The Negotiated Rulemaking Committee met in Congressional II Room, The Holiday Inn Washington Capitol, 550 C Street, S.W., Washington, D.C., at 9:00 a.m., Ted Bantle, Moira Caruso and Rozmyn Miller, Facilitators, presiding.

PRESENT
TED BANTLE, Federal Mediation and Conciliation Service, Facilitator
MOIRA CARUSO, Federal Mediation and Conciliation Service, Facilitator
ROZMYN MILLER, Federal Mediation and Conciliation Service, Facilitator
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

This transcript was produced from a recording provided by the Savan Group.
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
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
JONATHAN TARNOW, Partner, Drinker Biddle & Reath LLP
DEPARTMENT OF EDUCATION STAFF PRESENT

JIM MANNING, Acting Under Secretary of Education
CAROLINE HONG, Office of General Counsel
BRIAN SIEGEL, Office of General Counsel
JOHN KOLOTOS, Office of Postsecondary Education
ANNMARIE WEISMAN, Federal Negotiator, Office of Postsecondary Education
MS. CARUSO: Good morning, everyone. Welcome back. We're going to go ahead and get started. We are looking forward to a very productive day today.

There is certainly a lot ahead of us. The good news is that we, your facilitators firmly believe that we have all of the tools and resources here at this table to have that productive day. So we look forward to continuing our work together.

To get us started we are going to turn it over to the Department for some remarks and some updates.

MS. WEISMAN: Good morning. Welcome back to negotiated rulemaking, Session Number 1, Day 2. Very happy to have you with us again. We would like to make an announcement to get us started that the audio recording that we discussed yesterday and agreed to has been arranged.
We have contracted for that for the remainder of our sessions, including this one, and it is beginning effective immediately. So when we begin our session now the audio recording has begun as well.

So we would like to thank you all for your compromise on that issue and coming together with us to find a creative solution and we hope that it will be helpful to those who take advantage of that resource.

To get us started this morning there have been some questions posed to the Department about the current claims that are in progress. And we wanted to be able to speak to you briefly about that.

With me today we have the Acting Undersecretary, Mr. Jim Manning who many of who know. And Mr. Manning will be speaking with us today about that status of current claims.

Unfortunately he will not be taking questions today. But we did want to give you this overview to get us started with some
information. And again, hopefully that will help us to inform our process as we move forward.

MR. MANNING: Good morning. Let me start by thanking you for your service on this committee. Participating in an intense and time consuming process like negotiated rulemaking, particularly on a topic as debated as this one, takes commitment.

So thank you for working to ensure the end result is a borrower defense rule that protects students, safeguards the taxpayer's interest and treats institutions fairly. The Department has had these same goals in mind as it considers pending borrower defense claims and how to administer the program in the short term until new rules take effect.

Like all of you, Secretary DeVos views borrower defense as one of the most important issues facing the Department. And she has taken steps to make sure it gets the attention such an important issue merits.

While her commitment to getting
borrower defense right is part of why you're here today, the Secretary also remains focused on working through pending claims. Unfortunately, she inherited a difficult situation, one where there was inadequate infrastructure in place to properly adjudicate claims.

I want to share with you briefly the recent history of borrower defense, its current status and where the Department is headed on administering the program until new rules take effect. As you know, the borrower defense regulations enacted in 2016 have been delayed and so the Department has and will continue to consider claims under the regulatory status quo which assesses a claim under applicable state law and commits to the Secretary's discretion how to fashion relief.

During the tenure the previous administration had approved and discharged approximately 15,000 borrower defense claims, all from former Corinthian students. The Secretary inherited roughly 65,000 borrower defense claims
when she assumed office.

Of those approximately 16,300 had been approved in the waning days of the previous administration but not yet discharged. Most of these approvals were from former Corinthian students.

But slightly more than 2,800 were from former American Career Institute students in Massachusetts and 33 from former ITT students in California. Upon assuming my responsibilities on January 20th I began an evaluation of the Borrower Defense Program.

This review is complicated by a lack of defined policies, protocols and procedures established to handle the process and additionally the lack of a proper SORN or a database system that instead was 1,000 spreadsheets that had to be searched manually.

These claims were approved in haste just before the inauguration and there was no infrastructure in place to adjust them, as I just said. Given the budgetary implications to the
taxpayer and the impact on thousands of borrowers
and institutions it was necessary to conduct a
high level assessment of the program including
all these already approved claims.

Throughout the winter and early spring
a team consisting of both career and non-career
Department leadership evaluated the program and
worked to implement controls and procedures for
reviewing claims and processes for discharging
loans for successful claimants.

We examined the programs operational
and managerial structure within FSA and its
information systems and the legal and evidentiary
base for approving or denying claims. We also
looked at business practices for claims intake,
review, adjudication and discharge.

Our review uncovered several areas of
concern which required building an infrastructure
to remain, to review claims and make programmatic
tweaks which in turn contributed to the time it
has taken to adjudicate additional claims.

In sum, this short term evaluation was
needed to ensure the administration of the program was built on solid foundation that would in the long term operate efficiently and according to sound business practices and processes.

In respect to the more than 16,000 approved claims, the Secretary couldn't have been clearer when she said promises made to students under the current rule will be promises kept. These claims did merit a close review, but once completed the Department began discharging claims in late spring.

Most loans were discharged quickly but a few more complex claims have taken longer. Approximately 2,000 of these claims fell into the complex category.

For example, the Department began approving claims from FFEL and Perkins loan borrowers. However, the Department needed to implement business processes and requirements in order to consolidate those loans into direct loans for discharge.
There were other scenarios where borrowers with approved claims had multiple outstanding loans, only some of which were associated with their borrower defense claim. This also made it an extended process.

FSA had to manually determine which of these loans to discharge. In other instances some of the loans associated with the claim fully or partially fell outside of the applicable statute of limitations.

And so FSA had to identify and separate out those loans so borrowers would not get a discharge for loans ineligible for relief. Of these complex claims all but a few hundred, several hundred have been discharged or sent to services for discharge.

Our internal saying about the program is nothing in borrower defense is easy and these claims certainly were not. As a side note, the Department has continued to accept borrower defense applications from FFEL and Perkins borrowers under existing statutory authority and
the HEA and a part of the 2016 borrower defense rulemaking that was not delayed.

Applicants are given a preliminary determination on their claim before consolidation to allow them the option of not consolidating if their claim is denied. Moving forward, we have approximately 95,000 pending claims of which roughly 65 percent are from former Corinthian students.

While I cannot give you a specific date or number, I can tell you that approval of some of these claims is imminent. While it has taken some time I am confident that the work done to assess and make adjustments to the program during the short term hiatus in adjudicating claims will yield long term improvements and efficiencies beneficial to all.

Even the most strident borrower defense advocate would recognize that undoubtedly some claims are going to be denied. We have been working carefully to ensure that any denial comes only after a thorough review of the claim for its
potential applicability to an existing Department finding and a full consideration of any evidence provided in the application that would entitle the borrower to relief.

I can tell you today that the Department will soon begin issuing some denials. The Department recognizes that many borrowers have waited a long time to hear about the disposition of their claims.

For example, we inherited hundreds of claims that had been sat on for over a year and a half, some of which are now, we're close to adjudicating. To mitigate the inconvenience for how long it has taken to adjudicate claims interest that accrues on loans for denied claims will be forgiven starting one year after the borrower defense application is filed.

The Department is also working to adjudicate pending claims related to other schools and we are making progress on that front. However, I will admit that we're not as close as we are with the Corinthian claims.
Unfortunately when we arrived in January little to no work had been performed on processes of adjudicating these claims, as I said earlier. Another challenge, which I understand was raised yesterday has been the difficulty in assessing how to apply individual state laws to particular claims.

Once Corinthians adjudications begin our work on other claims will gather momentum. I can promise you we are working day and night to get these claims and I expect a consistent downward trend in the number of pending claims starting soon, very soon.

Long term I cannot express to you the importance of your efforts here. While we work to adjudicate claims under the existing borrower defense regulations we look forward to implementing an improved upon regulation that you begin considering this week.

I want to thank you again for your service. Thank you for your commitment to this process and I look forward to following your
work. Thank you so much. Good luck.

MS. CARUSO: Thank you. I think his
mic is still on. Thank you. Okay, yes, so there
is a request to speak. Please come forward.

MS. RAWLES: How is that? It's green
so I think I'm on. Those are tough shoes and
words to follow there. But I think what I have
to say is important this morning.

That was very professional and I thank
the Department for those comments. My comments
are not unprofessional but they are also very
personal.

I had a lot of time to think about
this last night and this morning. I've talked to
a lot of people on the Committee. I think it's
fair to say that some of us or many of us wish
yesterday had gone a bit better.

But we're back today and in good faith
to hope that it does. One of the things that
upset me on a personal note is the assumptions
that many of the negotiators have made about each
other before we got here.
You know, I represent the large for-

profits. People make assumptions about that.

They make assumptions about my party, my

motivation, my positions, what I will or will not

support.

That's a mistake. You know, I come

from a law firm of one, Linda Rawles Law. I paid

my own way to come here. I came here in good

faith.

Actually to make it very personal my

father just passed away. I came here and left my

mother's side after 61 years of marriage to come

here because I naively, even though I've been in

this industry for 20 years, thought that we would

all negotiate in good faith.

And that's still my intention. We're

all different. We shouldn't make assumptions

about each other. We should be open. We should

negotiate in good faith.

You all left businesses, families to

come here. We're going to be back here two more

weeks at least. So, you know, why are we here?
Are we here to make a point? Are we here to make a rule?

        A couple more points and I'll be done.
But what we, some of us noticed yesterday is that while we were talking, okay, the personal part is over so now I'm better, hard to talk about my dad, is that while we were negotiating many people were tweeting.

        Many people were retweeting what some bloggers and press people were tweeting in the audience. They have a right to tweet whatever they want. They're the public and the press.
        I think that retweeting folks who dismiss some of our constituencies out of hand while you're sitting next to me, not right next to me and say that you're, you know, you're retweeting that the whole for-profit industry is evil while you're sitting at this table negotiating with me in good faith is not good faith.

        And what I would like to ask this morning when I asked this person if they thought
it was good faith they said, yes. They asked for me Twitter handle or whatever you call it these days.

So I assume now I'm the topic of some of the tweets going out from this very table. I would like us to stop that. I would like to stop arguing our points in social media and argue our points at this table.

And as a sign of good faith I would like to propose that we have a consensus on that, that as long as we're here we will not use social media to argue our case, that we will not use social media to say negative things about each other or our constituencies until we see if we can actually create a rule.

And if you're not willing to do that then I'm wondering if you're here in good faith. And if you're not here in good faith if the Secretary should consider that those people should not be on the Committee.

So my proposal is that we agree not to argue in social media or retweet negative
comments from people in social media as a sign of
good faith during these negotiations. Thanks for
listening.

MR. BANTLE: And acknowledging the
proposal I would just like to open up the floor
to any other opening comments from Working Group
Members.

PARTICIPANT: A quick point on that.
So if you read over the protocols that the group
agreed upon, I believe it's Section C, of 6 it
very specifically allows Committee Members to
have but, nonetheless limited discussion on the
overall objectives and progress of the
negotiations.

I think these conversations should be
open and you all know how I feel about
transparency, mostly thanks to social media. And
it's important that our constituencies have
access to the information and discussions both in
real time and as accurately as possible.

Barring the fact that we didn't have
a recording yesterday it certainly is important I
think for many of our constituencies at the table to know exactly what the discussions are. It does point out that we're not allowed to comment on each other.

I think that, I will agree to that point. I think that is quite relevant. Nonetheless, our own points of view which are quite specific to our constituencies I think are quite relevant and certainly pertain to these conversations.

MS. RAWLES: Can I respond to that?

PARTICIPANT: Briefly.

MS. RAWLES: Yes. I think that retweeting statements that the for-profits are in a conspiracy with the Department to have secret hearings is a little bit more than telling your constituencies what's happening around the table and that we should at least agree in good faith not to tweet, to retweet or, you know, put our attention, have some respect for the people who came to this table to not use your time to be denigrating the proceedings or retweeting people.
who are denigrating the proceedings.

Instead listen to what we're saying and have enough respect for this process and all of us to look us in the eye and say those things if that's what you think at the table. If we're going to have any hope of coming up with a rule as opposed to just grandstanding and all going home with the Department writing the rule I think it's important to be honest about this.

MR. BANTLE: Just, as a facilitator and to address the proposal on the table is it safe to say that adherence and respect for 6(c) which Will had commented on which I will read, Members will refrain from characterizing the views, motives and interests of other members, going on.

If respected by the group would that address your concern?

MS. RAWLES: Yes. I actually think some of the activities that happened yesterday that I have screen shots already violate that protocol as written. So I just want a
recommitment to that protocol.

MR. BANTLE: Okay. So with that understanding and with a positive outlook at our efforts today, tomorrow and in the upcoming weeks can we as a group recommit to the protocols as a whole and to, and particularly due to the concern raised Section 6(c) and the characterization of other people's comments as it is written?
Joseline, Dan and then Aaron.

MS. GARCIA: Just for clarification, we're talking about refraining from characterizing the views and motives of --

MR. BANTLE: Other Members.

MS. GARCIA: Okay, not about like not being able to use Twitter as a form of communication?

MR. BANTLE: Correct.

MS. GARCIA: Okay.

MR. BANTLE: Dan, I think you had your tag up and then Aaron.

MR. MADZELAN: As part of this reaffirmation can we also reaffirm the protocols
in the context of the discussion yesterday around the recording because I think Joseline had an issue about well what happens if the Department comes back and says, no.

But the Department has come back and said, yes. So can we roll that part, that aspect into this as well?

MR. BANTLE: As a facilitator I am comfortable with that. Aaron and then Abby and then Will.

MR. LACEY: I was just going to say, I mean if someone, whether it be directly or by retweeting or restating a statement of someone else in the public or the press, I mean if someone in the public or the press is making a statement that any of the negotiators or any of the constituencies we represent, and I do mean any, saying something that's denigrating and you retweet that or promote that I don't know how you could say you are not characterizing the views or motives of the negotiator who represents that constituency.
And again, I think that's across the table. I mean I am very happy to say for my part that I will not do that.

I think it is not appropriate and I just want us to all be very clear that, if someone is taking a position contrary to that, that you could actively, if you're a negotiator at this table that you could in conformance with these rules actively denigrate the constituency represented by one of these folks during the negotiations, I mean I think we should know that because I would disagree that that's consistent with these protocols.

MS. SHAFFROTH: Two quick points, one on the 6(c). You know, it refers to refrain from characterizing views, motives or interests of other Members. I had understood that to mean other Members of the committee sitting here today.

I don't believe that anyone has violated that and I don't think anyone sort of has acted in a way that strictly violates those
terms. And, you know, I think, you know, it's appropriate to hear from other people about how they interpret that so that we can all have a common understanding going forward.

But I do believe that everyone is coming here and trying to do their best to represent their constituency and to work towards rules that will serve their constituencies.

On the audio recording I wanted to follow up on Dan's point. I certainly appreciate the Department coming back, looking into audio recording and making it available today.

That's wonderful. I wondered if we could get some clarification as to when the audio recording would be released to the public.

MS. WEISMAN: Unfortunately I don't have that information. The contract was put together very quickly. We would certainly try to get that information.

I don't know if arranging for it so quickly we're going to have the quickest turnaround time. We can probably arrange, you
know, now that we're arranging for all three sessions at one time we can probably get a more quick turnaround time for Sessions 2 and 3.

But I will try to get a firm commitment in terms of timing if possible.

MR. BANTLE: Okay. First I want to thank everyone for their comments. In general if I had to restate what I'm hearing, I am hearing a commitment from everyone who has spoken and I am seeing a commitment via body language from others with an agreement to respect the process and respect the individuals here.

I don't think it is any secret we had a difficult day yesterday. But we have worked through it. We were able to find a solution.

And if you recall at the end of the day I think we had some very productive conversation on Issue 1, Bullet Points 1 and 2. We shared perspectives on it. We answered questions on it and we did not, you know, have any conflict or back and forth on those issues.

As a facilitator again, appreciating
all the comments made, I would say I think it's
time we moved back into the issues. If there are
any outstanding concerns regarding, you know,
behaviors at the table, you know, feel free to
bring them to us as facilitators.

If you do have concerns that's one of
our jobs is to kind of manage and assist with the
process. But I think we, you know, we are
turning over a new leaf. It's a new day and
let's dive into the content. Michael.

MR. BOTTRILL: Yes, one quick comment.

Appreciate wanting to move on. But because we
didn't have a recording yesterday I actually
agree with Aaron that I think we should reaffirm
the protocols today and have that on record.

MR. BANTLE: Without seeing any verbal
or visual rejection of that, can we see a formal
show of thumbs on adopting the protocols with the
understanding that we do have the recording
occurring now and we are being recorded? Prior
to that, Joseline has her hand up.

MS. GARCIA: For the Department I know
that you just made the contract and so you don't
have a firm answer as to when we can get it. For
the meetings in January and February would the
audio recording be released out at least within
the week that the negotiations are taking place?

MS. WEISMAN: Again, I have not
personally seen the contract. So I don't want to
commit to something that I haven't seen. I will
endeavor to get the information that we need as
soon as possible.

But I don't have access to that
information right now.

MS. GARCIA: Okay.

MR. BANTLE: And just as a facilitator
note, we have that question written down and we
will continue to follow up on that. Okay.

MS. WEISMAN: If I can add one other
thing. I think just so you're clear it's not
that we don't endeavor to be quick about it. We
have agreed that we would post a 508 compliant
recording and we want to make sure we have time
to allow for all of the processes that the person
that we've contracted with needs in order to make
that happen, have the time to get it posted to
our website.

So again, we will endeavor to be
quick. But I don't want to over promise at this
point.

PARTICIPANT: Just another
housekeeping from my perspective. Yesterday
afternoon and in light of the fact that we do
have a recording I did want to clarify a couple
of comments that I made yesterday.

And that centered on really what my
intent was, was to educate this panel on burdens
of proof and what we'll be looking in, in the
future.

MR. BANTLE: And if I could cut you
off there. My, our plan as facilitators just
right before we get into Bullet Point 3 was to
reopen the floor on 1 and 2. So maybe that would
fit.

Is it all right if we take a formal
vote on the ground rules and then open up the
floor to you?

    PARTICIPANT: Yes, I just wanted to clarify while I had an opportunity to do so --

    MR. BANTLE: Okay.

    PARTICIPANT: -- because there was again, along the lines of what Linda had spoken mischaracterizations on the internet of what burden of proof that I was suggesting or adopting.

        And I did not mean to do that. It was merely to educate this panel on different burdens of proof whether it's preponderance or clear and convincing or substantial misrepresentation.

        And I did not adopt any of them. It was to educate this panel and that was my intent only. And that will suffice for my comments.

    MR. BANTLE: Okay.

    PARTICIPANT: You don't need to come back to me. Thank you.

    MR. BANTLE: Okay. With that and again, with the thought that we are going to open up the floor to 1 and 2 again if there are any
additional comments before moving on to Bullet 3, can we see a formal show of thumbs on affirming the ground rules or protocol document as is?

Again, it will be updated with, you know, filling in the blanks with all your names including Mr. Anderson who has been added. I know yesterday at the end of the day Annmarie had a quick announcement that if there any edits that needed to be made to spellings or addresses, phone numbers on the contact sheet to please do that.

Please do so we can put the correct information into the protocols. But can we see a formal show of thumbs on adopting the protocols for the remainder of this working group? Okay, seeing no thumbs down I will turn it over to Moira to open up the floor on the issues.

MS. CARUSO: Great. Thank you, Ted. Okay, so what I'm going to start with is, I'm actually just going to open it up for Bullets 1 and 2 if there were any comments, concerns after yesterday's discussion and you would like to
return to either of those two please feel free.
Michael.

