -- you know, we
22 can agree here that the intent, we'd be looking
23 at intent to the school, and not a rogue employee,

1 but then when, you know, a few years down the line
2 where we're going through this that may not hold,
3 and so I think we have to have the protections for
4 the schools of making sure that if they make every
5 good faith effort to correct, etc., that that would
6 be a bit of a safe harbor, so, again, on Issue Paper
7 6, 4, romanette (i) through (iv) would go in under
8 item number 10.

9 PARTICIPANT: Okay. Abby.

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

21 The department asked for feedback on
22 whether we prefer a reconsideration process versus
23 a sort of back-and-forth exchange of information

1 prior to the decision. I am, you know, I'm open
2 to the, to the reconsideration process.

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

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

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

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

22 (No audible response.)

23 MS. SHAFROTH: Okay. On page four,

1 this is about the minimum threshold for
2 consideration of a borrower defense claim. It
3 looks like the department has changed the language
4 to say that, that the borrower's application will
5 only meet the minimum threshold if the department
6 has evidence that's supports the borrower defense
7 claim.

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

18 MS. WEISMAN: So, we've said that the
19 evidence would -- that the application -- what we
20 would need to meet the standard to get through this
21 is that you would have an application plus some
22 other evidence, so if we're going to say application
23 plus, then any evidence that we have in our

1 possession at that time would be considered, as
2 well as anything that the borrower submits.

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

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

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

19 I also don't understand when you're
20 talking about either/or. I mean, if we went with
21 voluntary resolution, and then we included a
22 voluntary claim resolution process, and then the
23 parties declined, does that mean they get neither,

1 right? So, let's say we don't include a
2 reconsideration, and you include a voluntary claim
3 resolution, and one of the parties says, "No, we
4 don't want to do it," --

5 MS. WEISMAN: So, the choice was
6 between the idea of the back-and-forth with
7 evidence on the front end, and the idea of a
8 reconsideration process. The concern that the
9 department has is that those time frames, the 45,
10 30, 15, all of that, when you add up the number
11 of days that we would have an application, plus
12 putting it on hold for a period of time while we
13 potentially considered an ADR process, makes for
14 a very long process, and then if you're going to
15 have reconsideration as well on the back end, that
16 just seems like a lot of time to process one
17 application to leave it potentially open, so the
18 feeling was we would have the ADR process available
19 -- again, our plan is without department
20 involvement, but we would have that available, but
21 the other two are what you're choosing between.
22 You're choosing between the idea of all that time
23 frame up-front versus reconsideration on the back

1 end.

2 MR. LACEY: Okay. I apologize. I
3 misunderstood. Well, I would certainly prefer to
4 have the built-in time frames up-front. I think
5 that's very important leading up to the thinking
6 you'd exchange the information before the decision
7 is made.

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

15 PARTICIPANT: Kelli.

16 MS. HUDSON PERRY: I actually like the
17 way that this is worded with this ADR process, and
18 then the ability to submit the evidence. The one
19 thing that I would say, and I don't know if maybe
20 this will help some of the students, because I can
21 understand student group is where you're coming
22 from is in B, and there's actually a lot of Bs at
23 the top of this page, on page five, it says, "The

1 secretary will place the borrower's claim
2 application in advance for 60 days or until the
3 secretary is informed by both the borrower and the
4 school that the resolution process has concluded."

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

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

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

21 MS. WEISMAN: So, we actually made a
22 change to this that did not get reflected in the
23 paper that I think might clarify some of that.

1 First of all, I thought I had made these edits
2 before, but maybe I missed that.

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

11 Does that help with what you were
12 suggesting?

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

19 PARTICIPANT: Chris, and then William.

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

23 The department has to be involved in some way with

1 this, otherwise, it just -- it would never work.

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

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

17 The other thing I think is important
18 -- again, and this is part of the whole concept
19 of this, the idea that this is a process that is
20 going to streamline, and, hopefully, reduce
21 resources is that under C, under the VDR process,
22 we've got, "If the borrower and the school resolve
23 the borrower defense claim through the resolution

1 process, the borrower waives any right to further
2 pursue the borrower defense claim."

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

12 PARTICIPANT: Caroline, are you going
13 to --

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

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

1 harm is that students got a \$15,000 loan.

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

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

20 The idea is just that rather than going
21 through a process where you do this big
22 investigation and going back-and-forth and all this
23 to -- and that part of that too is, you know, you've

1 got a determination of how much -- you know, you
2 got partial relief too, so you've got the whole
3 damages' phase of it too, right, if you want to
4 put it in those terms.

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

13 PARTICIPANT: Thank you.

14 Okay. William.

15 MR. HUBBARD: Thanks, Moira.

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

21 Rogue employees, this continued rogue
22 employees' argument is a total strawman. Harm is
23 still had in this case, and the avoidance of

1 accountability in this case is simply stunning.
2 Respectfully, I would strongly encourage school's
3 concern about rogue employees to be more careful
4 about who they hire.

5 PARTICIPANT: Joseline.

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

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

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

18 And, then if we go to page seven, part
19 four, I wanted to appreciate the department for
20 including the language that I had recommended
21 yesterday, "The secretary may reopen a claim when
22 evidence..." I would suggest changing the word
23 "may" to "shall." I think that it should be

1 automatic that if you find new evidence later in
2 the future, you should automatically open up these
3 borrower defense claims that could be impacted by
4 this new evidence that you found.

5 PARTICIPANT: Valerie.

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

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

14 MS. SHARP: My other question was, so
15 we have the either/or now on the up-front claims
16 process or the reconsideration process, and when
17 we started our discussion, there was a different
18 time line, but it did afford for the exchange of
19 information up-front and a reconsideration
20 process, so does the committee have the option --
21 just for sake of understanding if, if we wanted
22 to make this, do we now have to pick either the
23 up-front exchange or the reconsideration or could

1 we choose as a committee to go back to the original
2 language proposed by the department that allowed
3 for both of those processes to occur on a different
4 time line?

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

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

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

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

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

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

23 MS. SHARP: One or the other, okay.

1 So, we don't have the option to vote to go back?

2 (No audible response.)

3 MS. SHARP: You do? Okay.

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

12 PARTICIPANT: Ashley Harrington.

13 MS. HARRINGTON: Appreciate all of the
14 suggestions for improving the voluntary process.
15 None of those suggestions really alleviate my
16 concerns just to put that out there. And while
17 seeing the language would be helpful, it's not
18 helpful in the, in the space where the department
19 is telling us they're not going to be involved in
20 the process, and they won't commit to it, and so
21 if department is not committing to be a part of
22 the process, we would not, we would prefer not have
23 any of that language in here, and have that not

1 be an option if there's no commitment from the
2 department to manage it in some way.

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

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

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

22 PARTICIPANT: Caroline.

23 MS. HONG: So, just to respond to that.

1 You brought up a really great point yesterday,
2 Ashley, and so we took it back and thought of it,
3 and really part of this minimum threshold
4 consideration is, you know, as everyone has
5 repeatedly reminded us, inside this process and
6 outside this process, we have a large volume of
7 claims that we need to work with.