MR. BOTTRILL: This is a question for Aaron. You had mentioned yesterday that you felt like the misrepresentation and substantial misrepresentation regulations as they currently exist and I think Mike Busada said this as well, that they are difficult or confusing or convoluted.

I don't remember the actual term. But it wasn't a positive one. Have you given any thought to what changes maybe to that regulation would alleviate the concerns or the problems that you've run into is as a, you know, risk manager and compliance officer that would alleviate kind of the confusion or the problems that you see with it and would still fulfill, you know, kind of the, what, you know, maybe other people here are talking about with regard to common law fraud and other kinds of measures and things of that nature?

I'm just trying to get a sense of it.
And from your viewpoint is there a way to make
that regulation a workable one?

MR. LACEY: And you mean workable for
the purposes of borrower defense or workable for
the purposes of the Department when it's
investigating a proceeding against an institution
for concerns regarding misrepresentation,
understanding that those are different things?

MR. BOTTRILL: Sure, but in the
context of this negotiator rulemaking for the
purposes of borrower defense.

MR. LACEY: You know, my preference
would be to craft a totally different standard.
And there are various elements that I would like
to see in that standard and I assume we'll talk
about that.

But, you know, actually in my mind
going to the point I just made, I mean, I think
that it makes sense to have potentially different
standards for the Department when it's thinking
about an enforcement action and the standard that
would be used and sufficient for a borrower to
pursue a discharge.

And just to give an example of what I mean, you know, when the Department comes in they might identify in the course of say a program review something that they would characterize as a misrepresentation under the current standard which I think and by the way, just to be very clear, I mean, you know, I work with institutions of all types and I see all the time in program review findings of institutions of all types findings relating to issues with how they've characterized placement rates or things on their websites or what have you, right.

The public state institutions, private non-profits and for-profits all across the boards. And I think it is appropriate for the Department sometimes in those program reviews given what they find to raise a concern or say we think this represents a misrepresentation say under this current standard, right.

And we want the Department potentially to be able to do that because we want them to be
able to point out to an institution that there is something that they think needs to be fixed.

The question is whether that thing they pointed out that's now in a program review in a finding should also serve as a basis for all of the borrowers who have gone through that institution over the period of time that the school was making whatever representation or mistake they were making to suddenly seek a discharge.

And I think it's really important to draw a distinction there because I think I want the Department in the context of administrative reviews and things like that to be able to speak to schools about mistakes they make and things they find that they believe are misrepresentations without at the same time necessarily creating a basis for thousands of borrowers to seek to discharge all their loans.

So I, even in addition to the fact that I think the misrepresentation definition, statute misrepresentation are very confusing I
think there is also a really important reason to have two different standards. Thanks.

MS. CARUSO: Linda had a comment.

MS. RAWLES: I agree with that and I'm not just parroting what someone else said. So great comment, Aaron.

Some of us have talked and in addition to what Aaron said about having a different standard between what is used in a program review by the Department and what would be used for purposes of this regulation would like to see an intentionality element put into it.

What we're looking at, and like Aaron I represent a lot of different types of schools and constituencies in my practice. And what we don't want is if a school makes a mistake and they correct it for that to be a basis.

So we should also, I think, consider some type of safe harbor for mistakes that were reasonably corrected in a reasonable time. Some of us have bandied about the idea of if you have a compliance program along the lines of the
Federal Sentencing Guidelines' seven elements, some of you may be familiar with that.

But there's a whole compliance industry out there that the Department and other federal agencies recognize where if you have a compliance program and you monitor and you educate and you take corrective action then you get points for that right.

So we could consider something like that. If you're an institution that made a mistake that wasn't intentional and you have a compliance program that finds and corrects these mistakes that should not to lead to a claim under this regulation.

MS. CARUSO: Yes, Caroline and then Abby and then Will and then Ashley.

MS. HONG: This is just for Linda, just as a clarification. When you're talking about safe harbors are you talking about the enforcement reg or are you talking about the for borrower defense?

MS. RAWLES: I think it might find its
way into many parts of things we're talking about. But I would prefer to see it in the definition itself.

If you have a non-intentional misrepresentation that has been corrected through an effective compliance program that perhaps would not meet the definition of misrepresentation in the first instance.

MS. HONG: And that's regardless of whether it's from the Department enforcement perspective or from individual borrower?

MS. RAWLES: It would be from any perspective.

MS. HONG: Okay.

MS. CARUSO: Abby.

MS. SHAFROTH: Thank you. So two quick points hopefully. First on the, I appreciate, Aaron, your point that it's important for the Department to be able to continue to enforce the misrepresentation standards.

In terms of whether that should mean that thousands of borrowers who attended the
school should all get relief, I would offer that should depend on whether, you know, the or at least in 2016 we decided that should depend on whether it's a substantial misrepresentation.

So a misrepresentation that is, you know, relevant to the issue here of a borrower deciding to enroll or remain enrolled in a school and to take out loans and also whether it was the type of representation that is likely to cause the borrower harm.

If the Department does find through its enforcement practices that a school engaged in a substantial misrepresentation that was likely to deceive or mislead students and to cause them harm I would say, yes, I don't see a problem then with providing those students who were subject to that substantial misrepresentation with relief.

So I don't see those two things as incongruous or as harming the Department's enforcement ability. With respect to the proposal about having an intent standard in part
to allow, to protect schools that engage in sort
of innocent mistakes.

You know, I think it's really
important to think about even if a mistake is
unintentional is it harming people. And if it is
harming people who should bear the cost of that
harm?

So it may be that a school did not
intend to, you know, we can imagine for example a
school recruiter misread materials she was given
in her training packet about what to tell
students when recruiting them and misread that
there was an eight percent job placement rate and
instead read that as an 80 percent job placement
rate.

If that recruiter goes around telling
students or telling perspective students that the
school has an 80 percent job placement rate and
she didn't intend to lie to them. She thought
that was the truth.

And the students enroll, you know,
thinking that this is a school where they are
very likely to get a job then they're harmed even though that wasn't intentional. They might also be harmed even if that recruiter is, even if the school later counsels that recruiter and says, no, it should be eight percent.

You're giving incorrect information. Those students who already relied on that misrepresentation have already been harmed. And I don't, I wouldn't want to come up with a rule through this process that would leave those students to have to pay down loans that they took out to attend a school that they thought was going to get them a job but that doesn't.

MR. HUBBARD: One thing to add to that. If the burden of proof is intent this Department last year specifically cited that nearly no student would be eligible for discharge under those standards. So I think it's an atrocious standard.

MS. CARUSO: Okay. Ashley and then Aaron.

PARTICIPANT: I was going to agree on
the intent standard. No student would be able to
benefit from that because that would be
incredibly hard to prove for most students
through the evidence that they have.

We've already talked about the
asymmetry of information between students and
institutions. And I just think the burden on a
student who is already burdened by a degree that
harmed them and loans that harmed them to
actually have to go out and find evidence of
intent and prove that is absolutely too much.

And we're trying to create a standard
that students can access relief without the help
of outside help if possible. And so we need to
create a standard that actually allows them to do
that.

MS. CARUSO:  Aaron and then, Walter,
I see yours too.

MR. LACEY:  Yes. Just so first of all
I agree in the sense that to your first point,
Abby, about the idea that the, I mean last year
in 2016 basically what you guys did was you came
up and said we do think there should be a higher
standard for borrower discharge and use of
substantial misrepresentation, that concept plus
actual reliance.

So you created sort of two thresholds,
one for the Department in a program review
proceeding or something like that and then one
essentially for borrower defense. My point is I
don't like the idea of trying to use or boot
strap the standard the Department is using of
program reviews and things like that for purposes
of borrower defense as well in part because I
think there can be confusion.

Also again think that the definitions
and misrepresentations, substantial
misrepresentations as a general matter are very
confusing. I just think we can come up with
something better here, just a clean and distinct
standard.

Also I mean in your example the thing
I would point out is there's no actual, in your
analogy demonstration of harm or damage to the
student. Now there could be.

But you've assumed that there's harm even if someone were to say it's eight percent and it's actually 80 percent and the student enrolls it's not clear what the damage would be, right. I mean if they didn't get a good education and it turned out not to be a good school I understand.

But the fact that the institution made the mistake in and of itself does not mean necessarily that there was harm which brings me to my next point. Is that even the FTC, I mean when they're, you know, they define unfair practices you know, I assume you know, substantial damages is one of the core components of that consideration.

You know, we talk a lot about defrauding students and that's often the tag line in the press. And I don't think there's anyone at this table, I can't speak for everyone else, but I am assuming there is no one else who would disagree that if a student is defrauded, meaning
an institution commits fraud that the student
shouldn't have relief, right.

But if the term we're going to use is
defraud and fraud is the concern then we should
use a fraud standard. And what it sounds like is
being argued for by you all is a mistake
standard.

In other words, if somebody does, if
an institution does anything wrong if it's a
mistake and in any way it leads to any kind of
harm for the student substantial or otherwise,
and the 2016 reg does not require that, there's
no materiality standard for harm or damages. It
just says detriment.

So if there's any harm as a result of
any mistake on the part of an institution that's
a basis for a borrower defense claim. As the guy
at the table representing institutional risk
managers that is not a fair allocation of risk at
all.

It puts 100 percent on the risk, of
the risk on institutions. And I also want to
make a really important point. When I say
institutions I'm not talking about some amorphous
legal entity in the sky.

I'm talking about faculty and staff
and the other students at the institution. If
you come up with a standard that puts 100 percent
of the risk on institutions for mistakes that
they make then they will have to figure out a way
to manage that risk.

And they will buy insurance premiums
that will go up and try to find policies that
will cover that risk. And it will increase
costs. And those costs will be put down onto
real people, faculty, staff and other students at
that institution.

So I just strongly encourage this
Committee to consider a standard that represents
a reasonable allocation of risk between the
institution. Institutions should be held,
absolutely should be held responsible for
fraudulent conduct on their part.

Again, I don't think anybody disagrees
with that. But a mistake standard with no materiality element relating to harm I do not represent a reasonable allocation of risk.

What I would suggest in whatever standard we come up with, I mean I think intentionality or reckless disregard. I don't think necessarily you have to, you know, if an institution should have known better, right, I think that would be reasonable.

I think you need to have some sort of substantial damages or material damages concept. The FTC standard also allows for a notion of whether or not the consumer should have known better.

I don't know if we would want to talk about that or not. There needs to be a nexus between the action of the institution and the substantial damage that occurs.

And I do agree I think there ought to be some sort of an opportunity for an institution to demonstrate that it cured whatever damage occurred. Although, if you have a substantial
damages standard then the cure ought to sort of be wrapped into that because an institution ought to have an opportunity to demonstrate that the substantial damage didn't occur in the first place.

MS. CARUSO: Okay. So we are going to go to Walter. I just also want to point out that our discussion is going into Bullet Number 3 and so we're going to open it up to Bullets 3 and 4 because there was a question yesterday as to the order of those.

Let's just go ahead and open it up to Bullets 3 and 4. Walter please and then Linda. The other thing I just want to, want the group to be mindful of this is good conversation. This is good discussion.

Attempt to keep it to new interests and I would also like to hear from some folks that we haven't heard from yet. Thank you.

MR. OCHINKO: So I would like to talk a little bit about what is misrepresentation and give some concrete examples of it because I don't
think it's very abstract and I don't think it's confusing.

And I don't think the misrepresentation standard is confusing. I'd like to submit to the Education Department something that can be distributed to all of the negotiators.

And it's a list of all the settlements since 2012 by state's attorney generals and by federal agencies against ten for-profit schools. And it lists the agency that brought the, or arranged the settlement, the date of the settlement, the amount of the settlement which is about $400 million since 2012.

And also lists the findings which are all about misrepresentation. And I would also like to talk a little bit about a specific school that the FTC settled with in May of 2015.

The school is Ashworth and the settlement was about misleading students about the training they received and their ability to transfer credits to another school. The FTC
found that many programs offered by this for-
profit institution did not meet state
requirements for those careers including two
programs that are approved for the GI Bill, home
inspections certificates and early education
degrees.

Ashworth claimed that its Bachelor's
degree program in early childhood education would
help graduates become elementary school teachers.
Yet in many states an elementary school teaching
license requires a degree for a regionally
accredited school.

Because Ashworth is nationally
accredited its graduates would fail to qualify
for a state teaching license. The FTC also found
that Ashworth recruiters referred to as admission
advisors by the school lied to students about
accreditation.

One student who was interested in
becoming a home inspector in Indiana was told by
an Ashworth admissions advisor the program
satisfied licensing requirements in that state.
After graduation however, the state licensing board told the student that the degree was not recognized in Indiana for purposes of state licensing.

The consumer went back to the school's admission advisor and was again falsely told that it was recognized. In addition, claims that Ashworth made about credit transfers were often not true.

For example, the school's website and print material, marketing materials claim why choose online classes at Ashworth College, credit transferability. And undergraduate certificates, learn specialized career skills in a few short weeks.

Transfer to a degree program to continue your education. Finally, the FTC complaint notes that Ashworth marketing efforts had targeted military service members and their families and that Ashworth advertises that it employs military advisors to speak with potential applicants who are eligible for military payment.
benefits.

The complaint also points out that Ashworth trains its admission advisors to be aggressive during sales calls. Admission advisors who were often seen as being insufficiently aggressive at rebuttling which is a term used by Ashworth, faced disciplinary action that could include loss of commission or even termination.

As part of their rebuttling training Ashworth salespeople were taught to ask background questions at the beginning of a call about the consumer's family, employment situation, educational benefits, educational background and other personal information.

MR. BANTLE: Hey, Walter, if I could just jump in.

MR. OCHINKO: I'm almost done.

MR. BANTLE: Yes. Is this something that you would also be able to provide?

MR. OCHINKO: Yes.

MR. BANTLE: Okay, just because it's
longer. Okay, thank you.

MR. OCHINKO: Ashworth then instructs its salespeople to use whatever information they learn as pressure points later in the call to get a commitment from the consumer. For example, a salesperson was instructed by a supervisor to remember what the consumer told you in the discovery section.

Need a job, has kids, et cetera, use those against her. These aggressive recruiting tactics are remnant of the pain funnel recruiting playbook uncovered during the 2012 Senate Health Committee investigation.

So I mean I think these are pretty concrete examples. I think they illustrate that there's a pattern at some of these schools, that it's pretty systematic. And I think it's pretty clear that these are misrepresentations.

MR. BANTLE: Okay, Linda.

MS. RAWLES: By the way I didn't talk much yesterday. But if I'm talking too much and there's new people who want to speak if they are
new people I will always yield to the new people. 

I think those last comments made a
little bit of my case which is, you know, maybe
we're playing a little bit to the audio and
something could be handed to us, you know, in
written form. But I just wanted to add that in
addition to intentionality I would have no
problem with reckless disregard, you know, as
part of the standard.

And that also we should look at
whether or not the student attempted to mitigate
the damages. No one here is for fraud. We're
all fine with holding people in any industry
accountable for fraud because if people aren't
held accountable for fraud it hurts all the rest
of the schools.

So what we really want, as Aaron so
eloquently pointed out, is something that's fair
to the students and the schools. We're here
representing our constituencies but also care
about vets, consumers and students as well all of
whom we wouldn't have a school without.
But that we should think about whether
the student if they were harmed attempted to
mitigate harm. If you get a degree from a school
and perhaps there was misrepresentation
intentional or not or what have you and you don't
try to get a job and use your degree, you know,
there needs to be quantifiable harm.

There needs to be a showing that you
tried to mitigate that harm. There needs to be a
connection between the fraud and your harm.
These are elements that without getting to
lawyered up here we see in fraud cases all the
time.

So I think many people at the table,
including some who speak for a broader standard
have used the word fraud in most of their tweets
and comments at this table. So if we're going to
stick with fraud we need to make sure that all
those elements surrounding proof of fraud and
connection and mitigation of damages are on the
table for conversation.

MR. BANTLE: Okay. And just a
facilitator note, we're going to move on to Kay.

Aaron, did you, is your tag up again or, okay, no
problem. We know it's easy to forget that.

And again, we are here to discuss
views. We understand these are strongly held
views and we all have, you know, own interests
that we're here to represent.

But if we could continue to kind of
move through and have productive discussion like
we have I appreciate that. Kay.

MS. LEWIS: Yes. I'm not sure, I'm
sorry if I don't know which bullet this goes in.
But in the previous discussions about standards
for fraud and the amount of damages and all that
it seems like we need to be talking about what is
the appropriate standard for the student and
whether the student gets relief.

And then there is a different standard
whether not an institution also needs to be then
held accountable for that. And so when we're
talking about just cases of mistakes,
unintentional then the institution maybe wouldn't
be held to a standard of having to recover or payback part of those funds

But the student would still get relieved if they were harmed in the action that occurred.

MS. CARUSO: Ashley Reich.

MS. REICH: I wanted to follow up with the Department on a question that was raised by someone I can't remember here yesterday. Since we're talking about definitions of substantial misrepresentation, did the Department, were they able to gather some examples of the current claims of what is considered to be substantial misrepresentation?

I know there was a question yesterday if the Department could bring back some examples and just wondered if they had that and that might help shape some of the conversation.

MS. WEISMAN: I do not have that yet, no.

MS. CARUSO: Yes, Aaron.

MR. LACEY: Just two comments. I'll
be quick. Two quick comments. The first is I just, with regard to the examples of misrepresentation I do not -- I mean clearly there are schools, company, every industry, every sector of higher ed, outside of higher ed it's all people and people make mistakes.

I have no doubt that there are schools that have engaged in bad conduct and unfortunately will continue to engage in bad conduct. That's why we need this.

And there's no doubt that in some cases it will be misrepresentation that rises to the level of whatever standard we come up with.

So I readily acknowledge that.

The other point I wanted to make in response is, you know, as a representative of institutional risk managers I don't have a huge issue with bifurcating the process.

But my concern is if you create two different standards, one for discharge of the claim and one for recovery from schools, you expose the taxpayer pretty significantly, right,
because you could discharge thousands and thousands of dollars of loans and then if you have a second standard that's higher so that you can't recover, we're all just paying for that. So just a point for thought.

MS. CARUSO: Dan.

MR. MADZELAN: Just respond briefly to Aaron. The Government already assumes all the risk in the student loan program with some minor adjustments.

But, you know, this is part of the overall public policy of ensuring access to higher education for those who otherwise would not have the means, financial means to do that.

MS. CARUSO: All right. Any -- Abby.

MS. SHAFROTH: I want to raise a concern or sort of an anomaly that would result if we, if this committee established a federal standard for relief that was significantly more restrictive than the standards that exist in state consumer protection law.

Most, generally private student loan
contracts are subject to this thing called the
FTC holder rule which means that borrowers would
be able to raise any of the state law claims and
defenses to repayment of that loan that they
could against the school.

This means in practice that if the
school violated the state's consumer protection
law which many state consumer protection laws
have a standard that is more similar to
misrepresentation certainly do not require proof
of intent, that the student could attain relief
on their private student loans based on that
state consumer protection law standard.

But then wouldn't be able to get
relief on their federal student loans because the
standard would be much higher to get relief on
the federal student loans. That seems to me
incongruous that the private student loan system
would be more forgiving to borrowers and more
protective of borrowers who have been abused than
the federal system.

MS. CARUSO: Joseline.
MS. GARCIA: I just would like to put into perspective of the situations that so many students are in. I think it is a lot to ask for, for students to mitigate fraud on their own.

For example, like I'm first generation and my parents were immigrants, at one point undocumented. How do you expect someone to be able to understand how these institutions work, understand how these policies work to be able to mitigate fraud on their own?

Institutions have massive resources and it places students in this David versus Goliath situation which I think is unfair and, you know, considering the fact that I am representing students it's not in their favor and, you know, I will leave it at that.

MS. CARUSO: Linda and then Mike.

MS. RAWLES: Yes. I'm also first generation so I'm very understanding of that. First person in my family to go to college was a poor, single mother.

When I say mitigate damages I don't
want to be too lawyer-ese here. I don't mean that they have to go and fight the school on their own.

I'm just saying that if they have a degree and they claim that they were defrauded that they still have an obligation to reduce the damages to them by their own behavior in seeking employment. I'm not talking about them litigating the schools on their own.

So I didn't want to use a legal term mitigation of damage in a way that was confusing.

MS. CARUSO: Thank you, Mike.

MR. BUSADA: As I get ready to comment on more of these issues I just wanted to take the opportunity because my experience is very different.

MR. BANTLE: Hey, Mike. Ashley could you just turn off, I think we have the two mikes right next to each other on which might give a little feedback. Thank you.

MR. BUSADA: And so I just wanted to share briefly where I come from on a lot of these
issues and what really is the foundation for a
lot of the points that I'll be making. I am the
general counsel and vice president of a very
small school in Shreveport, Louisiana.

We have about 100 students. We have
about 100 students regularly students starting,
students stopping. City of Shreveport is about
300,000 people.

When I graduated college I went to go
practice law. I got my law degree and I went and
worked for a firm, a large firm in south
Louisiana, a regional firm.

When the regulatory environment was
changing because my family had been running this
school for about 30 years, when the regulatory
environment started changing they called me and
they said, Mike, would come back to Shreveport?

And I said why? They said because we
want to make sure that we have the most compliant
system and there's going to be a lot of changes
and we need a lawyer that can make sure that
we're doing everything right.
I said with all due respect, Dad,
you're a small school and attorneys at big firms get paid a good bit of money. Let's be honest.

He said, I know. He said we won't ever be able to pay you what you could at a private firm. He said, but we really need you to think about this because of what it's meant for our community, what it's meant for Shreveport, what it's meant for the people that we know.

I said, well, give me some time and I thought about it. And I decided to do it and I went back to Shreveport and I spent a decent amount of my time helping them with their legal issues, compliance issues making sure that everything is done just right.

And we do need to have absolutely strong regulations. There needs to be rules of the road. We are a for-profit school mainly because I guess when we decided to set it up the professionals that you had to hire to meet for-profit regulations were cheaper than the ones that you had to meet to hire, to meet not for-
profit regulations.

    I've done both. The regulations on both are very, very big. I represent non-profits. There's a ton of regulations. It's expensive.

    The other thing is we all went to public schools, public high schools. My family said we're not, we're going to make sure as an education institution because the rest of Louisiana public schools aren't as good as in Shreveport.

    We've got great public schools. And they said the only thing keeping our public schools working is our tax base, people paying taxes to keep our public schools going.

    If we don't pay our own taxes then we're not going to have people to even train because our education system is going to be so bad. So what I tell you is we need rules.

    I will tell you right now definitely any institution whether it's public, private, for-profit, not for-profit that takes advantage
of a student, that doesn't do what they deliver
they need to be removed from this industry and
there needs to be significant swift consequences
because it's bad for everybody.

It's bad for us. It's bad for all the
people that I know, three generations of people.
I've met a mom, a grandmother and a daughter that
all came through our school all different
professions, were all successful.

We teach pharmacy technicians. If the
pharmacy technicians that graduate from Ayers
Career College if they're not well qualified
there's a good chance that pharmacy technician is
going to be dispensing the medicine for my niece
or my nephew.

When I got a home alarm system at my
house we do electronics technicians. Teach how
to do home automation. Coincidentally when I
moved into a new house the person that came was a
graduate of Ayers Career College.

I feel safer being here knowing that
my wife is at a home with a system that's secure.
So we have to work with those people and deal with those people.

So maybe my issues are a little different. But I just want to make sure that we keep focus on how do we make sure that people like my family, people that are trying to make sure that everybody gets an education, people that didn't have some of the benefits that I had growing up, how do we make sure because there's a lot of people that come to our schools that say you know what I didn't have anywhere else to go because nothing else, nobody else would work with me.

Nothing else was affordable. I didn't have an option. And I'll leave you with this story. I had a student when I was in middle school. I didn't understand what my family did as far as education.

I thought, okay, that's a school. That's neat, you know. Didn't really understand it. And a kid in my gym class in a public high school, I mean a public middle school we were
sitting in the gym and I was not the most athletic person and so I tried to sit on the side as much as I could.

And he was sitting next to me. And he found out that my dad worked at Ayers Career College. And he said he thought it was so cool. And it was almost like I was a celebrity and I'm thinking, you know, I didn't really, I didn't understand it.

And he said look I just want to tell you that we used to live in a neighborhood it's called the Cedar Grove neighborhood of Shreveport. And for a period of time, the 90s, a very, very high crime area.

There were riots in the 90s. And he told me, he said, you know, we would have to come in when the lights, when the sun started going down. And we couldn't sit on the furniture.

We had to sit on the floor because at least once a month there was a drive by shooting in the neighborhood and my parents would say get on the ground and we got on the ground. And we
just waited.

And then the next day we would worry about it all over again when we came to school.

He said my dad finally went to your school, graduated from your school.

He got a job. We were able to move to a new neighborhood. He said I get to come to school now and I'm not worried about getting shot in my house when I go home.

And that still didn't sink in to me as a middle school student. I went home and I told my dad that. And he just looked at me and said, Michael, that's why we do what we do.

These are our friends, people in our community. That's how I was brought up. So I just want to make sure as we do all of this that we make sure that we put in strong, stringent regulations that protect students but that also allow us, those schools that can't hire a bunch of attorneys unless you've got one related to you in the family that's willing to do some, you know, some very cheap work.
You can't hire accountants. Can't hire all these professionals. But we want to do the right thing and we do the right thing.

And so let's make sure that we don't get rid of those types of institutions because I think if we do that we will end up compounding any, the problems that are there because we will get rid of those people that are doing what I think everybody in here wants to see happen.

MS. CARUSO: Thanks, Michael. Will, if you can quickly and then we're going to take our morning break.

MR. HUBBARD: Thanks, Moira, I'll be very brief. Mike, very powerful story. I mean at the end of the day to your point it was a story of a school trying to help students succeed, right. I mean that's what I think we are all here to do.

The challenge certainly with military veterans, military connected students, their families is they're dealing with a system that's perhaps only more complicated than the Department
of Education system which is not simple which is
the VA system, equally complex if not more so.

They're balancing these two things at
the same time. They go to a school in some cases
that they find they don't have a good experience
at. The programs aren't great and they find that
they're having a difficult time getting a job.

Are we to ask that student that
they're not trying hard enough? Are we to blame
that student that they haven't gotten a job yet
because it sounds dangerously like the
conversation is going that direction?

And I want to ensure that everybody
around the table is having the student at the top
of their pyramid. I mean that's what we're here
for.

Mike, your story, they're right at the
top of the pyramid in that case. And to say that
the student didn't try hard enough to get a job
is ignoring the fact that the piece of paper they
graduated with potentially, not always but
potentially could be worthless.
And so to say that the student hasn't
done enough would be a lot like telling a person
who is injured physically that they're not trying
hard enough to live. It just doesn't make sense.

MS. CARUSO: All right. We're going
to take a 15 minute break. It is currently
10:10. Please come back at 10:25. And be
prepared to speak to Points 5 and 6 under Issue
1. Thank you very much.

(Whereupon, the above-entitled matter
went off the record at 10:10 a.m. and resumed at
10:25 a.m.)

MS. CARUSO: All right, everyone.
We're going to go ahead and get started. And to
get started we have some remarks from Caroline.

MS. HONG: Hi, all. Thank you so much
for the productive conversation this morning. I
just want to have a quick note that these are, as
we're all aware very public hearings.

So if in the course of your remarks
you're aware of some examples you want to raise
or some people that you would like to reference
just keep in mind that we should limit our remarks or comments about individual schools or people to what's already part of the public record in the media and not talk about things that may not already be out there in the public.

Thank you.

MS. CARUSO: Thank you, Caroline. Now turning back to the questions before us, just a reminder to the group that we do need answers to these questions as the Department prepares to make some initial draft regulations for your consideration and comment and negotiation.

So as we move forward we're going to jump in on Question Number 5. But if you are going to answer another question please specify which one it is. And with that I turn it over to the group. Yes, Dan.

MR. MADZELAN: I'm not sure which bullet this falls under because this was a thought that occurred to me when I was listening to the discussion about, you know, definitions of misrepresentation, that sort of thing.
And I just want to raise an issue and I don't have an answer because I haven't thought it through. But there is a provision in the promissory note that basically says, you know, I promise to repay even if I don't like the result of my education.

So I just think that's something for us and the Department to keep in mind that when we get to the drafting part of this is there some sort of conforming amendment to that portion of the regulation.

And again, I just don't want to get into a situation where there's a collision between, you know, a long standing provision, you know, I promise to repay no matter what and a provision that sort of has a little bit of an exception to that no matter what.

So I just wanted to put that out in front of the group to sort of keep in the back of our minds.

MS. CARUSO: Sure, Evan.

MR. DANIELS: I just wanted to point
out going and this relates really to Bullet Point 1, but John articulated the view of the states that state law provides adequate definitions for these things.

And as we discuss whether the Department should adopt a federal definition of what is a misrepresentation and what not I just want to point out that those definitions in large part exist in state law.

My understanding is that all 50 states as well as the District of Columbia and Puerto Rico, they all have UDAP laws, Unfair and Deceptive Act and Practices laws that largely provide definitions. And the courts and the states have looked at what is a misrepresentation, what is a deceptive act and practice.

So I can't help but wonder if the Department is trying to reinvent the wheel and of course we think that state law in large part provides adequate definitions to evaluate borrower defense issues. And to that point, you
know, there was some discussion yesterday about
whether a federal standard would provide the
floor from which the states could build up if
they wanted.

I don't know that we would, we being
in Arizona would agree that is how it ought to
be. But nevertheless, the point I'm trying to
make is that state law, I believe, provides that
floor already and therefore the federal
definition is unnecessary.

MS. CARUSO: Sure. Michael and then
Linda.

MR. BOTTRILL: I would just say from
an accreditation perspective that has an
opportunity to work in all 50 states across
several types of different institutions there
simply is not consistency in the application.

They all may have and they may be
different measures the extent to which one
attorney general works towards those claims can
be very inconsistent to the next. It's just,
there is just simply not consistency amongst the
MS. RAWLES: Believe it or not I almost didn't talk because that's close to what I was going to say. But and I hate to argue with my colleague from Arizona being an Arizonan, but I think, you know, I've taught constitutional law.

I don't see the same constitutional issue that you gentlemen do although I'm happy to discuss it. But practically speaking if you have an online school that's operating in most of the 50 states I think you're really putting a tough burden on those schools who are trying to do the right thing and operate in 50 states.

And I also think there's a large danger of overly politicizing the issue because if a school happens to be in say California versus Arizona, you know, schools are going to be treated very differently depending on where they are located and whether they are ground or online and that's a big concern to many people.

MR. BANTLE: Briefly, yes, and then we
have Suzanne.

MR. DANIELS: So I raised the issue, I appreciate the differences in application. I'm more or less talking about the standard itself. And notwithstanding how the standard might be applied or how, I can't speak for the actions of the attorney general.

I'm discussing more or less the standard by which a borrower defense claim may be brought. And as a legal matter I believe the standards that you get in state law are more or less the same in terms of what is an act or an omission under the UDAP laws.

They're very similar. So again, the point I was making was not so much to say what attorney general will do what. It's more about what the standard is for bringing a borrower defense claim.

MR. BANTLE: Okay. We'll go to Suzanne and Abby. And again, remember we're here during this first session to collect information so the Department can put together proposals for
us all to look at.

So we do appreciate, you know, having a full understanding of those two perspectives.

MS. MARTINDALE: Yes. I also, I want to kind of to the point that Evan is making, you know, obviously there is, you know, robust jurisprudence around state UDAP laws, a lot of precedent there.

There are laws that schools are already having to comply with. I would also note -- I don't want to go down a discussion on state authorization, a rule that I negotiated and that was painful.

But, you know, there are, it's complicated with, you know, brick and mortar, distance ed, combinations. Some schools, you know, seeking to operate in all 50 states which is their prerogative.

But, you know, states do have a role here. They do have to conduct active review over schools. And so there are already laws out there on the books that schools are, you know, on
notice that they have to comply with.

So I think that the, I just wanted to

echo the, you know, the important role of states,

state AGs and state laws in protecting students.

MR. BANTLE: Thank you. Abby, Chris.

MS. SHAFFROTH: On the UDAP point so

UDAP, Unfair and Deceptive Acts and Practices,

sorry for the alphabet soup here. The, many,

yes, I believe all the states do have UDAP laws

and in large part those laws are in many ways

consistent with or explicitly modeled after

federal law including the definition of unfair

under the Federal Trade Commission Act and the

definition of deceptive conduct there as well.

So, you know, if we're looking for a

basis to start for a federal standard that could

be a complement to state law basis for relief

looking to the FTC Act and its definitions of

unfair and deceptive acts and practices seems

like it would make sense.

MR. BANTLE: Chris.

MR. DELUCA: I just wanted to go back
to some of the points that were made earlier this morning.

(Off-microphone comment)

MR. DELUCA: I'll try to clarify. I get that a lot. I'm a lawyer. That's what people tell me. But I think when we're talking about, again, looking at a process. And one of the things that was mentioned this morning was that there is 95,000 pending claims if I heard that right.

And one of the challenges with that, what I heard also, was applying 50 plus, you know, 50 states plus Puerto Rico and D.C. statutes to the process of the claim. And again we're looking to determine, to come up with a process that provides relief to students who deserve it.

And in order to do that in an efficient manner plus, you know, when we're talking about relationships between the students and the federal government with federal student loans it seems like a uniform standard, federal
standard would be one, fair; two, constitutional, I believe and three, help with this process.

And I recognize that the 95,000 pending claims are under the old rules so it wouldn't apply to those. But we're looking at a rule and trying to come up with a best practice going forward and that's why again I think given the realities of what we're facing here that applying a uniform standard would make sense.

MS. CARUSO: Great. Thank you, Chris.

Valerie and then Aaron.

MS. SHARP: I would just like to ask for those of us who are not attorneys and familiar with all of the state UDAP laws if it would be possible to get some of the wording of how those laws are written and operate.

I do agree that, with Abby that it might be very helpful to if it is working and providing relief for students that it might be good for this committee to see that and be able to use that as we try to frame what we want to look at as misrepresentation.
And if we could have some of that for those of us who aren't familiar with that to inform our discussions. I don't know if our state attorney general representatives would be willing to do that for us.

MR. BANTLE: Seeking volunteers.

MR. DANIELS: I can certainly provide you with Arizona's law. I'm not going to promise to provide a 50 state survey. But certainly I can send around Arizona's law. That wouldn't be difficult.

MR. BANTLE: Abby, did you have a response or --

MS. SHAFROTH: Yes. I'm not sure the most recent date of the update. But the National Consumer Law Center does have a report, sort of an overview of the UDAP laws of the 50 states that I can circulate to the group if that would be helpful.

PARTICIPANT: And we can circulate a link from the FTC Act as well.

MR. BANTLE: Okay. We'll turn it over
to Aaron and then I would like to open it up to
the Department. If you have any additional
questions on the items we've covered and then
maybe you could put a finer point on kind of the
final items in Number 1, if there's specific
information you're looking for noting that we do
have 2 through 8 to get to.

MR. LACEY: Just as a matter for
consideration because I mean I've already been on
the record as saying I think a federal standard
could make sense. But if we were to go with, you
know, borrowers bringing claims under state law I
just wanted to note that I believe under the
formulation of the reg that was in effect, you
know, through the late 90s and early aughts, it
talked about giving rise to a cause of action
under state law.

It did not specify unfair practices,
you know, deceptive acts laws in particular. So
if we're going to go the route of referencing
state law instead of using a federal standard I
just want to say we also need to think about
drawing a box around exactly what state laws we're talking about or at least being clear because, you know, otherwise it could be anything.

PARTICIPANT: On that point the, another potential state law basis for relief is a breach of contract. Contract claims are generally governed by state law.

The breach of contract or other defenses to contract, the 2016 rules included in addition to substantial misrepresentation a breach of contract as a independent basis for relief. And that was set forth as a sort of federal standard.

I would offer and hopefully the AGs will back me up that it would make sense to allow state contract offenses to provide a basis for relief given that contract law is governed by state law and has been developed extensively in the context of state law.

MS. CARUSO: Linda.

MS. RAWLES: If we're going to break
up the breach of contract as a basis for relief
and revisit the last proposed rule that was
rescinded we have to remember that those breaches
of contract had to relate to the educational
experience of the loan of the student.

So again, we have to be careful that
we're making this clear and fair to all parties
and not so broad that no one can understand it.

MS. CARUSO: John.

PARTICIPANT: I think the states would
agree to the degree to which breach of contract
should be included in this that applicable state
law would be what govern the breach of contract.

MS. CARUSO: So if the Department
could just comment on any questions that you feel
you need answers to, anything within Item, Issue
Number 1.

MS. WEISMAN: I appreciate the
dialogue. I think we've gotten some good
information from you on Bullet Points 1 through
4. But I think we could use a little additional
fleshing out of things like burden of proof and
the ideas of full versus partial relief.

So if we could have a little bit more
on those two topics that would be helpful. Thank you.

MS. CARUSO: Michael.

MR. BOTTRILL: Well I'll just go to
the very last sentence in the last bullet which
was should the Department consider whether the
borrower could have ascertained the truth without
difficulty, inconvenience or special skill.

And I don't think that should be a
consideration for the measure of determining the
relief.

MS. CARUSO: Yes, Linda and then Will.

MS. RAWLES: I think if we're talking
about fraud and we're looking at the elements
that any reasonable person would have to prove to
either get redress or damages, there should
always be some reasonable standard that that
person acted reasonably to mitigate those
damages.

I think we should also consider
whether those damages should be full or partial
depending on the harm. If we really are
cconcerned about students and the damage to
students we shouldn't be afraid to say let's make
sure that particular student was damaged.

I don't think that's cruel or
unreasonable. And I think the burden of proof
should depend on who is the fact finder whether
it's the Department or it's put out for more of a
hearing type thing in which case we want to make
sure the standard is commensurate with due
process for the institution and the student.

MS. CARUSO: Yes, before I go to
William. Michael, when you say that you don't
feel the Department should consider whether the
borrower could have ascertained the truth under
these circumstances could you just let the
Department know and everyone at the table know
what is driving that, where that's coming from?

MR. BOTTRILL: Sure. And again,
taking this again from our experience in the
accreditation community. If an institution makes
a claim whether it's an employment raid or the
transferability of credit or the issue of the
student, the burden should not be on the student
to then go and identify the veracity of that
claim when making determinations about whether or
not to enroll in that institution.

They are doing that on the basis of
the claim being made and they should be able to
reasonably rely upon that.

MS. CARUSO: Thanks, Michael.

William, did you put your name tent down, okay.

It's up.

MR. HUBBARD: Thumb up, it's up.

MS. CARUSO: All right. Go for it and
then Suzanne and then Chris.

MR. HUBBARD: Great. So Michael makes
an excellent point because if you think about it
in practical terms let's say buying a stick of
gum.

If you go to the store and the
assumption that you are forced to make is that
everything that you purchase, perhaps that stick
of gum is no good it's on you as the consumer to
then prove that it's not good before you consider
it as something for purchase.

No less if you're going to buy an
education the presumption would be on the student
to assume that all opportunities are bad before
you then find out that it's good. You would have
to prove in fact that it is good before you make
that purchase, a burden that's simple untenable
for any student.

MS. MARTINDALE: Yes. Building a
little bit on what I was talking about more in
support of state law and also to get at Bullet 5
in terms of the burden of persuasion.

So implicit in my prior remarks I mean
I would say that the burden of persuasion should
be a preponderance of the evidence standard
consistent with consumer protection law.