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

22 We do have evidence in our possession
23 that we're using to corroborate the claims, and

1 we anticipate that situation continuing into the
2 future for other claims, so our thought is that
3 here, you know, borrowers can reapply, but then
4 we will in the initial cut just for streamlining
5 the process and making sure that all borrowers who
6 submit a claim will not, you know, will be able
7 to get considered, that there has to be something
8 in addition to the application.

9 It can come from our records or not.

10 And we do understand that we said that we set forth
11 here that we're consider our records. The borrower
12 is not going to know what's in our records, so as
13 part of that, you know, taking note Joseline's
14 requests that we have that the secretary may reopen
15 a claim, that was part of the reason why we also
16 included a section that we were referencing where
17 the secretary can reopen a claim when evidence
18 becomes available, or if when, when the evidence
19 becomes available to support a previously denied
20 claim, and that's to sort of accommodate that
21 situation where we later on find that there is a
22 number of claims that do support a claim under the
23 intentional, intentional misrepresentation or

1 reckless disregard standard that, that point, then
2 we can, we can return to that.

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

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

18 So, if you send them back a letter when
19 they send a claim in that was fully complete, and
20 you send them back a letter saying that you're not
21 even going to consider their claim, why would they
22 want to continue to engage in a process that they're
23 already distress, they already are not getting

1 access to when they did the part of completing the
2 form, and now they just want you to consider it
3 and let them submit evidence or find evidence.

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

10 PARTICIPANT: Okay. Abby.

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

1 deeply concerning to me.

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

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

21 To say the department wouldn't even go
22 to the school then and say, "I would like to see,
23 you know, your recruiting materials from two years

1 ago," I don't know why we would want that. I mean,
2 why -- that really stacks the deck against
3 borrowers.

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

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

23 That's -- I'm -- you know, I can -- I

1 can understand that. I can appreciate where you're
2 coming from on that.

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

12 PARTICIPANT: Juliana, and then Mike
13 Busada.

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

20 And I wondering that if, if the
21 department is not going to be involved in ADR and
22 it's a non-runner for many people, and that part
23 is stricken, you know, even the 45, 30, 15, that's

1 90 days plus some time for determination, I mean,
2 honestly, 90 to 120 days is typical slash short
3 for determinations on closed school, TPD, false
4 -- I mean, that's pretty standard, and those
5 decisions all do have a period that you can have
6 reconsideration based on evidence that wasn't
7 considered, so I would ask the department to
8 reconsider having both an exchange of information
9 and a reconsideration period if there's no ADR
10 process. I don't think it's that long given other,
11 other federal discharges of student loans in my
12 experience.

13 PARTICIPANT: Mike Busada.

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

1 but at the very least, I would just ask that we
2 don't, we don't preclude that ability.

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

17 PARTICIPANT: Aaron.

18 MR. LACEY: I was just going to -- Abby,
19 thinking through, you know, the concerns with C
20 and the department, what the department had to say.

21 I mean, just from a practical standpoint, I was
22 -- you know, it occurred to me that there could
23 be value to the extent it was left this way, you

1 know. C reads, "The department has supporting
2 evidence that supports the borrower's defense
3 claim."

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

17 And the other thing I would point out,
18 I understand it's a two-step, but because there
19 is no barrier to entry meaning, I mean, this is
20 a matter of filling out an application, if the
21 department didn't certify the claim and it came
22 back, one, now you have the additional information
23 that they don't have evidence that supports that

1 claim, which is useful for the borrower to have
2 as a data point, but also, I mean, correct me if
3 I'm wrong, but the dismissal is without prejudice,
4 so the borrower, knowing that -- I mean, it's not
5 like they can never bring the claim again. The
6 next day, they could just resubmit the application
7 in theory, so I'm just sort of thinking about the
8 practical stakes here.

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

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

23 PARTICIPANT: Ashley Harrington.

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

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

14 What you're saying about the department
15 saying, "We do have this evidence," they should
16 do that regardless if they get a claim that states
17 a claim. They should -- they should say, "Okay,
18 we have some evidence, that's fine," but to deny
19 a claim that is properly alleged under penalty of
20 perjury that meets all this other stuff just because
21 they didn't provide anything else, and department
22 maybe doesn't have anything yet, that's a
23 non-starter.

1 PARTICIPANT: So, the time is 2:48.

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

4 (No audible response.)

5 PARTICIPANT: Okay. Abby.

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

14 We're talking about low income
15 vulnerable borrowers who are abused by the system,
16 and they -- the granting of group discharge to these
17 borrowers who probably otherwise would have gone
18 into default and suffered enormous devastating
19 consequences to their lives is hugely valuable and
20 not, not allowing for that is part of this would
21 be significantly weakening, weakening protection
22 for students and hurting student borrowers as
23 compared to both the 1994 regulation under which

1 the department has said it has this authority, and
2 the 2016 regulation that explicitly spelled out
3 this authority.

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

8 (No audible response.)

9 PARTICIPANT: Okay.

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

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

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

20 PARTICIPANT: Thank you.

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

23 (Whereupon, the above-entitled matter

1 went off the record for a break and resumed at 3:30
2 p.m.)

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

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

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

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

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

23 So yes, we do have the information

1 available in terms of what their last proposal looks
2 like. They are a little behind us. They're last
3 session. Their session three occurs next month.

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

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

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

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

23 But to also include in there that it

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

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

12 And then there is no change to the
13 intent piece.

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

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

21 PARTICIPANT: Annmarie, I am so sorry.
22 Could you explain again the affirmative defense
23 piece? I'm not sure that I'm quite following it.

1 MS. WEISMAN: So if the borrower is
2 being pursued by the Department with collection
3 activity, if we are garnishing the borrower's
4 wages, if the borrower is in default, they can make
5 an affirmative defense within a ten-year period.

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

9 MR. BANTLE: Alyssa, a question?

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

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

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

21 PARTICIPANT: You have to remember,
22 combined with the significant standard for getting
23 your loans discharged here. Preponderance of the

1 evidence, plus attestation, plus to get in the door
2 that's a pretty significant standard to meet.

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

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

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

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

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

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

22 MR. BANTLE: Okay. Would the
23 Department prefer to go through the other Issue

1 Papers as well and discuss in total? Given the
2 time left?

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

7 MR. BANTLE: Oh, Wanda then Barmak.

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

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

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

22 What's your thinking that -- what makes
23 you think that an affirmative defense should have

1 a longer shelf life than somebody who's not in
2 default or in wage garnishment?

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

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

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

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

20 MS. WEISMAN: So, I don't think we saw
21 the idea of paying on the debt as reaffirming the
22 debt in that way. Certainly one might take it that
23 way.

1 But that was not part of the discussion.

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

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

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

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

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

21 Now you're breaking with that
22 tradition. And if you want to break with that
23 tradition, there has to be some basis.

1 Some sort of a policy justification.

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

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

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

10 And we're trying to find a period in
11 which we're not overburdening the schools too much.

12 While giving the borrower a longer period than
13 we initially proposed to assert the claim as a
14 defensive measure.

15 MR. NASSIRIAN: But you're not --

16 PARTICIPANT: Let me --

17 MR. NASSIRIAN: Um-hum.

18 PARTICIPANT: It maybe not be perfect.

19 But, we're trying to balance those interests.

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

1 go anywhere.