And I just want to note that, you
know, last year the Department said that standard
strikes a balance between ensuring the borrowers
who have been harmed are not subject to an overly
burdensome evidentiary standard protecting the federal government, taxpayers and institutions from unsubstantiated claims.

So striking the right balance. And it also would point here is as good a time as any, that, you know, students are also taxpayers. So I think that's really important to note.

MS. CARUSO: Chris. And, Stevaughn, did you have yours raised? I just wanted to make sure I understood that. Thank you. You'll be after Chris.

MR. DELUCA: So I mean one of the things I think in looking at the, again what factors, one of the things we should consider and remember is that there are multiple sources of information that's not only available to students but required to be provided to students.

And the challenge is, and again I represent small schools. I mean I'm here because of the American Association of Cosmetology Schools. We've got 600 plus member institutions. They're all very small.
Almost all of them are. Most of them don't have attorneys on staff and compliance people or they have compliance people. They don't have attorneys on staff full time.

And so, and they're working very diligently to provide the information to students as required and to make sure they make an informed decision. But just for example graduation rates.

I mean some of the schools that I work with are publishing at least three different graduation rates because they calculate it for federal standards, for IPEDs. They calculate it for an accreditation standard for their accrediting body.

And then they have state rates. And each one has a different definition and it's a different number as far as what's there. And so my point is that, you know, while I agree students should not have to make any extra effort to figure out, you know, is everything that the school is telling them correct.
But recognize too I think through this process is that there are multiple sources of information out there and that for example or it's information that may be corrected and if a school is going through and updating data and providing updated data to a student afterwards that those things should be part of the factor and part of what we're considering as far as, you know, the level of harm to the students.

And then ultimately getting to, you know, reasonable reliance on the information when we're looking at assigning liability.

MS. CARUSO: Stevaughn and then Aaron.

MR. BUSH: Good morning, good morning.

I've been kind of holding my tongue just a little bit. I had a point to make or a question to ask the gentleman who was first here this morning.

The Department has been talking about, you know, all of the wonderful things that it's doing right now to adjudicate borrower defense claims and really what's been pressing on my mind is what is the Department also doing concurrently
to make sure that students are aware of their rights under borrower defense law and what's the outreach looking like.

So if tomorrow or perhaps later today I could, you know, be provided with that I would be very appreciative of that information. And also, you know, I think we need to put this debate in a little bit of perspective.

So it's clear that we all want to discourage predation by for-profit institutions. But it's not so clear to me that we also should be encouraging truthfulness on the part of these institutions.

We should be discouraging a kind of carelessness that for-profit institutions have been showing with students' futures, students' ability to provide for their families by telling them, you know --

MR. BANTLE: Stevaughn, and I understand, you know, your passion for this subject. Just with the limited time I want to focus on getting, you know, answers to the
questions.

So is there a way we could touch base on your first question off line and then --

MR. BUSH: Yes. I can truncate it.

MR. BANTLE: Thank you.

MR. BUSH: So pretty much the crux of my point I just wanted to say that, you know, we should be making a claim easier rather than more difficult to prove and by elevating the burden of proof to a clear and convincing standard that puts an unfair onus on the student.

So therefore I would advocate for a preponderance of the evidence standard.

MS. CARUSO: Thank you. Aaron and then Walter.

MR. LACEY: And I had asked and maybe one of the AGs when you guys get a chance could take a minute to, I had suggested maybe they could talk a little bit about what the differences in these standards of proof are for the non-attorneys at the table and frankly for the attorneys who aren't litigators.
I think that could be helpful. But
the other point I wanted to make just with regard
to, you know, Michael had talked about this last
sentence should the Department consider whether
borrowers should ascertain the truth without
difficulty, inconvenience or special skill.

Totally appreciate the point on it,
consumers in the shopping sense or students not
having the burden of going back and proving
something. I think from my perspective when
you're talking about the standard what addresses
that largely is a reliance element to the
standard that we come up with if we had a federal
standard that we craft.

So you would have the behavior on the
part of the institution and then you've got the
damage and the student would have to establish
that there was some reasonable reliance. So if
somebody said inadvertently our placement rate is
184 percent and they meant to say 18.4 percent or
maybe that's a bad example.

But the point is if there was some
reliance that we would all agree was not reasonable because it was so outlandish or impossibly true that, you know, there would be an opportunity for an institution to say this was a mistake that the reliance there was not reasonable.

And I think a lot of state laws, unfair and deceptive practices laws and other similar type standards include a reliance aspect.

MS. CARUSO: Walter.

MR. OCHINKO: So I just wanted to build off of something that Michael said earlier about whether or not we should consider -- borrower should have ascertained the truth about without difficulty, inconvenience or special skill.

And I'm looking at a catalog from a formerly for-profit school that is now non-profit. And the catalog is 456 pages long. And on Page 54 there is a discussion of accreditation.

And in bold it says if a specific
Herzing University program at a specific campus does not state it has programmatic accreditation in writing students should assume the program does not have programmatic accreditation. Students should not rely on oral or unofficial confirmation of program accreditation.

Students are responsible for understanding the specific requirements of the certification licensing and for eligibility to sit for particular license examination of the state or locale in which they want to enter or practice their profession.

Herzing University makes no representation unless explicitly written --

MS. CARUSO: Walter, I just want to point out that it's difficult to follow when you're reading from something and speaking very fast. Is there a way you can summarize just what you're trying to say?

MR. OCHINKO: Well the whole point is that the university is essentially putting it upon the student to make a determination
themselves of whether or not the school has appropriate accreditation. And it's saying that if somebody has told you that its accreditation, it's appropriately accredited and you don't see it in writing, then it's not true, don't believe it.

But this is buried on Page 54 of the catalog which has 455 pages. And so I just think it is difficult for a student who usually goes to a school trusting that they're doing the right thing and that they're not misleading them.

And I just think it's worth noting that it's not easy for the student who is, you know, putting trust in the university or the school to be honest with them.

MS. CARUSO: Thank you. That's much easier to understand. Joseline and then I saw someone. Joseline and then Linda.

MS. GARCIA: I do want to echo what Walter said. But the other point that I wanted to make is in terms of the amount of relief I strongly urge us to move towards a place where we
are giving full relief to students.

Partial relief is not enough. These students make tons of sacrifice to receive an education and as Walter said they're coming into these institutions in good faith and also to receive an education.

And I think that often people create stereotypes of students saying that they're lazy, they're not trying hard enough, they weren't willing to do the work and that's why they are being taken for granted. But I don't think that's simply the case.

I think there's other things related to accessibility of information in terms of the language and also like having the resources. And so that being said there are a lot of sacrifices that students make.

They take out private loans. They sacrifice their families, their time, sometimes their physical and mental health and wellbeing. And to go to partial relief I think would be creating more barriers for people to receive an
education.

And I think at the end of the day as we mentioned students are first. And I do believe that in order for this country to prosper we should be increasing the access to an education and people being willing to invest in their lives.

MR. BANTLE: Okay. Just kind of a facilitator note here as we have a number of hands up. If you, as we've talked about both Numbers 5 and 6 if you're responding if you could give us a heads up as to which you're responding to.

We'll go Linda, Ashley Reich. I apologize I don't know if, John was next. Then Ashley and then Dan.

MS. RAWLES: It's the last one, which one is that again, okay. I just want to remind us that what we're looking for is something that is fair and clear, right.

I don't think anyone around the table would say let's not do something unfair or not
clear. So if we hold those standards in mind, you know, I want to make a few comments.

One is that if you read one item out of a catalog that's not really fair. I know many clients that I have that may put something like that in their catalog for legal reasons because there's so much litigation.

But they also have checklists that the advising people go through where they say things much more fully. So there, you have to look at the whole process that an institution has and not just one particular part of that institution.

Secondly, if we're talking about something that's fair I'm all for full redress and full damages if that's fair. But we want a process whereby if the Department or the fact finder determines that it's not fair for full redress, if it's fair if it's only partial we want a rule that accommodates that.

So I'm only arguing for fair and clear and so that would to me require partial redress and that's it.
MS. REICH: I just want to touch on Abby's point that she made about the full versus partial. I think we're assuming that the student is staying in the same program the entire time that they're there.

So my question is if I have a student that starts out in a religion program and then they switch to an education program and their claim is that the, you know, education website, you know, misled them in some way that they could receive professional licensure in a particular state I don't think it would be fair to say that the student should be relieved from their religion degree student loans that they took out.

So I think there needs to be some separation there assuming because I think we're assuming, like I said, that the student is staying in that same program. So we need to be careful with that.

MS. CARUSO: John.

PARTICIPANT: Just because AGs were asked to comment about the burden of proof
question, basically when we talk about burdens of
proof we're talking about the degree of doubt
that in this case could be in the Department's
mind about the facts.

We're talking about the degree to
which they find one version of the facts more
convincing than another. So when we talk about
preponderance of the evidence it's a simple
finding of I think it's more likely than not that
the situation is as described.

When we talk about clear and
convincing evidence we talk about evidence has
been permitted that makes me virtually certain.
There's only a very small doubt in my mind that
the facts would be that way.

In state consumer protection laws
acknowledging that they do differ, I would say in
general probably bodies of consumer protection
law preponderance of the evidence has been
sufficient in most states at least for the
baseline claim and not for exemplary damages.

But there are definitely situations
especially where specifically fraud is alleged
where clear and convincing evidence is the
appropriate standard. So hopefully that's of
some use to anyone in the room who is fortunate
enough not to be a lawyer.

MR. BANTLE: Thank you, John. Ashley.

MS. HARRINGTON: Would also support a
preponderance of the evidence standard. And I
think we should start from an assumption of full
relief. That should be the base line assumption
is that the student is going to get full relief.

And I think also we want to move away
from any standard or system that puts the
responsibility of policing schools on students.
The responsibility of policing schools should be
the Department and other regulatory agencies.

That's it. That's where the money is
coming from. That's who has the resources to
police these schools, not students. And we need
to remember that. These are not students who
have unlimited resources.

They used all their resources to go to
school to begin with. So when we put and we gave them the seal of approval. We told them, you know, this is a university. You get federal funding to go here.

So this must be somewhere where you can get an advantage up in life. Higher education is the way to get a better life. And we give them federal money to do that

So the job of policing schools should never be on the student. It should be on the Department to create rules and regulations that make sure that this does not happen to more students.

MS. CARUSO: Okay. We're going to play a little bit of tennis. It's Abby, Dawn, Joseline and then back to Kelli.

MS. SHAFFROTH: Thanks, John, for talking us through the preponderance of the evidence versus clear and convincing. With John's explanation in mind I would offer to the group that to the extent the Department finds it's more convincing to it that the student is
telling the truth that they were scammed into
taking out federal loans that it is more likely
than not that is true, I would suggest this group
should agree that the Department should not
continue to try to collect on those loans then if
it believes that the student likely was scammed
into taking them out.

So I think that's an appropriate
standard. It's also from a practical standpoint
a standard that the Department is already
accustomed to applying.

It's the standard that the Department
uses in other proceedings regarding borrower debt
as was pointed out in 2016 including, I believe
wage garnishment hearings. So it's something the
Department is practiced at doing.

And I should say, I'm referring on
that point to a document that the legal
assistance community put together sort of
annotating these issue papers with information
that the Department previously provided mostly in
the context of last year's rulemaking because I
think it's a helpful starting point for
understanding sort of where the Department came
g out before.

I asked for these to be distributed
because I had shared them with some folks already
and I didn't want to have them, some people have
the information and some people not. I want us
to have a common framework.

I don't know if they've already been
shared or --

MS. CARUSO: They have not been
shared.

MR. BANTLE: We still have them.

MS. SHAFTROTH: Okay. So I have a
request to share them. I will touch base with
the moderators about that.

On the amount, determining the amount
of relief I agree that the presumption should be
full discharge of the federal student loans that
are related to that, to the program where there
is the misrepresentation.

So I think that can be consistent with
the point about their, you know, if there is, if a student was misled into taking out loans with respect to one program but not another then it might be certainly appropriate just to get relief with respect to the program where there is the misrepresentation.

To me that doesn't necessarily mean partial relief. That just means relief on the loans related to the misconduct. And I'm, I would counsel against setting up any rule where we say, you know, if a student was still able to get a job or that sort of thing, try to say that they then weren't harmed.

You know, all the student borrowers that I work with are working as hard as they can to find employment to be able to provide for their families especially the Everest borrowers that I've worked with have said often it was a, having that on their resume made it harder for them to get a job.

So to the extent that they are still able to get a job notwithstanding having gone to
a program rather than because they have gone to a program they've still suffered harm in taking out, you know, say $10,000 of debt to go to a program that is not helping them advance their career, that is not helping them earn more money.

So I wouldn't want us to say that just because someone gets a job at the end of the day that they weren't harmed.

MS. CARUSO: We're going to go to Dawn. But I would ask for no new name tents at this time. Let's get to the ones that are currently up and then we're going to have a check in. So, Dawn, please.

MS. ROBINSON: So my response is to Number 6. Should the Department consider the borrower's actions or circumstances when determining the amount of relief and should the Department consider whether the borrower could have ascertained the truth without difficulty, inconvenience or special skill?

One of the things that I would like the committee and the Department to realize is
when you're dealing with accreditation, when
you're dealing with fiscal issues such as going
concerns students aren't going to know these
things.

Audits of financial statements are
private unless you are a governmental entity.
And then a student still has to know to go to the
State Examiner's Office or another governmental
entity to look for those types of issues.

So I don't think it's fair to put that
burden on a student. Then when we start talking
about timeliness. So a student enrolls in a
program. The program has not been accredited.

They don't know that the program has
not been accredited until it's time for
graduation right. So you've got a state agency
that has the authority to determine or make the
determination that, yes, this is accredited
program and they don't know.

Again, we go back to all of these
different agencies that you're saying that a
student should understand the complicities of.
EZ audits for DOE, federal clearinghouse, state regulation agencies, state examiner's agencies, then whomever is auditing the financial statements.

So I would just ask this committee to keep in mind that placing that burden on a student is not only cumbersome but it's very unfair because most of the people sitting in this room don't even understand those complexities unless you are a CFO like myself or a president or someone else that is in a cabinet position that is paid to know these things.

MS. CARUSO: Thank you. Joseline.

MS. GARCIA: You know, I just want to appreciate what Dawn and Ashley mentioned earlier. I'll just make this brief. We keep throwing around the words like fair and clear in terms of making this rule.

But the reality is that the situation that students are in is already like unfair. It is a David and Goliath situation. And we're asking students to go against these massive
institutions.

    I mean I'll just quickly relate it to
like a basketball example. Does everybody here
know who Stephen Curry is?

    PARTICIPANT: Never heard of him.

    MS. GARCIA: Really, you know, I am
5'2". I am a soccer player and a track runner,
not a basketball player. If I'm put up against
to go against a game around Stephen Curry,
someone who is trained, someone way taller than
me, someone who has the resources to beat me
there is no way that, you know, it's going to be
a long shot for me to win.

    And so, you know, I want to use that
analogy like in this situation. It is a long
shot for many of these students. And I think
creating more barriers is not the place that we
want to go.

    And I know that we keep talking about
having a fair and clear. But the situation is
that it is very unfair for a lot of students
right now.
MS. CARUSO: Thank you. Kelli.

MS. HUDSON PERRY: I just want to comment briefly on Point 6 asking should the Department consider determining the amount of relief the borrower should receive. And this kind of echoes what Ashley was saying.

I think that there should be some consideration in the fact that if a student has actually earned credits at an institution and they're able to transfer those credits to another institution they probably shouldn't be relieved of the debt as it relates to those credits that were transferred, because they are continuing their degree somewhere else.

MS. CARUSO: Dan.

MR. MADZELAN: I just had a question to clarify, maybe help the Department. When we're talking about complete or full relief is it contemplated that would also include refunds of amounts already repaid on those loans?

MS. CARUSO: Department, do you have a direct response to that question? Okay, we're
going to hold comments for a minute. I just want
to get to everyone. Walter?

MR. OCHINKO: Yes. I just wanted to
support what Ashley said earlier about students
versus agencies that actually regulate the
schools.

We work with a lot of veterans that
have gone to for-profit schools and that come to
us to help address some of the misrepresentations
that they encountered. And one of the things we
often hear from these veterans is, you know, why
did VA let me use my benefits at this school?

And when we say this to VA they say,
they point the finger to Ed and say and the
'accreditors, well it's accredited and it
participates in Title IV. So we view that as the
'seal of approval and clearly it's not.

MS. CARUSO: Okay. I just want to
turn it over to the Department for a moment. A
couple of questions. How are we doing? Where do
you need more discussion? Where do we need more
discussion with the amount of time that we have?
There is an interest to get to all eight of these issues. We just want to understand, you know, how much more discussion we need and where.

MS. WEISMAN: So I think for the most part we've covered the issues that we would like to cover here. I think there are two somewhat minor points which again depending on the reaction that we get that may take up some time.

But I think it's worth doing. We would like to hear a little bit more about if somebody is in favor of partial relief how would they envision determining how to calculate what that relief would be.

And I think also we would like to follow up a little bit more on the question that Dan had just posed regarding refunds of amounts already paid. That's on the table for discussion.

So if it's something that you're interested in speaking out about we would like to hear the opinions about those two issues.
MR. BANTLE: Okay. So while the group thinks about those two issues Mike did have his tag up. I know we've talked about a lot of things. So if you could kind of give us a sense of what you're commenting on.

MR. BUSADA: Yes. Just in terms of all this I just, I have to respond to this because for the 100 students that are sitting in my school right now this continued talk about for-profit schools that's hurting their graduating chances because when they go to and apply for a job we've got people just saying that everybody is all lumped in together.

So they're going to have a harder time because we continue to say that everybody there is bad. I can tell you I've worked in all industries. There is no industry that has no bad actors.

And quite frankly, in the public sector they have immunity in most cases. Talk about fighting Goliath. The State of Louisiana, the government their resources are much bigger
than our little bitty resources with 100
students.

They've got the whole powers of the
state government. So try to sue LSU. So come
on, let's just be fair with everybody and let's
not just say that everybody is bad. I guarantee
you there is good and bad everywhere.

Let's get rid of the bad and support
the good regardless of what a tax status is.

MR. BANTLE: Okay. I think you
addressed the concern about kind of the labels
being used there. First, let's break this into
two parts. And let's start with comments on the
partial relief question raised by Annmarie.

Okay. So I'm assuming if you put your
tag down you were thinking about the other
aspect. So we'll start with Alyssa and then
we'll go to the back of the room and Ashley Reich
has her up as well. So we'll go front, back,
front.

MS. DOBSON: I was going to comment on
both things. So can I do that quickly as long as
I'm brief?

MR. BANTLE: Just to kind of keep the arc of it we'll keep your tag up. But could you just do part.

MS. DOBSON: All right, okay. So then the first thing you want is the partial. I think that it just makes sense, you know, even thinking from the student standpoint and the school standpoint that the relief should be attributed to the misrep.

And so if you do have loans that come from perhaps two different schools or two different programs that the relief should pertain to how you were wronged, if that makes sense. So in my mind and I think somebody up there said it, it wouldn't actually be partial relief.

It would be full relief for the damages. Does that make sense to everybody?

Okay. And then I'll just leave my card up for the other question.

MR. BANTLE: Aaron.

MR. LACEY: Just a couple of comments
on the partial relief concept. I mean the first
is, you know, I think, I'm not sure I understand
why we would want to hem in administrative law
judges or hearing officials from having the
opportunity to grant partial relief.

And I think there is a danger. I
understand wanting to start there from a consumer
advocacy standpoint. I do think there's a danger
of that cutting, that sort of cutting both ways.

If you hem in hearing officials so
that their only option is to grant complete
relief I could see the idea that the standard
that has to be satisfied is higher or a
reluctance potentially to grant relief because
the understanding is I can't grant $5,000 or
$7,400 for a small infraction. It's all or
nothing.

So I just, I think that's something
worth considering. You know, I also think there
is a concept as the Department and I'm sure most
folks here know in the closed school loan
discharge, you know, there is this idea that if
you have your credits and even if your school closes and you would be eligible for a closed school loan discharge, you know, if you have your credits and you could take them somewhere else to complete your degree you're no longer eligible.

And clearly the philosophy there is well you've been able to make use of what you used the loan for at the original institution. I mean Ashley pointed at this and I think it is certainly something we could consider here.

I'm not exactly sure how it would work. But it does seem to me that if there is an act or omission of an institution and it occurs at a point, you could see a couple of scenarios.

One would be where let's say you got, and by the way let's just assume this is an institution that is not a for-profit but a respected public or private non-profit institution where we all think they do a great job and offer degrees of high value.

You know, let's say there's an act or omission on the part of an individual of that
institution in the last semester of an eight semester program, right. Student has no issue with the education it was provided in the first seven semesters.

There is no one that raises a question. But there was something that occurred in that last semester that impacted the quality of education in the last semester and we think there should be relief for loans that apply to that semester.

I would think you would want an ALJ or a hearing official to have the flexibility to grant that student some relief. The other question I have is if you have someone who has graduated and, you know, this is a little distinct.

I'm not talking about the situation where we're saying the student has to prove that they couldn't have overcome the misrepresentation or whatever. What I mean is if you have a situation where a student graduated from an institution and they are claiming the degree and
all of the credentials and they have put that
degree on their resume and they have secured a
job in part on the basis of that degree being on
their resume and they're three years out, and
again, this is not a for-profit institution.

Hypothetically this is a great private
non-profit with a high quality degree that
everybody agrees to and has a superb reputation,
right. And then that person says, identified
something and I believe it's, you know,
represented an act or omission at some point late
in my program, right.

There ought to be some way to consider
the fact because institutions I mean the widget
they produce are the credits and the credential,
right. That's the thing that they have to offer
when you're talking about what is their widget,
right.

Well in that case the graduate has
made full use of the widget and is still claiming
rights to keep the widget, right. They're not
surrendering their credential. They're not
surrendering the credits.

And I think it's problematic that they are seeking to discharge the loans that they used to finance the cost of the widget but they get to continue to keep the full widget and also benefit from the value of having it.

So all of this is just to say I mean I think there are very real and fair reasons to try to at least consider a mechanism that would permit a hearing official to try to draw a line and take those types of things into consideration.

MR. BANTLE: Okay. And the last on the partial relief up to Ashley Reich.

MS. REICH: Just on some ideas for calculation. Aside from what I've already stated you could possibly look at tuition and fees for that program for the misrepresentation claim to try to calculate some sort of an amount.

And obviously look at the loans that were taken out for that particular program. I think that would also allow for some sort of due
process at the institution where the Department
would then come back to the institution for
information.

And right now that's not really in
place. And so we would like to ensure that there
be some sort of due process where the institution
could have a voice for what, you know, first of
all the program that the student states that they
had some sort of misrepresentation for.

And then discuss, you know, the costs
associated with that program.

PARTICIPANT: Just want to comment on
the notion of basing partial relief, if that is
the collective consensus, on the tracking of
transfer credits which are a distinctly useless
proxy, I think for what you are looking for, for
various reasons.

Not least of all I want to remind
people that very frequently we end up serially
victimizing people. The Department of Education
facilitated placement of Corinthian students with
ITT blocking them from discharging the Corinthian
debt they had accumulated only to be victimized
even to a greater extent in the hands of another
subpar provider.

So that's one. Secondly, keep in mind
that the notion of transferring credits is a very
amorphous and ultimately meaningless concept
because you can take a lot of credits without
expediting time to degree.

And in fact given the unpleasantness
of telling people you're not going to take their
credits many institutions will simply nod and
accept the credits and you still have just as
many credits left to go to obtain the credential
in question.

So it's just not a robust, you know,
I'm not speaking against partial relief. But I'm
just pointing out that if you think you have a
good proxy for what the metric for it should be
transfer credits are not the right one.

MR. BANTLE: Any other comments on
partial relief? Partial relief, okay.

PARTICIPANT: Well it was just like a
response to Aaron. You know a question to think about is how do we prove that the graduate has made full use of the degree.

So I would just like ask folks to like ponder about that as we continue forward.

MR. BANTLE: And, Alyssa, I think you're coming back on partial relief.

MS. DOBSON: Yes, just to I guess add some information or perspective with regard to transfer of credit is that I don't think a student would be prepared or have the knowledge to know how to go about that.

Meaning they're, if we include transfer of credit in some sort of calculation of partial relief then they're going to have to do an evaluation of is it worth transferring the credits to this new program or not asking for the transfer of credit to occur.

And I think that's not reasonable to require a student to know in order to avoid harm with regard to the process.

MR. BANTLE: Real quick, okay.
PARTICIPANT: I don't disagree. I don't think the transferability of credit and whether they can transfer is a great idea because that's totally in the control of the receiving institution.

It's just, I don't think, my point is if the student wants to keep the widget and the student has 100 percent control over whether or not they are claiming those credits and whether they are going to claim the credential.

So if they want to say I don't want the credits, I don't want the credential then they're giving back the widget. But if they're going to keep the widget which means, for whatever use transfer of credit, to hold it on their resume, you name it.

But if they're going to keep the credits and they want to hold onto the credential and be able to try to use it, right, then they're keeping the widget. And I think in that case you've got to have, there's got to be some conversation because you can't give them the
money back and they get to keep the product.

MR. BANTLE: Okay, on, okay.

PARTICIPANT: Just to follow up on the transfer of credit. And I guess I'm coming possibly from a different perspective, not a for-profit. I'm coming from a non-profit, private institution perspective, okay.

If you have a student that has made it through two years of their degree, has received loans for those credits and decides that they're going to transfer and has a misrepresentation claim there is a very good chance that the new institution is going to accept all of those credits.

So if you don't consider transfer of credit you're basically saying we're going to give you those two years for free assuming that student used loans in order to pay for those credits. They're going to transfer them and they could potentially graduate with a four year degree at the cost of two.

MR. BANTLE: On transfer of credits,
okay. Last comment and then just to give the
Department a heads up I'd like them to kind of
frame our second issue.

PARTICIPANT: I guess my only
observation, I've been working at state systems
for the past 12 to 15 years is it can get quite
complex with transfer of credits and what slots
into a degree program versus just accepted as a
transfer and I think that's an important issue
there, you know, just as far as when you look at
it whether it's actually counting for the degree
the student is looking for or it's just accepted
and it's just sitting on a transcript and piling
up more credits.

MR. BANTLE: And I will readily admit
a facilitator mistake. Ashley had her tag up
before I called. Is that on transfer of credits
or on the second issue?

Okay, on the transfer of credits we
can jump, save the refunds until after kind of
the Department frames it. But we'll go Ashley,
Abby and then to the Department.
MS. HARRINGTON: Well mine was about partial relief. I just want to be careful that, the statute says that the Department can't give relief beyond the loans that were taken out.

But the students don't get their time back. They don't get back the other costs they had to use when they were in school getting a degree that they can't use.

The, anything that happened to their family, any other thing. So we're already limited to the amount of relief. And I'm not saying that's wrong. I think that's fine.

But we can't just say just because they're getting their money back they are restored to where they were before. Whether they cite the degree or anything like that we can't, that's not the same thing.

MS. SHAFROTH: I think that's mostly the point I wanted to make. And also in terms of the sort of giving the widget back, I mean I don't know how that would work in practice if someone actually did complete a program that
induced them to enroll based on
misrepresentations.

If they complete the program I don't
think that you can sort of like give it back. So
I don't understand that proposal.

MR. BANTLE: Briefly and then to the
Department to frame our next question.

PARTICIPANT: You can't take back the
education. They get to keep that. But if you
cannot certify that, you don't issue a degree.
You don't verify that those credits were received
if there's a transcript request for an official
transcript you don't provide it.

So, you know, the institution would,
I'm not saying this is right or wrong I'm just
saying as a practical explanation. You're right.
They still get the education.

So there is a wash here, right. I
mean there's costs that they don't recover.
There are benefits that they still receive. But
in terms of and this was a partial relief point,
right.
I mean my point was if a student wanted to come and say I don't want any of this then I think that gives additional credence to the idea that there should be full relief. But if a student says you know what I want to keep my two years' worth of credits and I do have an institution that's going to accept them or whatever because I don't want to mire in the transfer of credit.

But the point is they want to keep that. Then I think that's a basis potentially for partial relief. And my point is just that this might be a mechanism somehow looking at what the student wants to keep out of the relationship to determine what would be a way to measure partial relief.

And I think there is a way that functionally that would work with an institution.

MR. BANTLE: Okay. Can the Department kind of frame our second question here for us?

PARTICIPANT: So this is in response to the issue that Dan brought up, his question
about should we look into refunding amounts
already paid. So not just looking at amounts
that are still owed on a loan, but if a discharge
is given what is the groups feeling about amounts
already paid.

MS. MILLER: So, Alyssa, I think you
were first and then goodness, then we'll go back
to Abby, Michale, Ashley Reich and then William,
I'm sorry.

MS. DOBSON: So the answer that I
would give is a resounding, yes. I think that
should be restored. A student who is dedicated
to a responsible loan repayment process versus
one who either wasn't or couldn't repay their
loans based on any certain circumstance.

Loans get repaid based on family help,
on taking on second jobs, on the fear of
repercussions of default and delinquency and
accruing interest and not, just the uncertainty
and the length of time with which the processes
take loan amounts are going to vary based on
numerous different factors.
And I think it would be grossly unfair not to give the money back to a student who did everything that they could in order to pay down those loans. And then briefly because somebody had mentioned relief not just for amounts already paid but also for amounts that were refunded to the student for educational costs not directly related to billable charges.

And I do think that those need, would need to be included as well because there's a reason that we have a federally defined cost of attendance and that is to provide the resources for those students to earn the education whether it's a billable charge or not. And that is still resources that were dedicated to a program or a school that, you know, misrepresented the program in the first place.

PARTICIPANT: Yes, that covered my point about refunds of amounts already paid.

MS. MILLER: Okay, Michael.

MR. BOTTRILL: So, Annmarie, just so that I understand the statute, it does say that
there is an opportunity for the borrower to recover amounts that have already been repaid on a loan. Is that correct? Am I reading that, it's in your Issue Paper Number 1.

MS. WEISMAN: Yes.

MR. BOTTRILL: Right. So if it's contemplated in the HEA then doesn't it stand to reason that there is some will on the part of Congress that refunds or amounts already paid on a loan should be contemplated for relief in this particular circumstance?

MS. WEISMAN: I think it has been contemplated and we're looking here to get your feedback and the groups discussion of that issue in terms of again, if the group is in support of that. If so, how?

Any comments that you have. Dan raised the issue and we didn't want it to kind of get away from the group if it was something that you wanted to provide feedback on.

MR. BOTTRILL: I'm just, why is it a question? If it's in the HEA I'm just wondering
why it's a question?

PARTICIPANT: No, it's simply a thought that occurred to me when Joseline mentioned the, you know, the complete relief. And I, you know, I had in my head, you know, what does complete mean.

You know, outstanding amounts or something in addition to that. I wasn't, you know, I wasn't paying a lot of attention to the 2016 effort.

So I didn't know if that had been addressed as part of the previous committee meetings. So again, it was something that just occurred to me and I raised it.

PARTICIPANT: So it looks like then the current borrower defense process allows for, you know, when there is a cause of action or something that would give rise to a cause of action that a claim can be made and that the HEA already contemplates that not only is it for outstanding amounts but also for amounts already previously paid for the student to be able to
recover those amounts.

I'm just trying to frame it up for my, that's how we, what's currently allowed for. Is the question from the Department that particular provision in the HEA is not articulated in the regulations?

MS. WEISMAN: It seems to us that the statute directs us to regulate in this area and so we're just trying to have as rich of a conversation as we can have around it.

PARTICIPANT: So again my question is, is that particular part of the HEA not currently contemplated within the regulations, the repayment piece for amounts already paid?

MS. WEISMAN: I think that the language that we're looking at, Caroline had pointed out the way it's specifically worded is further relief. And so we just want to make sure we have as rich of a conversation and we get the sense of the group to make sure that we're including everything that we should include.

So I don't think that you should look
at it as any indication that we aren't planning
to go there, so to speak. It's more that we're
trying to address the question that was already
put on the table by another negotiator and we
just want to make sure we have the flavor of the
group.

And maybe the faster way to do it is
to do a quick temperature check if that's all
right to just get a sense of where we all are on
this issue and then we can go ahead and move on.

PARTICIPANT: Can I just ask one more
question? So I understand that. I guess what
I'm getting at is in the regulation, the current
regulation under 685.206 states that the borrower
may assert as a defense against repayment.

Does the Department view that as a
delimiting factor for a student's opportunity to
recover money that's already been repaid against
a loan because you only talk about a defense to
repayment.

PARTICIPANT: Well and that issue has
been raised previously. And I think that's why
we want to consider for any language that we're writing something that's very specific about what the intent is to make sure that we've covered all of our bases.

PARTICIPANT: Thank you. That's what, exactly what I'm thinking. Thank you.

MS. CARUSO: All right. So if we could just keep it the cards that are currently on the table and then we're going to move to the temperature check that Annmarie is referring to.

And if you would be thinking about how you want to frame it, Annmarie.

MS. MILLER: So, Ashley Reich.

MS. REICH: Some of mine is echoing what Alyssa already mentioned. But I think all of us are well aware that we have a very large student loan debt problem, 1.3 trillion and growing, right.

So I also know that there are a lot of institutions that have implemented financial literacy programs across their campus and many others that are looking to do the same. And I
I feel as though if we do not allow for some of the money that has been repaid to be a part of this that flies in the face of what schools are trying to do to educate their students financially about how to properly pay their loans back.

And so I also am aware that in some of the reauthorization process of the HEA that's taking place I believe now, there is going to be possibly some language in there about encouraging institutions to put financial literacy programs in place.

And I think that's very important to remember that, you know, there are schools that are trying to do that. So we need to have that as part of the discussion.

PARTICIPANT: The Undersecretary this morning referenced quite specifically that there was an intent on the behalf of the Department to offer potentially relief on interest on loans which were adjudicated as a no claim on the interest that had already been paid.

I think consistent with that
supporting the relief in this case for students
would make sense to us and we would applaud that
rule. I want to touch briefly on the partial
stuff that I didn't get to that my colleague, Mr.
Lacey had mentioned very quickly.

I think you made a compelling point
about seven out of eight semesters being good.
Then considering relief for that eighth semester
that was not good.

Although I would say on the point of
assuming the value of a degree I think that's in
some cases regardless of the type of school
perhaps misstated and can point to the fact that
there's probably no doubt several thousand
Corinthian widgets floating around that people
would like to relieve themselves of.

MS. MILLER: Valerie.

MS. SHARP: I just wanted to speak to
the refund of the prior loans paid. I strongly
support that. And I do agree with Alyssa in that
if there is extra cost that the student incurred
related to their education that they used loan
money for that was a valid educational concern
that we should consider that.

And I do not know exactly how we could
delineate that. But I think we do need to
consider especially since we're asking
institutions to possibly have skin in the game
and repay these loans to the government on behalf
of the student that there are many times where we
have students who we have counseled and honestly
almost begged not to take loans they did not need
however they chose to do so because the new car
at the lot down the street was very tempting that
now we're going to ask schools to repay those
loans and in essence pay for things that students
decided they needed that weren't tied to the
requirements for education.

Most of our student do not do that
just like most schools do not defraud students.
But it does happen. And I think we have to be
really careful and I don't know how you can do
that.

But we have to be careful to protect
institutions because institutions do not have options to tell students they cannot take their loans that they opt to take and it does happen where we have students who do have opportunities through scholarships or even VA payments who are taking out massive loans that we recommend strongly they do not take.

And then they do so and we see, we kind of see the results of that. And so I don't know how, as a committee I don't have an answer to that.

But I do think we need to have a way to delineate between the necessary educational expenses that students are taking loans out for and those expenses which they just opt for, for consumer spending that they're using their loans for that we can't protect them or ourselves from.

MS. MILLER: Suzanne.

MS. MARTINDALE: I just wanted to make this quick point since it actually has not come up yet. Correct me if I'm wrong, but in last year's regs there was a statute of limitations
applied on debts that were already paid.

I believe that's right. So I think
it's important to note that we would strongly
urge no statute of limitations on being able to
assert a claim regardless of whether the debt has
already been repaid because there is no federal
statute of limitations on collecting the debt.

MS. MILLER: Thank you. So that was
all the cards that was up at that time. As Moira
said we now want to turn it over to the
Department to sort of frame how you want us to do
the temperature check.

MS. WEISMAN: I have not heard any
opposition to the idea of refunds of amounts
already paid. So if we could just get the quick
thumbs up.

There may be some that I did not see.
So if we could get a quick kind of thumbs up,
thumbs in the middle, thumbs down that would be
helpful to us. And then if there are people that
oppose it would be helpful to hear that
perspective as well if that's something that we
could consider.

MR. BANTLE: And a comment prior to the thumbs up, okay.

PARTICIPANT: I was going to bring up the statute of limitations issue and just clarify if we were considering one and because she said that they would favor no statute of limitations. Some of us would be all right with the past loans if there were a statute of limitations because I fear, you know, just an overload of claims that will never get through.

And I don't think it's fair to institutions not to have some type of statute of limitations.

MR. BANTLE: One last comment before the thumb check, two, sorry. I didn't see both tags went up. That will be this afternoon.

PARTICIPANT: So I just wanted to raise again that someone made this point earlier. We are currently I understand talking about the process for borrowers to get relief from the Department of Education on whether they have to
repay their loans or can get refunds, not about whether schools should be liable or whether the Department can recoup from the schools.

So not having a statute of limitations that applies to borrower's ability to get relief on their federal student loans doesn't necessarily mean anything about when, you know, whether institutions would continue to be liable or whether institutions could have a separate statute of limitations.

PARTICIPANT: I think as long as students can be on the hook for loans until their last breath there should be no reason that they shouldn't also have that same burden lifted off of them to not have those loans.

MR. BANTLE: Okay. Thank you, everyone for the comments. I think it's time for the show of thumbs.

And as I as the facilitator kept letting comments in, Annmarie, can you just state the test of thumbs just so it's in everyone's mind and we'll get a show of thumbs?
MS. WEISMAN: So again, it seems as if most of the group was in favor of the idea of refunding amounts already paid. So if you are in agreement with that if we could get a thumbs up.

If you are unsure, thumbs in the middle. And if you are opposed thumbs down just to give us a sense of whether this is truly something that everybody is in agreement with.

MR. BANTLE: Okay. And I see, okay, I see no thumbs down in the room. A couple sideways just to note that for the record. Okay.

Just a facilitator note here, it is 11:48. We have promised to be respectful of breaks. Noting that in this area 12:00 is a busy time and you generally want to break before, you know, or after, does the group have a preference on how we proceed?

Should we introduce Issue 2 and give you all time to think about it and maybe have a discussion until 12:15 or so or would you like to break now and come back a little earlier than 1:00?
Okay, I'm hearing a lot of break nows.

So let's take a break, our typical hour. So we'll be back at 12:50. And at that time the Department can kind of give us a sense of Issue Paper Number 2. Thank you.

(Whereupon, the above-entitled matter went off the record at 11:48 a.m. and resumed at 12:50 p.m.)

MS. CARUSO: Okay, everyone. We are going to get started for the afternoon session. Just as we are settling in and getting started, good, as we are getting in and getting started there was a document that Abby referred to earlier that she would like to make available for the group.

And what I've asked Abby to do is just to give you some context, talk about who authored this document. And as we look to provide documents to the group for its consideration throughout the next day and a half I would like to make sure that we have either a title or context, an explanation of who created that
document where it comes from. So, Abby, please.