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

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

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

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

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

21 Okay. So Barmak, I think the Department has heard
22 your concern and your question. So I'm going to
23 move to Aaron.

1 MR. LACEY: So, I articulated in
2 Session One and Session Two that one of my
3 significant concerns with a bifurcated process was
4 that we were not insulating these determinations
5 to the extent we should be, or we should be striving
6 to insulate them from the political processes.

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

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

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

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

21 We previously articulated, meaning the
22 institutional side, that we liked clear and
23 convincing. The preponderance was advocated by

1 the other side of the house.

2 So we proposed a midpoint. Which is
3 exactly the definition of compromise. And now we
4 are seeing at four o'clock on the last day,
5 preponderance of the evidence.

6 That's a major problem for me. I'm
7 also concerned that the statute of limitations
8 represents an erosion from the -- not only the
9 initial proposal of three years, but what we
10 proposed as a compromise of a fixed five years.

11 Compromise as I understand it, means
12 you give a little and you take a little. I cannot
13 entertain an erosion of both of these standards.

14 I am willing to entertain a discussion
15 about the proposed statute of limitations if we
16 get clear and convincing. It's a trade-off.

17 MS. MILLER: Abby?

18 MS. SHAFROTH: I want to respond to the
19 characterization of preponderance as a toss-up
20 standard. Preponderance of the evidence is the
21 standard that is used in almost all civil
22 litigation.

23 It is the normal standard when we're

1 dealing with anything other than criminal cases.

2 It is not a toss-up. It is looking at the evidence
3 and deciding what the evidence most likely
4 demonstrates.

5 Anything else is really putting the
6 thumb on the scale in favor of institutions and
7 against borrowers.

8 So, I'm appreciative that the
9 Department seems to be working towards -- back
10 towards a preponderance of the evidence standard
11 that we think is appropriate.

12 The Department is proposing
13 preponderance plus corroborating evidence, which
14 is above preponderance. It is harder to satisfy
15 because it is saying that as a per se matter that
16 a borrower's testimony is insufficient to be
17 compelling in any case.

18 So, I still have some concerns about
19 that. But, I did want to sort of recognize the
20 Department for, you know, for trying to find
21 something here.

22 I do share Barmak's concerns about the
23 -- this ten year limit applicable to defenses to

1 collections. Aaron is saying, you know, we need
2 to find compromise on time limits.

3 I was putting forth a compromise and
4 saying that I would be, you know, I don't believe
5 that there should be any limitations period. But,
6 that I'm open to a compromise on a limitations
7 period applicable for refunds of amounts already
8 paid so long as there are not limitations periods
9 on outstanding balances.

10 That does represent very much a
11 compromise. I'm also open to a compromise
12 suggested by other negotiators at the table of a
13 limit on how long the Department can go after the
14 schools for recoupment versus when the Department
15 should discharge.

16 So, I think that there are good faith
17 efforts at compromise here from both sides. And
18 we're trying to figure out what that is.

19 MR. MILLER: Mike Busada and then
20 Linda.

21 MR. BUSADA: I just want to point out,
22 and I think Abby kind of made the point that a lot
23 of us are trying to make though. You're right.

1 Preponderance of the evidence is what you use in
2 a judicial setting.

3 This is not a judicial process. It
4 does not have the checks and balances and the due
5 process procedures that going to court would have.

6 If we had those things, I would say
7 absolutely. But we don't have those things. This
8 is an express lane to help ease the process.

9 It's an administrative express lane,
10 which I think is good. But we don't have those
11 things.

12 And so you can't say we want -- only
13 want half of what a court system would give, but
14 we don't want the other half of the protections.

15 It's not a fair balance.

16 At the end of the day I just want to
17 have a fair opportunity to make sure that we are
18 heard. And that what we're trying to do is
19 recognized.

20 Because at the end of the day, when we
21 leave here, there will still be waiting lists at
22 colleges and technical colleges and universities
23 across the country because there's not enough

1 seats.

2 And this is only going to help make it
3 -- make fewer and fewer and fewer seats out there.

4 MS. MILLER: Thank you. So we've
5 heard quite a bit about the preponderance of
6 evidence from both sides. Linda and Joseline, do
7 you have comments on the other concepts presented
8 by the Department?

9 Okay. Linda and then Joseline.

10 MS. RAWLES: Well, as a prelude, I
11 agree completely with what Aaron and Michael said.
12 Especially Aaron's position on how these things
13 would have to relate in a bargaining situation.

14 Also, I want to add that in other parts
15 of the Federal government they've encouraged
16 schools to go to clear and convincing as opposed
17 to preponderance, such as in Title IX cases.

18 Last, I have two questions for the
19 Department. I had heard you say before that you
20 were trying to find a middle ground between
21 preponderance and clear and convincing.

22 Did you not come back with that middle
23 ground because you couldn't define it? Or because

1 I'm really shocked that we didn't get that original
2 middle ground back.

3 Not that I'm saying I support it, I
4 still support clear and convincing. But, I was
5 disappointed not to see that.

6 And I'm wondering why we didn't get it?

7 PARTICIPANT: Combination of two
8 points. One, it's difficult to define. Second,
9 we're trying to reach a compromise here between
10 the borrowers and the advocates on the students'
11 side who are concerned about the standard, the
12 attestation plus standard, and the school side,
13 which I understand wants the clear and convincing
14 standard.

15 We're trying -- we were trying to make
16 a proposal to try to find a middle ground. We
17 understand people may not agree with it. But that
18 was part of the intent.

19 Plus, as I said, it's hard to define
20 the middle ground between preponderance and clear
21 and convincing.

22 MR. RAWLES: Okay. Thank you. The
23 middle ground between preponderance and clear and

1 convincing isn't preponderance.

2 It's the thing we're having a hard time
3 defining. But, just because it's hard doesn't mean
4 we shouldn't do it.

5 My other question is because these
6 things relate too much to Issue Paper Two, and I
7 know we're not there yet, but how I feel about these
8 things really depends on whether those affirmative
9 defenses have come back.

10 So, could the Department tell me if
11 they've come back while I'm thinking about Issue
12 Paper One?

13 MS. WEISMAN: The list of the items
14 that you had requested did not come back.

15 MR. RAWLES: Okay. Well, then I --
16 it's very hard to support these changes.

17 PARTICIPANT: Potentially it would be
18 beneficial to at least get the concepts on Issue
19 Paper Two. Knowing that we don't have the
20 document.

21 MS. WEISMAN: We actually do have the
22 document now. Issue Paper Two is on the screen
23 behind me.

1 PARTICIPANT: Yes. I'm looking at it.

2 MS. WEISMAN: I have received a request
3 if we could make the font size bigger. The view
4 section, Aaron. Sure. We'll go with that.

5 We may struggle a little bit as we get
6 into some of the changes. Especially with the
7 shading. But, we'll try to work with this as best
8 we can.

9 No, you don't have to do that.

10 So, for Issue Paper Two, the comments
11 that we heard around the table were that if the
12 Department was not going to have involvement in
13 an ADR process, that people were not very satisfied
14 with the idea of ADR.