MS. SHAFTER: Sure. Thank you. So the document is perhaps in front of you or being passed around. It's just, we took a, we being members of the legal assistance community largely myself and Eileen Connor from the Project on Predatory Student Lending worked together to look through last year's notice of proposed rulemaking and final rules the way the Department addressed and resolved some of these issues last time and some of the factual findings and rationales.

And so we just excerpted those and quoted them with citations to where those points were made where they seemed to be responsive to the issues that have been teed up in these issues papers. So we basically took direct copies of the issue papers presented and put in points that we thought were potentially interesting or relevant from the Department last go around.

And I just wanted to, I just asked for it to be distributed because I had already, I had been referencing it for my own like use. I think
it's useful to see sort of how these things were resolved last time as a reference point and I had shared copies with a few negotiators and I didn't want some people to have it and some people not to have it.

So use it, don't use it. But it's in your hands.

MR. BANTLE: Okay. Second, we have a lot of work to be done. We have roughly 20 issues in Issue Papers 2 through 8 and we have one issue remaining in Issue Paper 1 that we have to get through that we'll have the Department frame up the discussion on when we get started.

So with that in mind, we need to focus on being concise, being succinct, attempting not to repeat ourselves. And I think as the facilitators were discussing over lunch we need to focus on answering the questions at hand because those questions will help the Department in drafting language that we will then be able to look at and evaluate and negotiate on during the next meeting.
So with that in mind, if we can keep the discussion pointed on the issues, on the questions at hand that would be much appreciated. Kind of a supplementary note to that, you know, we are all here in good faith to negotiate.

I think there's been some concerns raised to the facilitators about the characterization of some of the comments at the table. I understand everyone here has strong opinions on the issues that we are discussing.

I just want everyone to be aware that those concerns have been raised about, you know, characterization of other individuals at the table and the organizations they may represent. So I think kind of reverting to my first point focusing on the questions at hand, focusing on the issue papers before us will help us really be productive and avoid those concerns arising over the next couple of hours today and tomorrow.

So I appreciate everyone's best efforts to stay on track. And I will warn you in advance noting that we have 21 issues left your
facilitator team is going to give you a shorter
time span on comments and we will be cutting off,
you know, people or at least jumping in and
asking you to summarize succinctly at times.

That is not a, you know, a judgment of
the comment or the individual making the comment.
We're just trying to keep things efficient.
Thank you very much.

So if, Annmarie, if you could open it up. I know you mentioned briefly that you had
one more question on Issue Paper 1.

MS. WEISMAN: Yes. We started just
before we broke for lunch regarding some
discussion about statute of limitations. And it
is a point that I think we thought could kind of
go into multiple areas and multiple issue papers.

But since we were kind of leaving off
on that discussion and people were starting to
have some really fruitful comments we thought it
might be helpful to go ahead and keep down that
path for just a little bit so that you could have
your say on that issue now.
Again, because we seem to, the conversation seemed to naturally flow there. So if people have comments about statute of limitations whether there should be one, shouldn't, if so how long this would be the time to have that discussion.

MS. MILLER: Before we begin that discussion, Annmarie, we have a procedural request from Ashley Reich.

Ms. REICH: Yes, just a couple of us were talking. Several of us have the same first names. So it would be really helpful I think for the record, I know the facilitators are doing a really great job about stating, you know, Ashley Harrington versus Ashley Reich, et cetera.

But for all of you if you're speaking in reference to a comment that was made by someone that maybe has the same name it would be helpful to recognize their last name as well. We can't enforce that. But I think it would be helpful for the record.

MS. MILLER: Thank you.
MR. BANTLE: Okay. Opening up the
floor to comments on the statute of limitations.

MS. MILLER: Ashley Reich.

MS. REICH: Okay, sorry. I should
just keep talking. Just one comment on that. I
know that institutions are only held responsible
for document collection for a certain period of
time.

And so I think we need to keep that in
mind when we're talking about a statute of
limitations if, you know, schools are asked for
documentation and to provide documentation for
the student's particular claim. So I know that
those would kind of, those would need to probably
coincide with one another.

MS. MILLER: Aaron.

MR. LACEY: The comment was made
earlier and it's a very fair one that, you know,
there's a distinction to be drawn here depending
on whether or not we're talking about a
bifurcated process or not.

And we haven't really gotten in the
process. But if we're talking about the idea that there would be one decision made with regard to discharging the claim and a second process and decision made with regard to whether or not the Department could recover then you're talking about two statute of limitations.

If we end up ultimately determining that there would be one process during which a single official would make the decision both with regard to whether to discharge a claim and liability you're talking about one statute of limitations. And that distinction is really material, right.

So in a bifurcated proceeding the point was made earlier and I agree from an institutional risk management standpoint I'm less concerned about the statute of limitations that applies to the student if we're only talking about discharging the student's claim.

With regard to any recovery action we absolutely believe there should be a statute of limitations. We would suggest that something
tied to the period during which institutions are
required to keep documentation which is usually
about three to five years would be reasonable.

I also think five years is pretty
consistent and folks can fact check me on this,
but with the types of statute of limitations you
see under a lot of Consumer Protection Act and
other types of state laws.

But if we're talking about a married
process where you would have a single decision
made I just want to be really clear we would also
expect a statute of limitations.

MR. BANTLE: Additional comments.

PARTICIPANT: There is really no
justification for linking the two because the
Secretary's unilateral decision to accept a
defense offered by a borrower and his or decision
to discharge a debt, you know, it may be
probative in revealing evidence that maybe would
not have come to light.

But it doesn't really create a new
cause of action against institutions. Whatever
the Secretary's authority is that authority exists with or without a successful defense or an unsuccessful defense.

And therefore, I really do think that it's in our collective interest to separate the two and in fact I would urge the non-federal negotiators to collectively agree to recommend to the Department to just drop the issue of institutional liability all together.

Whatever the institutional liabilities are they exist separate and apart from the decisions the Secretary makes with regard to discharges.

MR. BANTLE: Is there anybody else that has a comment on the statute of limitations question? Seeing no tags up you can respond now.

PARTICIPANT: So I disagree strongly. I think there are multiple reasons to have a single process and not a bifurcated process. First, I think with due respect to the departmental staffers that staff members at the Department are more subject to political pressure
than you would expect an administrative law judge to be.

If there is anything I would think everyone in the room could agree to that we have learned in the last 12 months it is that the White House and its views of the world can change dramatically in a short period of time. And the Department of Education and the staff members are part of that administration.

And I think we owe it to institutions and students and everyone involved here to try to create a process that is independent of those type of political machinations as possible. And I think that would involve potentially marrying the process together and putting as much of it as possible in the hands of independent parties.

Two, I think that if you have a discharge process that is separate from the process that involves recovery from institutions you create enormous exposure for taxpayers or the government or whoever you might like to say.

But if you've got staff members who
are part of a White House at that point in time
that for whatever reason feels under whatever
standard is in place they want to discharge a lot
of loans and then ALJs who are making different
decisions with regard to the exact same claim,
all of those discharged loans can't be recovered
which I think is extremely problematic.

The other issue I have, third, is that
you put staff members if they're making decisions
on the merits and with regard to amounts to
discharge and the position of making what I would
call precedential decisions but there's no
process in place right now to capture precedent
when you talk about decisions that are made by
staff members.

It's also totally unclear if you had
a bifurcated process the extent to which
decisions made by staff members would hold
precedential value vis-a-vis the decisions being
made by the ALJs subsequently.

So and we can talk about this more
later. But I just want to highlight that I have
multiple reasons that I think a bifurcated process is problematic.

MR. BANTLE: We'll go, Suzanne.

MS. MARTINDALE: I just want to bring up it's sort of a problem when you start attaching statute of limitations to the students because and I heard potentially a five year statute of limitation brought up.

And some of the programs if a student is full time are four year programs. A lot of these students are not full time and so therefore they could be at an institution for a length of time that would exceed even the statute of limitations before they could recognize that there was a problem.

Some of the students would already be gone. And tying it to record retention is also difficult because I guess you could potentially define a statute of limitations as five years after the required record retention for that individual student.

But there's a weird construct there
when you're trying to attach it to the student and to the school. So I would say conversely I think we need two different definitions because of that.

PARTICIPANT: Well since I'm the one who brought up the statute of limitations I'll just clarify that I was envisioning a bifurcated process as well focusing on the fact that federal debt does not have a statute of limitations.

So borrowers are subjected to collections until they die. That was why I was thinking, that's why I was advocating for not having a statute of limitations there.

I would strongly agree that a bifurcated process is, I think, you know, necessary to ensure fairness in this context particularly because we don't want to be in a situation where we're talking about borrower defense and institutional liability in the same situation which effectively creates a zero-sum game between the students and the schools and kind of pits their interests against each other.
before the Department.

I don't think that any of us, you know, want that. We don't want schools and students to be pitted against each other.

PARTICIPANT: And I think if indeed the Department goes this way that some consideration in terms of the statute of limitations for students, I think, yes, some students attend on and on and on and on.

But those that go on and on are the ones who get federal student aid. There are lifetime limits in the student aid program. So, yes, there are ten year, 15 year. We actually found a 17 year Pell recipient years ago.

But again these days with lifetime limits in both the Pell and loan program. And I admit I'd have to go back and look at what the record retention requirements are, how those are structured.

But it seems to me that the interests of the Department are with students who are accessing federal resources.
MS. CARUSO: Ashley Reich.

MS. REICH: Maybe the Department can clarify too the three year, five year. I know there's an open audit time frame as well. If you have an open audit you get a longer amount of time.

And then my question back to what Alyssa had mentioned. If we don't go with some sort of record retention requirement then is there another standard or another time period that you would suggest looking at that schools are already having to do because if, to my point earlier, if we don't, we would have to update the current record retention policy for institutions if it was, if this particular language was somehow changed because we can't go back to an institution, you know, ten years later if the record retention says three years.

That isn't, they wouldn't have that documentation. So do you have another suggestion maybe that would be helpful for that?

PARTICIPANT: No, I think the point
that I was trying to make is that attaching a
student's limit to our record retention limit
isn't fair because it's going to be different for
each student depending on how long they're in the
program, when they separate from the school where
they could have experienced the same
misrepresentation but their statute of
limitations would be different just based on
their period of attendance.

And that doesn't make sense to me. So
again, do I have a suggestion? Not really.
Speaking for students I see fairness in not
having a statute echoing the concerns of some of
the people who have already spoke today because
they can collect for a lifetime.

But speaking from a school my concerns
are the same as yours because we do have record
retention policies. So and that's just
reiterating that's why I think they can't be
linked.

MS. CARUSO: So Ashley Reich she would
like to respond and then I want to Kelli and then
Linda.

MS. REICH: So you would be in favor of a, following a similar record retention for institutional liability not for students, correct? Okay, I understand and I agree.

MS. HUDSON PERRY: Just a point of clarification. When we talk about or those of you around the table that have talked about no statute of limitations for students, are you saying that assuming that the student has already repaid their loan in full that statute of limitations would not exist past that date so that if something came up with an institution where, you know, the student then decided that they were misrepresented, you know, five years after their loans were repaid that they would be able to bring a claim?

MS. CARUSO: Who are you asking, Kelli? Just the group, okay. Alyssa.

MS. DOBSON: I would, from my perspective, yes, I think that they should still be able to bring a claim in that case.
MS. RAWLES: I just want to make a suggestion which is we may want to tie this conversation into the financial responsibility conversation because depending on whether or not we bifurcate and we don't favor that, whether or not we have a statute of limitations, which we do favor especially vis-a-vis institutions.

    If you ended up with too long of a statute of limitations or no statute of limitations for institutions you're also exposing them to enormous liability. And that's going to have go into our discussion of financial responsibility and what kinds of letters of credit we're going to expect institutions to have.

    So I think we have to be practical about the possible amount of exposure we're giving to institutions.

    PARTICIPANT: I also think it's useful just to be practical and realize that, and I've already stated the reasons I think a bifurcated process is not the best. But the other thing is
I think it's really important to appreciate that, look, if the Department is discharging loans there will be enormous pressure to recover those amounts.

I don't think it's as a practical matter fair to divorce the two completely and assume that even if you're discharging loans based on a lower standard or the, you know, with no statute of limitations staff are making those decisions you're going to create this amount that is owed.

The Department has a directive arguably to try to recover those amounts, right. But even if it doesn't have a directive the fact is you still have all that debt out there and I think there is an expectation or has to be that there could be an attempt to recover those amounts.

So you're creating, talking about risk allocation. I mean my point is I don't think it's fair to say if we've got a bifurcated process we don't create any risk for
institutions. That's just not realistic.

If the Department is discharging thousands and thousands and millions of dollars of loans that is absolutely creating risk for institutions even if you have a bifurcated process. And it's going to create a lot of pressure to recover on those funds.

MS. CARUSO: Okay. Unless I hear otherwise. Michael, did you have, your mic is on, okay. Unless I hear otherwise I'm going to assume that we have had a discussion of the statute of limitations unless there's something else that we need to visit.

I would ask that we begin to discuss Issue Number 2. Going, going, okay, yes.

MR. BUSADA: Just a clarification. So are we going to wait and have, further discuss statute of limitations at a point in time that we're talking about bifurcation or is that going to be it for this round?

MS. CARUSO: Do you have something specific to the statute of limitations question?
MR. BUSADA: I just want to, yes, I mean on the statute of limitations I do think it matters which process you go down whether it's bifurcated or unified. I do think it makes a big difference.

But let's also keep in mind that there's a lot of different things that play on the statute of limitations. I mean when you go back to, and not to sound like a history academic, but I mean if you really go back and look at the whole purpose of statute of limitations going back to the ancient Roman civilizations and on it was for protection of all the parties.

And one of the biggest protections is once a case gets too far out it is very, very, very difficult to have evidence that still exists to be able to prosecute and come up with a fair and just outcome. And so that's why people are encouraged to present these within the matter of time before the evidence is spoiled.

And looking today, yes, it is a little
bit easier today with electronic documents. But let's keep in mind that if we extend electronic documents one, you're still having, it's still, it's going to increase costs significantly to hold those documents longer.

But more importantly with the technology out there now and all the hacking threats there is a student privacy and a personal privacy concern out there because the longer you hold those documents in your system, your online system the longer that those personal, private documents would be potentially open to hackers and nefarious users.

So I think that we need to come up with a policy that's fair. But I mean the statute of limitations is just a fundamental bedrock in determining justice, I mean going back centuries. So I don't think we should second guess that.

I just think we should come up with a fair standard.

MS. CARUSO: Okay. Thank you, Mike.
Joseline and then we're going to go back to the Department.

MS. GARCIA: I just have a question and it might be like a data request as well. Do you all know or could you provide us how much the Department has recovered from schools based on closed school discharge?

MS. WEISMAN: I don't have that information readily available. We can put in a request for data and see what we get back.

MS. GARCIA: Okay, thank you.

MS. WEISMAN: Do you have a period of time? It's helpful if we can define the parameters of what we're asking for as much as possible.

So if you said I want it from this period to this period, you know, going back how many years would be helpful to know what would be of interest to you.

MS. GARCIA: As much as you can.

MS. CARUSO: Okay. So I would ask the Department are there any other questions that you
have around statute of limitations or any other
elements of Issue 1, okay.

So moving on to Issue Paper Number 2
if we could just revisit either just a brief
issue summary or specifically anything you're
looking for outside of the questions as they're
stated.

MS. WEISMAN: So Issue Paper 2 is
focusing on process. We were, in the previous
regulations what is currently in effect, again
going back to 1994 we did not go into great
detail about process related to borrower defense.

As we've said previously, the number
of claims that we had over a period of many years
was almost insignificant. It was a very, very
small number.

And so as we look forward to what
could come down later we want to be prepared. We
want to look at how might we identify a process
of submitting claims to the Department and how
would we evaluate those.

We want to make this easy to
understand for all parties involved. We want to make sure that we have a process that would include submission of sufficient evidence to make a claim.

We want to make sure that we have clear expectations for borrowers and for institutions. Discussions about next steps, time frames and anything around process is helpful here.

And again, we want a process that's fair and equitable to all of the parties involved. So we would start out by saying what process should a borrower follow to submit and establish a basis for a borrower defense claim?

And I think if we could again try to take them bullet point by bullet point. There may be a couple that are tied together. But at least for this first one if we could start with that bullet point that would be helpful.

MR. BANTLE: And just as a facilitator note, we know this is a somewhat amorphous question. So just please be aware of the, you
know, the time we do have left.

   But we do, we would like any and all suggestions.

   MS. CARUSO: Kelli, please.

   MS. HUDSON PERRY: Annmarie, I know you want to start with the first bullet. But I'm going to actually skip down to the fourth or fifth bullet just because I think it makes sense.

   I mean one of the questions you're saying is should the process differ depending upon whether the school is open or closed. And, you know, sitting here listening over the last day or so I think there is two real main reasons why somebody might petition for discharge.

   One being misrepresentation the other being a school closure, right. So and I think we heard from the Undersecretary this morning that the majority of the claims that you have now do relate to school closure.

   And you just mentioned that there haven't been a lot of claims probably from a misrepresentation perspective that the Department
has had to deal with. We also talked in Issue Paper Number 1 about the federal statute versus the state statute.

So, you know, I didn't really speak to that at this point. But I'm just going to mention this now where there may be a differentiation between misrepresentation and school closure from that perspective as well because of the schools, sorry, because of the states having different rules relating to misrepresentation and things like that.

Where I might propose that misrepresentation stay with a state statute where the school closure would follow a federal rule potentially in an effort to expedite the process.

So if it's a situation where the Department is trying to expedite the process of discharging these claims and a good chunk of them is being brought based on a school closure, would it make sense to look at that school closure as one claim and the Department take action simply based on the fact that school is closed?
MS. CARUSO: So responses to Kelli's point and also any process suggestions in general based on Bullet Point Number 1 or the process for submitting and evaluating a claim. Yes, Alyssa.

MS. DOBSON: Since we're talking about having a different process whether the school is open or closed and I don't see it mentioned anywhere in here.

But I do think it's important for the school to have an opportunity for involvement, rebuttal to provide their case, if you will, to defend against any type of claim especially if there's going to be recovery.

MS. CARUSO: Walter, Dan and then Michael.

MR. OCHINKO: Yes, I just wanted to quickly respond to Kelli's comment and that especially with respect to Corinthian is a pretty much 100 percent overlap between closure and misrepresentation.

PARTICIPANT: We have a mike open and we're getting some feedback and can't hear
Walter.

MR. OCHINKO: That's me. Quickly to repeat myself I just wanted to say that with respect to Corinthian I think there's a pretty much 100 percent overlap between closure and misrepresentation.

MS. CARUSO: Okay. Dan, Michael, Linda.

MR. MADZELAN: I just have sort of a framing question. The, who is eligible for a borrower defense claim in the context of where they are in their sort of loan history.

The current loan regulations speak to any proceeding to collect on a direct loan. Collect historically is a term that is used in, for defaulted loans.

If you look at the due diligence rules around, you know, loan servicing you don't see the word collect. So, you know, the way the existing rule is written seems to imply that it's a defense to collection activities by either a guarantee agency well or by the government I
should say.

So I don't know if, you know, that where the Department was or has been or is on this. But again, because the existing rule is written in such a way that at least to me strongly suggests applies to borrowers who are in default is that, will that, is that the case or does the Agency have some discretion here? I just throw that out as a question.

MS. CARUSO: Michael.

MR. BOTTRILL: Well, yes, also as a framing matter I think the process should be easily understood, facilitate the submission of sufficient evidence, establish clear expectations for the borrower ensured claims.

So I think that you've framed it up exactly the right way in terms of the goals that I think are the appropriate ones to be looking at. And so, you know, fair and equitability I think are important equations in that.

And the metrics that are used to try to determine that. So, Kelli Hudson Perry, to
your question or your statement are you
suggesting that in a closed school scenario
students go into this lane which may be an
express lane and in an open school scenario there
is another lane whereby there's more gathering
and submission of evidence and more adjudication.