15 There would be nothing in the
16 regulations that would prohibit parties from
17 engaging in ADR. But, we have removed the text
18 that included references to ADR.

19 Including the idea of putting the
20 application on hold while that process occurs.
21 The Department is not able to commit to involvement
22 in ADR at this time.

23 Also, with the initial screening, the

1 idea of including evidence, because it is
2 attestation plus, we would expect to see evidence
3 attached to the application.

4 The other major change here is that we
5 talked about the idea of what some of us referred
6 to as the ping pong, the back and forth at the
7 beginning with the 45/30/15 terms of the time frames
8 for the application period.

9 With the collection of evidence, and
10 then sending those copies to the other party on
11 the front end. And the idea of reconsideration
12 of the application on the back end.

13 So, we retained the time frame, the back
14 and forth. The idea of the 45/30/15. And we
15 removed the language that talked about
16 reconsideration.

17 MS. MILLER: Joseline and then Kelly.

18 MS. GARCIA: Thank you. I have a
19 question for the Department and also the
20 facilitators. Considering the time restraint that
21 we have, how do we make this hour productive?

22 Because I'm trying to think of how to
23 frame my comments. And I don't really know what

1 we're doing.

2 Like, are we still negotiating on these
3 changes that you all proposed? Or are we voting?

4 Can I just get some more clarification
5 as to what we're doing now?

6 MR. BANTLE: So, I will jump in as the
7 facilitator here. And accepting all suggestions
8 on how to best use this time. I'll start off with
9 that.

10 I think what I am hearing is from many
11 individuals at the table, regardless of
12 constituency, disagreement with the documents as
13 they have been presented here. Is that fair to
14 say?

15 I've heard comments from people around
16 the table that they felt some of the discussions
17 we were having earlier may have gotten us -- maybe
18 on a path to getting us or the group to where they
19 needed to be. Not certainly that they were there
20 at that stage.

21 I think what we need is some agreement
22 from the group as a whole of what will work. We've
23 identified numerous things that will not work.

1 So, obviously, you know, we are
2 focusing on consensus. And Aaron had mentioned
3 compromise. I think that's something we all, or
4 you all, need to think about.

5 What gets us there? And obviously the
6 Department is an important factor in that.

7 Annmarie?

8 MS. WEISMAN: Just a quick question.
9 Did we find out if we have anybody who would like
10 to make public comment this afternoon?

11 Because if we do have anybody, then that
12 takes us only to 4:45. Giving us really, just over
13 about 35 minutes left.

14 MR. BANTLE: Can we see a show of hands
15 of anyone who intends to give a public comment?
16 Okay. So that is two public comments.

17 MS. MILLER: You'll stay until 5:30?

18 MS. CARUSO: I heard emphatic noes
19 about that.

20 MR. BANTLE: Okay. So --

21 MS. WEISMAN: I believe our concern
22 with that would be that people have flights already
23 booked. And we want to make sure that everybody

1 is still able to stick to the schedule that we have,
2 because we did outline that it would be five
3 o'clock.

4 So, to change it now could impact
5 someone's ability to be here.

6 MR. BANTLE: Okay. So with that in
7 mind, I think we have to look at our 4:45 traditional
8 break point. Barmak?

9 MR. NASSIRIAN: I want to make a plea
10 to everybody, including those of you who are sort
11 of diametrically opposed to where I sit, to take
12 a step back and think about how much you've
13 accomplished here in terms of gaining protections
14 that you did not have in the previous iteration
15 of this regulation.

16 And understand that failure to come to
17 consensus here leaves the Department to its own
18 devices. That all of the stuff that you think may
19 be in the bag could be lost.

20 And that it's in all of our collective
21 interests to be as accommodating of things as
22 possible. And walk away with something instead
23 of nothing.

1 I am very dissatisfied with this rule.

2 I think this rule significantly erodes protections
3 for borrowers.

4 But I'm willing to say that we are sort
5 of 90 percent of the way there. That I'd much
6 rather take lots of specific black ink protections
7 I see here rather than walk away from a deal and
8 leave it to the Department and its devices.

9 And I'm not sure that it would be these
10 nice folks who are going to make the final rational
11 decision. It could be people that none of us have
12 actually set eyes on.

13 So, we ought to be very careful here.

14 And you know, if we need to work some more on issues
15 that can accommodate each other, we should do that.

16 MS. MILLER: Kelli?

17 MS. HUDSON PERRY: One, I don't know
18 if there was enough copies. Because it didn't make
19 it all the way around. But, that wasn't my point.

20 Okay.

21 If I could make a recommendation just
22 because I -- I've been sitting here kind of watching
23 the back and forth on all of these topics.

1 Can we use the screen maybe to just
2 bullet point list what the real contentious points
3 are? So that there actually can be some
4 conversation on specific items of maybe compromise?

5 Because I feel we're -- like we're kind
6 of jumping around where one person says I don't
7 want this. The other person says, I don't want
8 that.

9 And there's no real -- we're not
10 compromising because the things that people have
11 issue with, aren't listed up there.

12 MR. BANTLE: So, in that vein, I would
13 suggest that we look at the concerns. I'm going
14 to use that term kind of in the context Kelli did,
15 in Issue Papers One and Two concurrently.

16 MS. WEISMAN: So, I can update you and
17 let you know that they are copying Issue Paper One
18 right now. So, you will have a copy of this
19 shortly.

20 But, I think that if we can get started
21 with this list, that might be very helpful. I am
22 certainly willing if others are.

23 MR. BANTLE: And I think we are looking

1 at your primary concerns. And I believe a number
2 of -- you know, although we do have countervailing
3 positions on them, they are similar issues that
4 we're focusing on here.

5 So, accepting nominations from the
6 group for our new list. If you -- if it's not on
7 the list, we're assuming it's not a --

8 MS. HUDSON PERRY: I'll start just
9 because I've heard them around the table. The
10 intent -- or clear and convincing versus
11 preponderance is one.

12 The statute of limitations is another.

13 And then on and on. I don't -- I'm not sure what
14 the other ones exactly are. But those are two
15 definite ones that we've been talking about.

16 MR. NASSIRIAN: You trade those off
17 right now and be done with those.

18 MS. HUDSON PERRY: No. Let's get the
19 whole list. Because this whole concept of
20 compromise, we need to see everything that's up
21 there, I think.

22 Because there maybe one point that
23 someone feels very strongly about that they're not

1 going to get passed. But if there's something else
2 that it may give on a different one, there may be
3 some compromise there.

4 So, I think we need the whole list.

5 MR. BANTLE: One and two.

6 MS. HUDSON PERRY: Everything really.
7 I mean, even, you know.

8 MS. MILLER: Okay. Aaron, your card
9 was up. Are you ready to list your concerns? Or
10 --

11 MR. LACEY: No. I probably shouldn't.

12 MR. MILLER: Linda, do you have
13 concerns that you want to put up on the list? Yeah.

14 MS. RAWLES: If I forget to list it
15 doesn't mean I'm waiving it. Just want to say that.

16 The two that Kelli said. I think that
17 was the statute of limitations and the evidentiary
18 standard. Also, on Issue Paper Two, it would be
19 the lack of the affirmative defenses.

20 And also the point I mentioned before,
21 on -- try to help me find, it's on page five now.

22 When the Department can reopen.

23 It's the middle of page five now. The

1 Secretary may reopen a claim when the evidence
2 becomes available. That not having any time
3 limitation.

4 So, to me those four as written are
5 non-starters at least. And we still have Issue
6 Paper Four and Six that there are issues with.

7 MR. BANTLE: So, --

8 MS. HUDSON PERRY: Well Linda, if
9 there's issues with Four and Six, I think we need
10 to put those up there was well. Because we're
11 trying to come to consensus on this whole thing,
12 so.

13 MS. RAWLES: Oh well you told me just
14 One and Two. All right.

15 MS. HUDSON PERRY: I'm sorry. The
16 whole thing.

17 MR. BANTLE: Yeah. My focus just as
18 a facilitator note, was let's get -- so we're not
19 jumping back and forth, let's -- we'll get out --
20 before we discuss, we'll have everything up there.

21 But, are there any other, for lack of
22 a better term, non-starter issues on One and Two?

23 In concept?

1 MS. MILLER: Joseline?

2 MS. GARCIA: I mean, Ashley went into
3 this a lot. But for Issue Two, the minimum
4 threshold for consideration, Part C, just like
5 having to acquire more evidence with the borrower
6 defense application.

7 MR. BANTLE: Okay.

8 MS. MILLER: Aaron, your concerns?

9 MR. LACEY: Yeah. Voluntary claim
10 resolution process.

11 MS. MILLER: Abby?

12 MS. SHAFROTH: I'm concerned about
13 intent standard. And I don't know where -- that
14 I don't know where things landed on the list for
15 the intent standard, or on the list of things that
16 would demonstrate financial harm.

17 MS. MILLER: Other concerns for One and
18 Two? John?

19 MR. ELLIS: Recognizing that we talked
20 about language. And we haven't seen whether the
21 language is there or not.

22 I continue to have concerns about
23 whether or not the rule still allows an appropriate

1 role for state law.

2 MR. BANTLE: Okay. Issue Papers Four
3 and Six?

4 MS. MILLER: Linda, are you heading up?

5 MS. RAWLES: Oh, no.

6 MR. BANTLE: Just the general concerns
7 from our earlier discussions.

8 MS. MILLER: Aaron?

9 MR. LACEY: Well, I had the concern
10 with Six regarding the absence of a knowledge
11 qualifier around false certification based on high
12 school diploma.

13 MR. BANTLE: And this is understanding
14 we do not have the latest documents. John?

15 MR. ELLIS: I still have the concern
16 that the Department doesn't have authority to
17 regulate in the area of Issue Paper Four.

18 MR. BANTLE: Okay. Abby?

19 MS. SHAFROTH: I still have a concern
20 that the Department does have authority to bar from
21 dispute application --

22 MR. BANTLE: Okay. Can we just make
23 that authority to regulate on the issue? And it

1 covers --

2 MS. SHAFROTH: I don't know if that
3 covers. But, I firmly believe we -- that the
4 Department should bar use of forced arbitration.

5 MR. BANTLE: At least I'm viewing these
6 as just the topics. Not proposals on them. Is
7 that --

8 MS. SHAFROTH: That's fair. But I do
9 think it's a different --

10 MR. BANTLE: Okay.

11 MS. SHAFROTH: It's a different issue.

12 MR. BANTLE: Can we pause just on that
13 one for a quick second. This is an example that
14 I'd like to talk about with regard to negotiation.

15 So, Abby's saying that's a non-starter,
16 right? That you definitely want that thrown out.

17 Is that correct or not? Am I
18 misunderstanding?

19 MS. SHAFROTH: So, I think we're making
20 a list of things that are highly important to us
21 that there's a possibility that we might --

22 MR. BANTLE: Understood.

23 MS. SHAFROTH: Be willing to move on

1 one thing if we get other things.

2 MR. BANTLE: Understood. Is that a
3 non-starter for you, is what I'm trying to
4 understand?

5 (Off mic comment)

6 MR. BANTLE: Sure. Is that a
7 non-starter for you? I'm trying to understand
8 that.

9 MS. SHAFROTH: Yeah. I don't have --
10 I don't think I'm in a position to identify, you
11 know, I'm still in a place where if I got other
12 things that I wanted -- if I got everything else
13 that I wanted, then I would be willing to move
14 forward with that, so.

15 MR. BANTLE: That's helpful. Thank
16 you.

17 MS. MILLER: Other concerns or issues
18 on all of the Papers? Linda?

19 MS. RAWLES: We missed this one. I was
20 going to bring it back up when we got to Issue Paper
21 Four.

22 But I believe in Issue Paper Three we
23 added, Abby can help me, she added the word

1 arbitration. Does the arbitral -- yeah, which to
2 me if we put that in Issue Paper Three, we've stepped
3 on the same legal limitations as Issue Paper Four.

4 So, if we go back to Issue Paper Four
5 about arbitration, we have to address arbitration
6 now in Issue Paper Three.

7 MR. BANTLE: Okay. So we have a
8 substantial list of items here.

9 Do -- does the group, or does anyone
10 in the group have a proposal that touches upon these
11 items that they think would be acceptable to the
12 group?

13 And we're just talking in concept. We
14 don't need language here. An overall proposal.

15 I think we need to look at these in not
16 necessarily all subjects, but -- identifying some
17 of the major concerns is how I'm saying it.

18 It doesn't need to address every single
19 one of these.

20 MR. NASSIRIAN: Could we try to resolve
21 some of them by trading them off for each other?

22 Aaron mentioned that he was of the opinion that
23 the first and the second, I understand you want

1 both of them your way.

2 But, potentially one could see an
3 arrangement where we take the lower threshold for
4 the standard of evidence in exchange for accepting
5 a limitation, a statute of limitation on claims.

6 MR. LACEY: No. The problem is the
7 presumption there is that both of the proposals
8 I previously made are the way that I want those
9 things.

10 And those reviewed in my -- those were
11 compromises that I was offering. Does that make
12 sense?

13 And there have been other compromises
14 throughout this process that we've already made.

15 MR. NASSIRIAN: All moved from where
16 we start from. And we are where we are. So now
17 this is what is in black ink on paper.

18 And I'm suggesting that -- because
19 that's not where we would be either. Right?

20 I mean, we would be somewhere else.
21 So, forget the past. Those are all some costs.

22 At the moment, can we trade those two
23 off and think that's a reasonable walk away for

1 both of -- for both sort of sides?

2 MR. LACEY: I would accept the
3 Department's proposal on statute of limitations
4 for a clear and convincing standard.

5 MS. MILLER: Okay. Let's think about
6 --

7 MR. NASSIRIAN: How is that a
8 compromise?

9 MS. MILLER: Hang on Barmak. Let's
10 think about that for a minute. Valerie, you have
11 a question. And then Linda.

12 MS. SHARP: Okay. So,
13 notwithstanding any discussion that's taking place
14 that might have overridden what I just was going
15 to ask, it sounded like earlier today that we had
16 had a discussion on the statute of limitations that
17 might be moving all of us in the same direction.