So two, that's the kind of the
separating factor that by virtue of the fact that
the school is closed the claim is handled this
way as opposed to another.

MS. HUDSON PERRY: To confirm with my
head nodding, yes, that's what I'm suggesting.

MR. BOTTRILL: Thank you.

MS. CARUSO: So Linda, Ashley Reich
and then Abby.

MS. RAWLES: We just need a bigger
table.

PARTICIPANT: Can I just, one more
thing quick. Unless, Walter, you have some
information that I don't have I don't know and
the Undersecretary didn't say today and I just, I
don't know if this is accurate or not, the
reasons by which any defense claims are being
granted by the Department.

I don't, that's why I asked for the
information whether or not they're being done for
closed school or for misrepresentation. So maybe
you have that information and I don't. But I
mean that's why I've asked for it.

MS. RAWLES: I think I'm responding to
the first one but let me know if I go too far off
base. I think they are so connected. I think we
should consider whether or not the student has,
to use a legal term, exhausted their
administrative remedies.

I think they should have at least
tried to resolve the issue with the school unless
for some reason that was impossible. Then if
that doesn't work I think then the Department
staff would try to resolve the issue.

If there's a sufficient claim made to
the Department of course we would have to talk
about what sufficient claim is. And if that sort
of informal resolution does not create agreement
between the school and the student assuming that
the school is still open, then I think it should
go out to ALJ or administrative law judge for
those of you who may not know what that is where
there is due process for all parties.

And then under certain circumstances
there would be an appeal to the Secretary if
parties were not pleased with the ALJ process.
So I think we started this conversation saying we
wanted something that was clear and fair to all
parties.

So I think that rough outline is a
process that would be clear and fair.

MS. CARUSO: Thank you. Ashley Reich.

MS. REICH: Just for some clarity, the
90 some thousand outstanding borrower defense
claims that are, that you all are working on now,
how, are they filling out an application for
borrower defense?

And if so which application are they
using because the one on the web does not allow
them to, like there is no option for closed
school discharge under the circumstances where
that's appropriate. So how are they currently
doing this?

MS. WEISMAN: Closed school discharge
is a separate process. So again, I want to make
sure we're focusing this discussion on the
borrower defense claims.

There is a separate application
available for closed school discharge if a
borrower feels that they meet those conditions.
And that includes things like enrolling within
120 days of the closure date of the institution.

So closed school discharge is kind of
a faster way because that process is already in
place. It's been in place for years. That
application has existed.

They can go ahead and do those. But
for those who didn't meet that condition there
are, there is a borrower defense application
online.

There was a previous iteration of that
application. There was one that was streamlined
for Corinthian borrowers in some cases.

So I'll say that the claims that are
out there, and I'm certainly not an expert on the
borrower defense claim process, but I do know
that there are applications of multiple types
then of both at least of those that are kind of
in the pipeline and waiting to be adjudicated.

MS. REICH: Okay, thank you.

MS. CARUSO: Abby, Aaron. Robert, did
you put yours down because your question was
answered? Okay, Abby, Aaron and then Will.

MS. SHAFFROTH: Thank you. So there
was, Dan raised a question about whether the
process for seeking relief should only be
available to borrowers who have already defaulted
on their loans and are in the collection process.

My understanding is that the
Department is not, does not interpret the 1995
regulation that way and is allowing affirmative
applications from students who are not in default
to be considered for borrower relief currently
under the current process.
And I hope, Annmarie or Caroline will correct me if I'm wrong about that. And I would offer that's the right approach, that it doesn't make sense to say that only student borrowers who have defaulted on their loans should be eligible for relief.

I don't think we would want to say if you want to get relief you better default first and then we'll consider whether you should get relief. That seems like a bad outcome for everyone.

So I hope we would not go that way.

Second, in terms of, you know, going back to Question 1, what process should a borrower follow? I want to focus this on that question, what should the borrower do.

And I think that the, that we should in thinking through that keep in mind that the vast majority of borrowers who feel that they have been scammed, misled, defrauded, otherwise taken advantage of by a school are not going to be folks who are able to access assistance of
I provide legal aid services to borrowers in this situation. But I am only able to help a small number and there are thousands and thousands who aren't able to access counsel.

So we need to make sure that any process is available and accessible to borrowers who aren't represented by counsel and we need to make sure it can be easily navigated, a simple public form. You know, the Department currently has a public application form.

That seems like an appropriate way to do this with plain language not requiring the borrower to get into legal ease. The borrower also, you know, I hesitate to go too much again into this point of one process for borrowers and one process for schools versus not.

But that's to me another reason that it's very important to have two separate processes. If we have a process where the student is, student borrower is pitted against the school, yes, there may be some small schools
that also don't have legal counsel.

But there are a lot of schools that are giant public corporations and have extensive legal teams. And pitting that extensive legal team against a pro se borrower who may be, you know, doesn't have any postsecondary degree and certainly has no legal training is just, I think a truly unfair process that's unlikely to come to an acceptable outcome.

The other point I wanted to make is this question was framed as what process should a borrower follow to submit. I would argue that in addition to there being a process for individual borrowers to affirmatively seek relief there should also be a process whereby the Department of Education can initiate relief to groups of borrowers if the Department has conducted an investigation or received information from a state attorney general or other law enforcement agency where they have found evidence of systematic misconduct that would give rise to borrower defenses that the Department should be
able to initiate a process to provide relief to
groups of students rather than requiring each
student to raise their hand and come forward one
by one and to adjudicate each of those
independently.

MS. CARUSO: Okay. So we've got a
bunch of folks up to speak. Aaron, Will,
Michael, Wanda and Jay. I'm also hearing, you
know, common themes in the interests that you are
putting forth.

You want a process that's clear, fair
and accessible. That's being understood here.
So did you put yours down, Aaron? Got you, all
right. Aaron, go for it.

MR. LACEY: Yes. So and I'll be as
quick and concise as possible. I agree with Abby
on your first two points. I don't, I agree that
I don't think students should have to go into
default to be able to start the process and
certainly agree with everyone that it should be
simple and accessible to folks.

I don't think it should be so complex
that you have to have counsel. On the bifurcation point, you know, the idea that we should keep the process simple so we don't pit schools against students, unless you're going to exclude schools entirely from the initial determination they're already pitted against each other.

The only difference is you're putting them in front of an ALJ instead of a staff member at the Department. But if you're going to allow schools, if you're going to tell them that a claim has been filed and allow them to participate you're already there.

You've already got the school and the student both providing information in front of a third party at the Department. So my point is that third party should be as independent from the political process of the day as possible and right now that's the administrative law judges in the Office of Hearing and Appeals.

With regard to closed schools I just think we need to be careful. And some folks may
know this, I know they do, some others may not. But when you talk about a school at the Department you're talking about a regulatory concept, an OPE ID, right.

So whether you're for-profit or non-profit it's entirely feasible that you could have an organization that would close a school but the organization still exists. I think philosophically the reason previously that the thinking was if you have a closed school they don't need as much in the way of due process protections is because there's nobody left there who would need the due process.

But I think that's a fiction. I think you will regularly have circumstances where you might have a school that is closed or a location that is closed, an additional location but there's still a school or organization proper out there that cares about its rights.

So I do not think that, at least in so far as we're determining the liability of an institution, it makes sense to limit the rights
of a "closed school" because again I think there's an organization there that could really care about responding.

   With regard to process, so I would take a slightly different approach but I do agree with Linda. I think it is in absolutely the best public policy interest to have some mechanism when a claim has been filed to at least allow a school and a student to see if they can come to an informal resolution.

   The Department encourages that right now and most systems, court systems et cetera they'll encourage some sort of settlement. I'm not suggesting that a student would have to agree to that.

   But I think it would be helpful. I mean what I had proposed as opposed to the exhaustion of internal remedies was the idea that, you know, you get a claim and you notify the parties and you tell them you've got 60 days to try to meet and settle and let us know if you can come up with something.
At least then they have a chance. Again, if the student doesn't want to talk to them understood. But at least give the institution a chance to reach out to the student if student is interested and to see if they can resolve it and then you save on the administrative time and costs and all that kind of jazz.

I've already advocated for a single process. I do not like a bifurcated process and I've explained why.

What I would suggest is that when a staffer receives a claim after they notify the parties and give them the 60 days or what have you to try to resolve the issue their job would be to certify whether or not the claim on its face satisfies whatever standard we come up with assuming that the allegations made by the student are true, right.

So there's not an actual finding on the merits. I think that way you ostensibly can weed out claims that don't even on their face
satisfy the components or elements of the standard that we design or come up with.

But then once that is certified the staffer can assist the student potentially in gathering evidence, notifying people of their rights and responsibilities and then it goes off to an administrative law judge and it's managed pursuant to a process that ensures due process et cetera for all.

MS. CARUSO: Okay. So I've got you, Linda. I've got you on my list. I'm hearing some things for the second time, hearing some repetitive interests and suggestions.

So what I want to do is limit this round to the folks who have their cards raised at this time. Let's get the comments from you all new and then have a check in. So next one is Will.

MR. HUBBARD: Thanks, Moira. I want to touch on what Aaron said and the comment was made earlier as it pertains to Question 1 the process that a borrower should follow and
establish.

Note that it specifically identifies the borrower as the category in that specific instance, not the school. So in this case we're talking about the student.

I don't necessarily disagree that there could be potentially be an opportunity to resolve that if the student wanted to. That could be an option for them.

But it's not a, something that the, we're not doing that on behalf of the school and we'll probably get into that a little bit more in Point 4.

But something that I would like to address as it pertains to the military and veterans community. Many people I think mistakenly believe that if you've served in the military that you already have the GI Bill, you're covered, you don't have loan discharge.

But that's actually a tremendous myth. We know that certainly reservists who don't have access to the GI Bill, military families, those
who perhaps expended on prior education and those
who are coming with prior debt are affected.

So it's an important audience to
consider in this. And as we seek to have a clear
and fair and accessible process I think to say to
those military connected families and students
that they would be expected to go to the school
who potentially shattered their life is insulting
and something that would, I think for some
students be so uncomfortable they would rather
just live with the debt.

So as an option for the student
perhaps something to consider. But let's not
start pushing into the idea of doing that on
behalf of schools.

MS. CARUSO: Wanda.

MS. HALL: Not to restate what Dan and
Abby said, I mean they don't, they shouldn't go
to the point where they're defaulted, absolutely
not. By the time they get to that point there is
already a lot of damage done from the perspective
that their credit has been affected because in
most instances we're reporting that they are, you know, they have adverse credit when they're 90 days delinquent.

So, but that does lead you to your Bullet Number 2 which has to do with the automatic administrative forbearance. That happens today. I mean we do apply an administrative forbearance when we're notified the borrower has submitted the application.

And so, yes, there should be administrative forbearance would be what I would say.

MS. CARUSO: Jaye.

MS. O'CONNELL: So to follow Wanda that was largely the comment I was going to make. And I was, had a question as to whether 682.211(I)(7) from the 2016 regs which is the administrative forbearance, if that was not delayed because as guarantee agencies and lenders we are receiving lists to apply administrative forbearances or if that's just part of the Department's process.
Just curious as to whether we are regulating this piece truly or was that one of the provisions that was approved for implementation.

MS. WEISMAN: So we would like to respond to that and just clarify that it was an item that was flagged for early implementation. So people were able to implement things for early implementation if they chose to do it.

But if it's something that we're interested in keeping as part of any new set of regulations that we want to enact we would need to have that discussion here and include that as part of our package going forward.

The other thing is it seems as if we're starting to go down that path organically about the idea of automatic administrative forbearance. So I'm not trying to cut off conversation if there are still things to be said on the other issues.

But I also don't want to pull people artificially into a structure. If we're going to
start on automatic administrative forbearance the
only thing I would say is to remember we also
need to hear about the idea of stopping
collection activity as part of that as well.

And if we are doing either or both of
those we have to also address the ideas of an opt
in versus an opt out. Would you want a borrower
to have to request an administrative forbearance
or a cessation of collection activity or would
you want it to be assumed that it's there and
they, you know, that they have to say, no, if
they don't want it?

So if the discussion around that could
include all of those items. And again, it's kind
of a three part then question. But we're ready
to hear feedback on that as well.

MS. CARUSO: Okay. So we have a
request from the Department to move to the
discussion of automatic administrative
forbearance including the question of stopping
the collection activity as well as opt in versus
opt out.
So if you could address those that would be great. Certainly not cutting off discussion on the other items, but noting that, the desire to move in that direction. Linda, are you, go.

MS. RAWLES: Mostly I want to mention forbearance. But first, there was a mention of group claims. And so I did want to point out that we talk about we want fairness and due process.

And group claims are sort of the antithesis of due process because you eliminate the nexus between the alleged fraud and the damages, the whole discussion we had this morning about mitigating damages. All those go out the window really if we're talking about a group as opposed to individuals.

But on the issue of forbearance I just have one thing to keep in mind. I'm very open minded on this issue.

But we talk a lot about incentives and we have to think about what kind of an incentive
we are sending out for folks to file claims with
or without merit if we make loan forbearance too
automatic or easy.

MS. CARUSO: Chris, you're up.

MR. DELUCA: So I just wanted to
comment on the process and whether we have a
bifurcated process or not. And one of the
comments was made and the idea that creating a
process that's simple and accessible for
students, not intimidating for students and not a
situation where you're going to have a single
student having to face off against a team of
lawyers.

And I understand that. I mean we want
to create a system that's accessible for students
in order to file a claim. But it got me thinking
about some of the processes that we already have
in the educational environment.

We've got issues where students are,
you know, have process to file complaints with
state regulators, a process to file complaints
with accrediting agencies and processing, filing
complaints with the Department on other issues.

And so you got me thinking about, you know, working towards a system similar to that where, because I've been involved in many of those on behalf of my clients. And I would be the team of lawyers that they would be facing against if they were going against one of my clients.

But the idea being that those processes and I know that the accrediting agencies in the states and the Office for Civil Rights, for example, are working on encouraging students to have a process where they can file a claim and file a complaint against a school.

So thinking about that in terms of in here again, but the way that works is that a complaint gets filed and then you've got some, whatever body it is that does an investigation. But they gather information from the school as well to come up to determine whether or not there was a violation of whether it was state regs, accrediting standards or Department standards.
And so it seems like, you know, we can still have a simple process or a single process that's, you know, but again with an opportunity to encourage students who have valid complaints to be able to submit those on borrower defense yet still engage the school without it being a process of where it's something like we would see on some sort of a law procedural on Thursday nights where you've got people in a room fighting against each other and the school and the student having to hire a team of lawyers to do that.

I don't think we have to have that as part of the process.

MS. CARUSO: Mike, I've got you next. But, Wanda, I didn't see your tent go down. Are you still, okay, thank you.

MR. BOTTRILL: So with regard to the issue of the automatic administrative forbearance and the opt in, opt out. Are there, what would be the stakes I guess for the student in that particular regard?

That is to say if I opt in am I
meaning that I would be granted the
administrative forbearance and everything would
be on hold. Are the stakes that if I choose to
do that all the interest continues to accrue and
I'll have to pay that at the end or if I just
decide to opt out I'm just going to keep going
down the path as I was before?

Is that what you're envisioning in
terms of what the stakes would be to the student
in making the decision?

MS. WEISMAN: Yes. The concern is
that if it's an opt out where they have to
specifically say I want to be excluded do they
understand the full ramifications of the interest
that's accruing on their account?

MR. BOTTRILL: Okay. And I think
that's an important distinction on how students
in the decision making paradigm that they would
go through for that particular case.

But in a general sense, you know,
supportive of the administrative forbearance. I
think that there are a number of administrative
processes that support the idea of putting either
some kind of quasi injunctive or at least stasis
kind of process in place while something is
pending and being determined.

And I just wanted to make a quick
comment about Aaron's comments about closed
schools. I think there's a distinction between a
school that responsibly teaches out and closes a
campus and a campus that precipitously closes.

And if another school is affiliated
and is still around after having precipitously
closed a campus thereby shutting out students
there's liability that attaches to that action.
And so I think it's just important to make the
distinction between how the school closed and
what harm was actually done to students.

MS. CARUSO: Alyssa and then Abby.

MS. DOBSON: Just some comments about
administrative forbearance and, yes, I think they
should be granted an automatic one. But we've
already kind of brought up the impact of interest
and it was kind of a welcome surprise this
morning from the comments that we heard that
interest on those loans that have kind of been
held up in the process for a very long time I
believe he said one year that interest that would
accrue after that time would be forgiven for any
student whose borrower claim was denied or sorry,
defense repayment was denied.

And I think that's an important piece
to it. I think that maybe we would want to put
that formally into any regulation that we might
have.

You know, his comments were spot on
that not all of the claims are going to be
approved. But I don't think that there should be
a danger of a ton of interest for these students
just because it takes a very long time to process
the claims.

And further I think the longer it
takes to process a claim probably the more
complex it is which means that it's not just a
frivolous type of case brought by the student but
rather that there are some nuances that need to
be parsed through. And along with that I wonder if one year is actually even too long before interest forgiveness is granted to those types of students.

MS. CARUSO: Abby.

MS. SHAFROTH: Thanks. I'm going to try to tick through a few different points here. There was some discussion about whether students should be required to exhaust or an internal grievance procedure with the school before pursuing a claim with the Department of Education or even if not required to exhaust it told that they are encouraged to meet with the school and have the school notified and to not allow the Department to begin its process until after there's been an opportunity for the school to try to work things out with the student.

I think that sounds better in theory than it would be in practice particularly when we're thinking about predatory institutions. If it's a good school and there's an honest mistake or misunderstanding then that might work out
fine.

But when we're talking about predatory schools if this is a school that has already scammed a student and a student wants to go to the government and say I've been scammed saying go talk to the institution that scammed you doesn't seem like a good idea.

It seems like it's setting that student up to be scammed again, to be told, you know, you don't have rights or like, you know, it's setting them up for being harmed a second time. So I would strongly caution against any sort of requirement to exhaust or pressure to use an internal grievance system before going to the government.

In addition, I think that would have a negative impact for students, for future students and for the public and taxpayers in terms of it would tend to quiet and chill information about predatory and illegal conduct. We want, if there is illegal conduct we want students and borrowers to tell the government.
We want the Department of Education to know about this and to investigate it rather than to encourage an opportunity that could lead to cover up or quieting of what's going on. We want everyone to know about this before it gets worse and hurts more students.

Second, in terms of the process of a borrower seeking relief on their own and who should be making that determination, I appreciate the point that Aaron raised about wanting to make sure it's someone with some independence.

I'm not sure that an ALJ is the appropriate person to be doing that though in part just I think in an individual process with the borrower not having legal counsel and not having often access to any evidence that the school may hold, that there's an important role for the Department to play in helping to investigate and gather the relevant evidence to determine that claim.

So I think someone from the Department would need to be involved and they would need to
be sharing information with the compliance unit and that sort of thing. Third, Linda raised a point that she doesn't think there should be a group process because she doesn't think that could be consistent with there being due process.

I would disagree strongly with that. There's, a group process could look something like a suit by a state attorney general seeking relief on behalf of a group of students. That exists in the 50 states already and there are due process protections in place to protect all parties in those suits.

This isn't something new here. There are also class actions and there is an extensive body of jurisprudence around how to provide due process to parties in those actions. Those sorts of principles can be brought to play here as well.

So there's no, I don't think that there is, that this is any way antithetical to allowing due process for different parties.

Finally, there's the specific request for
comments on administrative forbearance and
stopped collections.

On behalf of the legal aid community
I would say that we strongly support providing
administrative forbearances and stopped
collections both to borrowers who, while their
borrower defense claims are being processed.

And the stopped collections portion is
especially important. If someone is in default
we don't want them to have their, for example,
earned income tax credit that their family relies
on seized from them while they're waiting a
decision on whether they should owe their loan
debt at all.