18 At least on that topic. And then the
19 Department did not include that.

20 So, helping us understand what might
21 be an option, is that something the Department just
22 is not willing to consider where there is the
23 extension for the student to forgive the loan, you

1 know, as long as they owe it. But the school still
2 has a statute that they can come back after them.

3 It seemed to be something that the two
4 sides were really forming together. So, I -- and
5 it's not in there.

6 So, I just wondered if that's because
7 it's not acceptable to the Department?

8 MS. WEISMAN: That was not acceptable
9 to the Department because of the concern about
10 leaving the taxpayer on the hook for the amounts
11 of money then that would be discharged.

12 MR. LACEY: Yeah. And so Barmak, just
13 to answer your question, I mean, I -- so I had
14 proposed a flat five on statute of limitations.
15 That was my position.

16 So, I'm willing to go up to increase
17 potential exposure for institutions to ten years
18 in exchange for clear and convincing.

19 MR. NASSIRIAN: The problem with that
20 is of course, that again, you're incremental.
21 You're trying to drag us back positionally to where
22 you started from.

23 We are all -- we are all past --

1 MR. LACEY: Wait a minute. Just a --
2 no we started with three years.

3 MR. NASSIRIAN: Understood. And we
4 started with eternity. So that's --

5 (Laughter)

6 MR. BANTLE: Okay. Barmak, can you
7 turn off your microphone just so we don't get
8 feedback. And Kelli?

9 MS. HUDSON PERRY: So, since this was
10 my idea, I'll tell you what the next step of the
11 idea is.

12 (Laughter)

13 MS. HUDSON PERRY: The next step would
14 be to take the issues and put them on sides.
15 There's obviously things that the institutions
16 want. There's things that the student groups and
17 advocacies want.

18 And rank them in order of priority.
19 What is the most important to you? To see if we
20 can start to knock them off the list and compromise
21 on the positions.

22 MS. MILLER: Linda?

23 MS. RAWLES: You may yell. You may

1 gnash your teeth. But I just have to make this
2 statement. And I'm going to finish it.

3 This is no way to do a rule. We have
4 a half an hour. These are hugely important issues
5 for everybody at this table.

6 I don't think any of us should be
7 pressured that we have to reach consensus when we
8 have this list up here of extremely important parts
9 of a regulation that are going to affect this entire
10 industry and many, many students, and the taxpayer
11 for potentially years to come.

12 So, you know, I have some faith in the
13 Department to write a rule. If we get to the point
14 where we are horse trading off our hip, to me, that's
15 malpractice as an attorney.

16 And I will not participate in it. So,
17 we need to calm down here a minute. And not feel
18 like we have to reach consensus if we're going to
19 reach consensus in this way.

20 MR. BANTLE: Michael?

21 MR. BUSADA: So, I appreciate the
22 caution around not wanting to put the taxpayer on
23 the hook for the idea that I floated before. So,

1 I'll float another one.

2 And that is, number one, as part of that
3 consideration, even though the Department may not
4 pursue a -- or initiate a repayment claim, it does
5 not mean that either any member of the triad could
6 not pursue some enforcement action, the state, the
7 accreditor, or the Department, for violation of
8 any law or regulation related to that claim.

9 Just as a matter of point of clarity.

10 But number two, I guess for me, if it's a one off,
11 if it's de minimis, it's one student, it's two
12 students ten years into their loan, I guess I'm
13 not so concerned about those things as a taxpayer.

14 And I guess my community of interest
15 now is my household. And you know, how I think
16 about those things.

17 But, so what if we were to say if the
18 amount of the borrower defense claim is -- or four
19 amounts less than five percent, one percent of the
20 total amount of Title IV distributed in the
21 preceding year, you won't initiate claims.

22 So that gets to the point of, I don't
23 have to worry about the one offs and the onesies,

1 twosies, but I will initiate a claim for any big
2 deal. For any large size. For any kind of 10,
3 20, 30, 40 student kind of claim.

4 But the ones -- the onesies, twosies,
5 we're not going to worry about. Is that anything
6 that the Department would consider? Or anybody
7 else in terms of that?

8 PARTICIPANT: That's the kind of
9 prosecutorial discretion that the Department
10 exercises. We've got to decide what to put our
11 resources into.

12 But, we would not put that in the
13 regulation.

14 MR. BANTLE: Joseline?

15 MS. GARCIA: Sorry. I was shuffling
16 through papers. Could we add reckless disregard
17 for the truth to the list to Issue Paper One and
18 Two?

19 To the Department, could you all give
20 us some guidance as to how we can move forward?
21 Or -- because we do have limited time and yeah.

22 I'm just trying to make sure we're
23 productive.

1 MR. BANTLE: Michael?

2 MS. MILLER: Mike? Okay.

3 MR. BUSADA: So, here's where I'm a bit
4 stuck as well. With regard to the true definition
5 of negotiation, let's use the three-year rule that
6 was originally proposed in the work papers.

7 Is that correct? So, three years.
8 That's the ball in the game. Three years.

9 So what Aaron is saying, is he's moving
10 back and forth. Do we ask for less? Do we allow
11 for more?

12 That's negotiation. Saying I don't
13 want any of it, I want no statute of limitations,
14 that's a whole new ball.

15 That's not the ball you're negotiating
16 anymore. That's a completely different ball.
17 We're never going to get there.

18 We've got to get back to the root of
19 the original paper. For each of these topics, what
20 was the proposal? And move back and forth on that
21 proposal.

22 That's the ball.

23 MR. BANTLE: Aaron?

1 MR. LACEY: Since no one else is
2 speaking, I will just say a couple of things. The
3 first is, I very sincerely appreciate that
4 everybody is here. And I mean that as seriously
5 as I can say it.

6 It is hard and meaningful work. I know
7 we don't always agree. But I would not want anyone
8 to think otherwise.

9 Everyone is here to advocate on behalf
10 of their constituencies. And I think everybody
11 has done that to the best of their ability. So,
12 I appreciate that.

13 The second thing I will say is, after
14 the proposed rules are issued, there will be a
15 period of commentary. The Department can take that
16 into consideration whether we reach consensus or
17 not, and think about revisions.

18 I want to strongly encourage the
19 Department during that period to give serious
20 consideration to a voluntary claim process. I
21 think the Department should do a full sum cost
22 analysis and try to determine whether or not a
23 process as outlined in the proposal that was

1 provided by Chris DeLuca, would make sense.

2 Because I think again, and I've said
3 this before, of all the things that have been
4 proposed, that concept, which incorporates the
5 notion of a departmental representative assisting
6 borrowers and institutions to find resolution prior
7 to this entire thing, I think that is the most
8 important concept.

9 So, I just want to go on the record as
10 saying, please, please, please Department, include
11 that in your takeaway. And give it its due
12 consideration.

13 Because I really think at the end of
14 the day, of all the things we have attempted to
15 do here that is the most likely to help borrowers
16 and institutions figure things out quickly.

17 PARTICIPANT: Since we're sort of
18 moving into general statements, you know, I mean,
19 you know, I was thinking the same thing that Linda
20 said about, you know, I mean, I have worked on
21 negotiated rulemaking committees before. I've
22 never been at this point in the day on the last
23 day, doing this.

1 So, when you don't have actual language
2 that you're hashing out. So, you know, it feels
3 like the sands of time are running out here.

4 You know, so just -- I appreciate what
5 Aaron said. Share that view. You know, the goal
6 is to achieve to negotiate in good faith, to achieve
7 consensus if you can, while representing your
8 communities of interest.

9 So that's what we're here to do. And
10 that is the balancing act that we've all had to
11 -- had to entertain throughout this process.

12 I would also say that, you know,
13 whatever we walk away with today, I would urge the
14 Department to remember that bad stuff really
15 happens to students, and continues to happen. And
16 it hits them every single day.

17 I hope that no one has ever felt that
18 my comments were directed at any individual in this
19 room. I know that there are educators in this room
20 who believe in what they do and who care about their
21 students.

22 Those of us who receive calls from
23 borrowers are not -- now those aren't the schools

1 that they went to, right? I mean, we're talking
2 about almost a different species of school.

3 The harm is real. People have been
4 waiting too long for their debts to be discharged.

5 The delay of the 2016 rule and all the
6 uncertainty that continues going forward while
7 we're doing this, this is -- I mean, this is costing
8 people's health.

9 I mean, this is psychologically
10 damaging, not just pocketbook damaging. It really
11 is so serious.

12 And so many of the students' stories
13 that we've heard throughout this process I think
14 really bear that out. And absolutely deserve to
15 be heard.

16 So, appreciate all of the work that the
17 current career staff at the Department have been
18 doing. We -- I can't tell you how much we
19 appreciate what you do every single day.

20 We certainly hope that the leadership
21 of this agency takes its job, you know, seriously.

22 And really seeks to correct what is a very real,
23 well-documented problem that was also, you know,

1 reasonably discussed in the 2016 regulations.

2 So again, there's a real problem.
3 Students can't wait any longer.

4 MR. BANTLE: Okay.

5 MR. NASSIRIAN: Am I correct in my
6 understanding that because we obviously are headed
7 for non-consensus and the Department will exercise
8 its right to produce an MPRM that it will publish
9 for comment.

10 But, am I correct in my understanding
11 that there will be no ex parte communication with
12 any interest group while that process is ongoing?

13 Do we have an assurance that there won't
14 be any further conversations with a subset of
15 affected interest until an MPRM is published?

16 PARTICIPANT: There are certain
17 requirements that we are covered by when we are
18 doing a regulation. Including making a record of
19 any contact relating to that regulation.

20 We have complied with that rule in the
21 past. And we will do so.

22 MR. BANTLE: Okay. I want to jump in
23 here. We have eight minutes until our traditional

1 public comment time.

2 Understanding the comments that have
3 been made and the limited time we have left, are
4 there any of -- any issues that are on the screen
5 that the group thinks an agreement can be reached
6 on?

7 Or that a proposal can be made on? That
8 is, a proposal we have not heard thus far?

9 William?

10 MR. HUBBARD: I mean, this is not a new
11 proposal, but in terms of reckless disregard for
12 the truth, I think if we pull out reckless, I know
13 there's been some intent on that.

14 But, given where things are at, perhaps
15 sticking with disregard for the truth is something
16 that folks can come to the table on.

17 MS. WEISMAN: That is something that
18 the Department already discussed and declined to
19 take.

20 MR. BANTLE: I would reaffirm my
21 question. And we can look at any of the Issue
22 Papers here. I know we do have other concerns on
23 Issue Papers Three and Four. Or Three, Four, Six.

1 PARTICIPANT: I have a quick question.
2 Should that one come off the list then if you're
3 not inclined to change that?

4 (Off mic comments)

5 MS. WEISMAN: That's up to the group
6 to determine if they'd like to remove it from the
7 list. We also are not able to commit to an ADR
8 process.

9 So again, if that's something that
10 would be better to take from the list, you can
11 certainly do that.

12 MR. BANTLE: I, you know, in the next
13 statement it's -- I think probably the group can
14 remember those two limitations.

15 We had discussion on kind of the
16 combination of the evidence standard and the
17 statute of limitations. We had numerous proposals
18 kind of packaging those two.

19 Are there any additional proposals?
20 New concepts that we can think about? On the
21 package of those two.

22 Mike?

23 MR. BUSADA: Just an idea, and this

1 will obviously take some more time, but just
2 something to think about, going back to the early
3 adjudication process and mediation process if you
4 will.

5 And I understand the constraints that
6 were discussed. I do think it would be
7 advantageous to look at potentially whether or not
8 it would make sense and it would be feasible and
9 institutions would be willing to.

10 I think the biggest issue is you have
11 to have a neutral party. I know that the fine
12 gentlemen in their agency do that, you know, for
13 other government agencies and private sector
14 interests.

15 And so I think that at least from a small
16 school standpoint, and I'm not committing to this,
17 but to me just looking at it, it seems to me that
18 for a small school that, you know, most of them
19 don't have lawyers -- yeah.

20 Basically I'd rather pay, you know,
21 their cost as an institution and have a mediation,
22 then hire a high-priced lawyer and have to fight
23 it out.

1 MS. WEISMAN: And I would just repeat
2 that nothing would preclude you from offering to
3 a borrower who filed a claim. You would certainly
4 be able to do that.

5 PARTICIPANT: Another challenge is,
6 you know, if I'm one of the student advocates, I
7 mean, I'm not going to want somebody that the
8 institution hired. I'm going to want the
9 Department.

10 And I think what Mike is offering here
11 is that the Department should consider whether or
12 not if they put a mechanism in place, and
13 institutions were willing to fund it, but it would
14 be representatives from the Department or some
15 other neutral party.

16 I think Mike's point is, a lot of
17 schools would prefer to spend a hundred dollars
18 an hour or whatever, on someone to work on a
19 voluntary resolution process then to have to hire
20 an attorney at several hundred dollars an hour,
21 and risk reputational harm.

22 So, if cost is the concern, we are
23 suggesting that the Department should consider

1 whether or not that riddle can be solved by placing
2 the cost burden, potentially, at their, you know,
3 at their discretion on institutions who would be
4 willing to take that on.

5 MS. WEISMAN: Not in the least to sound
6 critical, but it's like oh, a new idea at 4:42.
7 I appreciate it.

8 (Off mic comments)

9 MS. WEISMAN: I do appreciate the
10 suggestion. Thank you.

11 MR. BANTLE: Yes. And I am asking for
12 new ideas at this point. William and then Linda.

13 MR. HUBBARD: I have a new old idea.
14 I would like to, certainly with all due respect
15 to the Department, but formally propose that given
16 the process that was carried out in 2016 with all
17 folks at the table, would like to propose rolling
18 back to the 2016 negotiated rule making rule.

19 MR. BANTLE: Linda?

20 MR. RAWLES: Just a suggestion. If
21 the Department does revisit the line of credit issue
22 and the composite score, I would just encourage
23 us to have that as a separate process and not do

1 that through this rulemaking.

2 And then since I have become the poster
3 child for the predatory schools, I want to tell
4 all the folks on the other side that if you would
5 like to talk about any of these issues, or visit
6 any of my schools, or have any kind of chance to
7 break the stereotypes and have a meeting of the
8 minds, contact me.

9 MR. BANTLE: Okay. It is 4:45. As
10 usual, this is the time we open the floor up to
11 public comment.

12 I think the suggestion was from Will
13 that he had two comments. Is that correct? One
14 comment? Okay, two.

15 As usual, we will be limiting public
16 -- do we have any additional individuals from the
17 public that would like to make a comment?

18 Okay. That is two. I guess, Will, are
19 you making the comments? Or --

20 WILL: Yes. And these are two.
21 They'll each be less than a minute or two.

22 MR. BANTLE: Okay.

23 WILL: I'm reading these statements on

1 behalf of two student veterans. The first one was
2 a Brown Mackie, a college student from 2015. His
3 statement reads as such:

4 I was misled by the recruiter about the
5 accreditation of Brown Mackie's nursing program.

6 I had been misled by a recruiter at ITT the year
7 before.

8 I enrolled and I knew about -- I knew
9 to ask about accreditation. But the recruiter just
10 lied to me.

11 Six months after I enrolled, I found
12 out that the school was under provisional
13 accreditation with the state and was under review.

14 Before each Board of Nursing accreditation visit,
15 school officials would warn students that if they
16 didn't pass the licensing exam, the school would
17 lose its accreditation.

18 Students were afraid to be honest about
19 problems at the school with the Board of Nursing
20 officials for the fear that the program would be
21 killed. Brown Mackie consistently changed
22 academic standards in an attempt to save its nursing
23 program.

1 But is now being taught out and shut
2 down. Fortunately, I graduated before that
3 happened.

4 When I enrolled, I asked about being
5 able to work at places like the VA when I graduated.

6 And they said, a license is a license.

7 I graduated in 2015 and applied to the
8 VA. I was told that because Brown Mackie does not
9 have a regional accreditation, I'm not eligible
10 for work at the VA.

11 The school had promised to pay for my
12 nursing licensure exams, and then just before I
13 graduated, it changed its policy. It would only
14 pay if we got a certain grade on our exit exam.
15 Brown Mackie justified this change by citing a
16 clause in the enrollment agreement.

17 The next statement is from a student
18 at -- who attended Colorado Technical University
19 from 2011 to 2014. And it reads as follows.

20 I enrolled at CTU to earn an Associate's
21 Degree in business management. Over the next two
22 years I kept asking why I wasn't taking more
23 business courses.

1 I had also found that the teachers were
2 hit and miss. Some were so unprepared that they
3 just read from the textbook.

4 I was told that I could teach at CTU
5 once I graduated. Really? This says something
6 about the quality of the education they provide.

7 It turns out however, that CTU didn't
8 have an Associate's program in business management
9 after all. CTU had enrolled me in a general study's
10 program with a focus on business.

11 This didn't cut it with two large
12 employers who were interested in hiring me. They
13 required degrees in business management. All I
14 got from CTU was a sorry that I had been misinformed.

15 The following year I earned an
16 Associate's Degree in accounting. But that didn't
17 qualify me for jobs I wanted either.

18 So, CTU talked me into going for my BA
19 in business administration with a concentration
20 in finance. Which would give me my business
21 management degree and move me further along in the
22 accounting world.

23 They told me I still had enough left

1 on my GI Bill benefits to earn a BA. I was misled,
2 because when I had one year more of classes left,
3 my GI Bill benefits ran out.

4 I would never have enrolled in the BA
5 program had I only known my benefits would run out
6 before graduating. Now I have two Associate's
7 Degrees that aren't in the field I wanted, and an
8 unfinished BA degree, and no more GI Bill benefits,
9 and 65 thousand dollars in federal student loans.

10 That concludes the statement.

11 MR. BANTLE: Annmarie?

12 MS. WEISMAN: Thank you. There's so
13 much that I would like to say, and so little time.

14 As I think we all feel.

15 We came together here to work as a
16 committee. And we came together in good faith.
17 I believe we each did that. And I would like to
18 thank so many people.

19 We all worked really hard. And the
20 lack of consensus as someone said to me earlier
21 today, if we got there, to be mindful that it is
22 not representative of failure.

23 So, we worked really hard here and made

1 some really good progress. You have given the
2 Department a starting point as we move forward.

3 Because as you know, our work does not
4 end today. But it's kind of like what you hear
5 at graduation speeches. It's commencement. It's
6 the beginning for us.

7 It's the beginning and we kind of hit
8 the reset button again. And what we do is we move
9 forward with writing more.

10 We still have our original goals in
11 mind. We are here to support borrowers who were
12 wronged, and seriously wronged.

13 We are mindful of those borrowers. And
14 we first want to acknowledge that as our primary
15 goal.

16 We also want to balance the needs of
17 institutions as well as the taxpayer. And the
18 Department commits to working toward that effort
19 and supporting all of them.

20 So we continue our work in the best
21 interest of all. And we'll work to provide
22 regulations.

23 As was alluded to earlier, our next step

1 is that we will produce a notice of proposed
2 rulemaking. We will have a public comment period.

3 And I expect that we'll be seeing
4 comments from many of you in this room right now.

5 And that you will be encouraging others to provide
6 your comments in support of the things that you
7 already brought to us today.

8 We expect to publish final regulations
9 by November 1, 2018 to be effective on July 1, 2019.

10 So, I want to thank our facilitators,
11 our negotiators and alternates. I want to thank
12 the Ed officials who worked so hard with me, as
13 well as others that we brought in to help to support
14 us in this effort of having our rulemaking.

15 I want to thank all who made public
16 comments or read public comments on behalf of people
17 who could not be here with us today. And to the
18 members of the public that stayed here as our
19 audience.

20 Anyone else that I forgot, I just want
21 to say thank you for being part of this and
22 supporting us and the effort. It's been my
23 pleasure to work with each of you.

1 And I hope that we have the opportunity
2 to do again the same someday on a different topic.

3 But, most of all I just again I want to say thank
4 you for everything.

5 And we certainly respect the
6 conversations that we've had here. And we will
7 be mindful of them as we continue our writing.

8 MR. BANTLE: Thank you Annmarie.
9 Mike?

10 MR. BUSADA: And I think I can speak
11 on behalf of all of us, or I hope so, in thanking
12 you, Annmarie, for doing a phenomenal job in a very
13 difficult situation. And all the Department of
14 Ed staff, we really, really appreciate everything
15 you all have done.

16 When we leave, you all are still
17 working. And we appreciate that tremendously.

18 MS. WEISMAN: Well, we're working for
19 you and for the students in this country. So, thank
20 you.

21 MR. BANTLE: Not to delay more than
22 necessary. I want to reaffirm the thanks that have
23 been presented by everyone.

1 Thank you for allowing federal
2 mediation in. We know we're probably not --
3 actually, you all were probably not happy with us
4 at certain times. And that's our jobs as
5 facilitators.

6 But that being said, thank you very
7 much. And for the last time, please pick up your
8 garbage.

9 (Laughter)

10 MR. BANTLE: Thank you.

11 MS. MILLER: If you'd like it as a
12 memento, you can take it. But, if you don't want
13 them, just leave them on the table and we'll
14 recycle. Thank you.

15 MR. BANTLE: Safe travels everyone.
16 And thank you very much for your time and the passion
17 you put into this.

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

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