And I support it being an opt out. So
the presumption would be that someone gets
forbearance for stopped collections unless they
check a box on the form saying that they, that,
no, they do not want forbearance or stopped
collections they would rather keep making
payments on their loans.

And to the extent that the Department
is willing to forgive interest while in
forbearance all the better.

    MS. CARUSO: Okay. Dawn, Ashley
Harrison and Wanda.

    MS. ROBINSON: So most of my questions
or comments have been made. But I did have one
question for the Department in regards to the
discharged loans.

    So if a loan is discharged and a
student is in default status, does that, is that
status removed thereby decreasing the default
rate of the institution that they defaulted
against while they were, once they got the loan
to attend?

    MS. WEISMAN: The status is removed.

    MS. ROBINSON: Okay.

    MS. CARUSO: Ashley Harrison.

    MS. HARRINGTON: It's Harrington. No
problem. I wanted to do a little bit of response
to Linda's comments about the group process.

    We also would agree with a group
process being necessary and we would think that
it would be better for both schools and students
if there was a common set of facts that the
school had to defend against and the students
were brought together.

In terms of fairness and efficiency
there's a group of students who all had the same
issue with the same school, the same problem it
should make it easier for the school using less
resources to address those claims all at once.
So I think it makes sense for both parties in
that case to have a process for group discharge.

MS. CARUSO: Wanda.

MS. HALL: Talking about the
administrative forbearance I mean there's two
ways to go. One of them is that it's automatic
or the borrower requests it.

I think that, you know, from our
experience in talking to the borrowers and
believe you, I mean they're talking and they're
complaining to us because we're trying to get
money from them and they have a situation. So we
would find that the majority of the borrowers,
they want the forbearance.

Today it's automatic and we let them know and we notify them that if they don't want it then, you know, then we can remove it. So I think a high percentage of them would want it.

What we do need to be careful of though is that, you know, we have the question is it a capitalizing forbearance or a non-capitalizing forbearance. Today it's non-capitalizing.

It does increase their balance. So, you know, at least for that first year depending on, you know, what the final resolution would be that's a question that we need to figure out.

MS. CARUSO: All right. I've got John, Joseline, Mike and Linda and then I want another check in.

PARTICIPANT: Forgive me for backtracking a little bit. There was a discussion of sort of administrative exhaustion.

And to the degree that's part of the discussion I think it's also worth considering
whether there's a formal role for trying to leverage whatever state enforcement authorities exist at that point, whether there's a formal part of that process where for instance borrowers could be asked to report any allegations of misrepresentation, fraudulent conduct to relevant state enforcement authorities or whether or not there's a formal role in that process whereby the Department to the extent allowed by all other relevant laws, privacy laws and the like, can report those allegations to the relevant state enforcement authorities.

MS. GARCIA: So I know that earlier there were requests made to not group schools together and, you know, say that all schools are bad schools. And I just want to put it out there that I would request a similar thing for students.

I feel like there has been some comments that I don't appreciate about students and their incentives for making claims. And students having incentives that are in their
self-interests where they're not genuine or they're not actually trying to better themselves.

So I would just put out that request as well as not to group students intentions to better themselves when they have been taken advantage of. The second thing that I'll point out that in terms of process I had a question for the Department.

So you all have access to these claims and within those claims there's probably some trends of where they're taking place. And I'm wondering if you all reach out to students who are in those institutions and let them know like, hey, there have been claims taking place from these institutions because I do believe that knowledge is power.

And I think it would be a proactive measure or letting students become aware that former peers have been found in a situation like this.

MS. WEISMAN: We made a request to get information about the outreach that was asked
this morning by Stevaughn. And as far as I know we're still gathering some of that information. So we can kind of group that question, if you don't mind if we can kind of tag that onto the earlier question and try to provide that answer together.

MS. GARCIA: Okay, thank you. And then just a really quick because we have all, well not everyone, but it seems that the trend that we want to do is to make this process simple and easily understood for students.

I do think that, I would agree with Abby's comment about being able to opt out. And the second thing I know that Linda had mentioned about students being in a position where they have to exhaust their resources and speak to the institution.

I also worry about the situation that the student would be in there and whether they would have all the resources necessary to get into an agreement or a settlement with the institution that they're dealing with.
MS. CARUSO: Mike, Linda, check in.

MR. BUSADA: Just to address a couple of points and see if we can just get some clarification and maybe come to a little consensus. One, going back to what Abby and I think William talked about and I agree with you don't want to force somebody to have to deal with somebody that has, you know, done wrong by them I mean in any situation.

I was wondering though would you be open to, I mean a lot of you know, federal programs whether it's Department of Labor or other areas it's, there's a mediation process but the mediation process is managed by, for instance the Department of Labor.

So there is an intermediary trying to bring the two together, making sure that nobody is treated unfairly. And my thought there is that the last thing, I mean I tell clients all the time, you know, private clients outside of school stuff that even when they a good claim sometimes they say I want to go sue somebody.
I say you can sue and you'll probably win. But it's going to cost you a lot of money. It's going to take a lot of your time. A lot of times people, if you sit down with them they'll say hey, I was just mad about this. Let's come up with a solution.

There are other times they won't. If they're bad people, they're bad people. They're not going to. But I just think that, you know, we do a disservice to everybody I think if we tell a student that, you know, we don't give them an opportunity with someone from the Department involved to try and come up with a solution.

I mean I think it would get both of those, accomplish both of those. So something like that is kind of a middle ground.

In terms of, and I do want to address what Joseline said and I agree. We don't want to say that anybody is bad or guilty. But I do want to say this and I was the one that brought up the original point about not grouping all schools together.
And so I want to be very clear. I live, you know, I think we all have to agree just pragmatically that any kind of entity you look at whether its schools, charities, churches, businesses there's good and there's bad.

There's always bad actors. I mean there's always going to be bad actor whatever you're looking in. I mean I think if anybody can tell me, I mean I'm a lawyer, there are good law firms there are bad law firms.

There's good charitable organizations, there's bad charitable organizations across the spectrum. I think we need to acknowledge that education is going to be no different.

There's going to be good schools regardless of what sector. There's going to be bad schools. There are going to be most schools we hope and our effort is to make them all good schools and make sure we have all good schools.

I think we have to be realistic though and say there are some people out there that have no intention of being actual students. You can
look at indictments for trying to commit fraud.

And those aren't the people you represent and I understand that. But I think we need to be realistic in saying there's good schools and bad schools. There's good potential students, you know, there are good students and there are people that aren't serious students that have another ulterior motives.

MS. CARUSO: Mike, I just want to limit the comments to the questions and the issues at hand.

MR. BUSADA: Yes.

MS. CARUSO: And so I'm going to redirect.

MR. BUSADA: Yes.

MS. CARUSO: Okay. Linda, please.

MS. RAWLES: Yes. I had really wanted to clarify something before Joseline spoke and now it's even more so. When I'm talking about incentives I mean every rule creates incentives, right.

I mean any rule that the Department
would write on this, any rule that we would come up with incentivizes people and discourages other behavior. Not to repeat too much, but what I'm thinking of is a student exhausting their remedies or at least trying to settle the issue with the school that could be a student with a legitimate fraud complaint or it could be a student who is just mad and has no legitimate complaint.

It's a mix. So if you have some kind of precursor to a lengthy, expensive process that allows us to sort that out a bit to figure out, you know, you ask any of the accreditors, I won't speak for Michael or others but anyone who works with students realizes that most of them are sincere and mean well, et cetera but that there are some who don't.

And you get some frivolous complaints. So we're just saying it would be nice to have something at the beginning if it's not an exhaustion of remedies some kind of step that helps us sort out legitimate complaints from non.

It's just as naive and wrong to say
that all the complaints are going to be legitimate as to say all the complaints are going to be illegitimate. They will be a mix.

MS. CARUSO: Okay. Understanding that we still are on Issue 2 back to the Department to direct us in any form or fashion you see fit, areas where you want to explore within Issue 2.

MS. WEISMAN: I'd like to move to Issue 2.3, what evidence should the borrower be required to provide to support a borrower defense claim?

MS. CARUSO: Abby, Joseline.

MS. SHAFFROTH: Thank you. So in working with borrowers who want to submit borrower defenses I can tell you that they rarely have evidence beyond their own testimony about what happened to them.

There are some circumstances where, you know, where they happened to still have a handout or something. But for the most part they get materials in the beginning, recruitment materials and they throw them out because they
are not, they don't have any record retention
requirements and they're not holding onto things
tinking I'm going to have to prove a case one
day.

They don't think that they're being
taken advantage of and they're trusting
everything that they're receiving. So they're
not stockpiling evidence for a later claim.

In addition to that a lot of the
misrepresentations that occur or at least the
ones that I hear about are oral
misrepresentations. It's, you know, a borrower
is called by a recruiter or meets with a
recruiter on campus and it is at that point that
they are given misinformation about job placement
rates or they are guaranteed that they will get a
job or they are told that they, that their
expenses are all going to be covered.

Those sorts of things. These are all
oral misrepresentations where there won't be,
that borrower isn't going to have any other
evidence other than their own testimony.
So for these reasons in order to make sure that the process is accessible to those who have meritorious claims but don't have other sort of documentary evidence and of course don't have subpoena power or anything to go after and depose the institutions that they should be able to support their claims with their sworn testimony.

And they can, you know, maybe it should be signed under penalty of perjury or something like that to ensure that it sort of counts as testimony the way their testimony would be evidence in a court of law.

And that, you know, in addition to the borrower's own, whatever evidence the borrower is able to submit the Department should also consider evidence in its own records or evidence submitted by state AGs or other enforcement authorities and doesn't need to like just consider the borrower's evidence in a vacuum.

And to the extent that the Department does not credit a student's sworn testimony I would say the Department should provide an
explanation in writing of what other evidence it has that contradicts the student's sworn testimony or what other reasons they have for why they don't find the sworn testimony credible.

MS. GARCIA: I have a question for the Department. External evidence that is made or excuse me that involves like investigations or judgments like how much of a weight do those have for borrower defense claims?

MS. WEISMAN: So I think that really the one set of claims that were filed from former Corinthian borrowers are the only ones that we can really speak to related to that.

There were a couple of other schools that Mr. Manning mentioned this morning as well that would fall into that where we had sufficient information and that was really the majority of what was looked at for those claims.

We have not really gotten into the level of processing individual borrower claims yet. So I can't speak to what might be the process for those.
I think in many of those cases they were kind of put aside because we didn't have that information for those. So where we have good information I think we're using it.

But we're really trying to look forward and say we want to create a process to really outline what we would do and talk about, you know, how useful is that. But in a lot of cases I think we won't have it.

And so that's really what we're trying to gather some more information on as well is what happens when that information isn't available to us.

MS. GARCIA: Thank you.

MS. CARUSO: Michael and then Aaron.

MR. BOTTRILL: Well thankfully my agency doesn't receive a whole lot of student complaints. But of those that we do I would say they mirror what Abby described without much, if any, documentation.

And I, you know, from experience will say that makes it very difficult to, you know,
try to suss out what if anything can and should
be done. Oftentimes a student might claim that a
recruiter or admissions individual stated
something and what we'll get back in return is
well here it is where it's in the catalog on, you
know, page 56.

But in addition here's where the
student signed their initials and said they
received this information. And here's where it
says, you know, the specific, you know,
opportunity and, you know, has far greater
evidence that contradicts the student's claims.

So that makes it, I'm sure, a very
difficult process for the student, I mean for the
Department to try to again determine the truth of
the matter.

But I think at a minimum to Abby's
point there, because of those circumstances there
has to be, you know, at least some kind of
affidavit or sworn statement or something that, I
just don't think you're going to get much else in
these misrepresentation or substantial
misrepresentation claims.

When you get to the next bullet about due process I think you'll have an opportunity to talk also about the opportunity and how "adversarial" you want to make it with regard to, you know, how many times so and so gets to respond back to the other person and the other claimant and whatnot.

But, you know, again minimally I think there has to be something where the student is attesting to, swearing to the testimony that they're providing.

MS. CARUSO: Aaron.

MR. LACEY: Yes, just following up on those comments. Actually I would sort of encourage that the Department aside from just setting that floor which I think is consistent with false certification, discharge and closed school, I mean having to have a sworn statement from the student.

But I would actually suggest not penning yourselves into a policy corner by trying
to articulate anything beyond that. I mean you've got a standard, you know, of proof.

You've got whoever it's going to be in ALJ making or whoever making the decision. You know, you've got the claim articulated. I mean the responsibility of that individual is to gather, you know, through the process and the due process whatever evidence they have and to make the decision they have.

And I don't, you know, I guess my recommendation would be that you not try to articulate some specific set of documents or standards that have to be satisfied. I mean at the end of the day you want a just decision and you want that person to be able to gather whatever they can.

So beyond the floor the certified statement I would probably say, my suggestion is not to try to articulate any particular pieces of evidence that would be required.

PARTICIPANT: In the same vein as Aaron's point I would actually say the opposite.
And I would say you could give examples of what
might be considered evidence so that there's an
understanding of what the opportunity is to
provide that evidence.

But not, it doesn't necessarily paint
you into a corner if you give a couple
opportunities. So you might say, for example, a
sworn statement could be considered evidence on
and on and on though not saying exclusively that
those items would be the evidence required.

MS. CARUSO: Are we all set on
Question 3? Let's go to Question 4.

MS. WEISMAN: So Question 4 asks what
due process and notification requirements should
the Department provide to an institution of a
pending borrower defense claim and what
opportunities should be provided for the school
to respond to a borrower defense claim?

MS. CARUSO: The floor is open.

Valerie.

MS. SHARP: I do think that
definitely, in order for due process to take
place, we do need to set something in the regulation.

It was something that was not clarified in the 2016 documents that there would be a notification to the school, and the school would have proper opportunity to respond and provide documentation.

I don't know necessarily that it's a matter of trying to pit the school against the student, because both responses and things are going through the Department of Education for review, and that is protecting both interests at the same time.

But I do think it is important for schools to have an opportunity to be aware. If nothing else, if it is an inadvertent mistake, it allows them to catch it before anybody else is harmed, but also have an opportunity to respond, provide the documentation that they have.

And in the prior considerations, there was given opportunity for students to appeal decisions, but none for the institution to
appeal.

So, I think we've talked about fair and equitable, and we certainly want fairness for the students, but we want a balance in legislation as well to make sure that schools have an opportunity to also share their side.

And as mentioned several times today, most schools are responding on their own without the backing of law firms in these cases.

Usually I am the respondent, and I do not have a law degree. And so, it is important to note that many times the schools are just providing you with, the Department with the information that they have in allowing the Department to make the decision.

PARTICIPANT: Michael, Abby, and then Kelli.

MR. BOTTRILL: So, this might be the bifurcation of the bifurcation, which would be a quadfurcation, and it goes to what we said before about, you know, if it meets the definition of a closed school, you go into this lane, whatever
that definition is going to be.

You know, precipitous closure, but
with an open school where there is an opportunity
for the institution to have notice and an
opportunity to respond, I think those are the two
lanes that you might want to consider as you're
thinking about crafting the process.

And so, in an abundance of fairness,
to give the institution notification and an
opportunity, I don't know that it needs to be,
again, a back and forth tennis match of
responding to the different responses.

I'll leave that up to the lawyers to
argue about, but you know, certainly notification
and an opportunity to respond would seem fair,
across for all parties.

PARTICIPANT: Abby.

MS. SHAFROTH: So, I'm not sure what
the due process would be beyond notification to
the school, or what's being proposed for due
process, if it's anything other than notification
to the school that a borrower has submitted a
claim.

To me, in terms of due process, if we do have a bifurcated proceedings, if there is a distinct process where a borrower can get relief from the Department of Education, it's just between the holder of the loan and the borrower, and there's an entirely separate process where the Department might decide it wants to seek recoupment from the school, or it might decide it doesn't want to seek recoupment from the school, then I'm not sure that -- it's not clear to me that schools would have any due process interest with respect to the first proceeding, because the outcome would not make them liable for anything.

It would only be if the Department decided to conduct a second proceeding, that the school's due process interests would be at play.

So, I mean, my main concern here is I want to make sure that the first process, the process by which the Department can decide whether to forgive a student's loans, isn't adversarial in terms of between the student and
the school, and also moves at a reasonable clip.

If there's a lot of process points
where the school has 180 days to respond, and
then the student has time to review with what the
school's submissions, and then the school has an
opportunity to somehow appeal the decision, that
is about whether the Department should forgive a
student's loans.

That strikes me that it would really
slow down and burden the process for getting
students relief who really need it.

PARTICIPANT: Kelli.

MS. HUDSON PERRY: In an effort to try
not to echo what Valerie and Michael said, I do
want to just provide some context about what Abby
just said as well.

Where it becomes important from an
institutional perspective is when we get to Issue
Paper 3, and the determination of what the
liability is to that school.

So, if a claim is presented and the
liability does not come back to the school, there
may not be a situation where the institution needs to get involved in that point other than if it was somewhat of a mistake by an individual at that institution, because there needs to be clarification made at the institution so that that mistake doesn't get made again. So, processes might need to change at the school.

So, notification is important from that perspective, but where it really becomes an issue is if there's liability that the institution is going to incur based on that discharge.

PARTICIPANT: Linda, and then Aaron and Dan.

MS. RAWLES: Due process is a very important concept, and it's sort of like free speech or some of our other rights.

All of our opinions change, I guess, depending on where we are looking at it. But I think we ought to really pay attention to this issue.

The thought that -- first, of course,
I don't favor a bifurcated process, but if you had one, and we were supposedly only looking into whether the loan would be discharged, and not the liability of the institution, that's a little bit of a false paradigm, or quite a big false paradigm, because the school has, if nothing else, reputational liability.

The school has an interest from the point someone says to the school, you committed fraud, and so this person doesn't have to pay their loan back.

So, the fact that due process to a school, in that context, consists only of notice, goes against any notion of due process or fundamental fairness I've ever heard of.

What I've always told my clients is make sure that, especially if they're private schools, make sure you're at least giving fundamental fairness, if not due process.

And even if you're not a lawyer, you know, there are just different standards of how much process you give somebody.
So, let's say we're only going to give a school fundamental fairness and not due process from the beginning of the process, that usually requires, or always requires notice, an opportunity to present evidence, and a right of appeal.

So, I think it's pretty obvious, if we really mean that this process is going to be fair to all parties, that the school needs to be involved from the beginning with notice, an opportunity to present evidence, and appeals. We can argue the details of that later.

But to go any less than that, I think, goes against our goal of being fair to all the parties involved.

PARTICIPANT: Aaron.

MR. LACEY: Yes. I mean, I hear very clearly, and I agree that there is a great interest for students in having a process that is fast. I get that. But between fast and fair, I think we have to go with fair every time.

And I echo Linda, I was going to make
essentially the same point. I will add that I think that the regulation should specify that both parties have a right to present evidence, a time period in which to present that evidence, a right to understand and review the evidence that the student has supplied so that they can respond.

But I think those, some of the things that were lacking in 2016 version, in my view, were some guaranteed time frames, the opportunity to provide that evidence, the guarantee that the evidence would be considered by the arbiter, those types of things.

So, and I think whether you have a bifurcated process or a single process, which I prefer, either way, you've got to have those things from the very beginning, for school and for student.

The other point I wanted to make is, if we decide to move in a direction of permitting or contemplating a group process, I think that the due process afforded institutions, in that
context, and students, has to be greater in the
group process, because the stakes, conceivably,
can be very, very high for an institution.

    So, if we decide in the individual
claim process to try to go lean and afford sort
of the minimum amount of due process to
institutions to, for the sake of expediency, I
think, in the group process, we need something
more like what looks in January, you know, in the
regulations that were provided there.

    And I also don't know if, in the group
process, you would have a departmental
representative advocating on behalf of the group,
in which case, all the more reason that would
probably look a lot more like Subpart G, you
know, in the process that was laid out in
January.

    PARTICIPANT: Alyssa, Ashley Reich,
Danny, Michael, and then check-in, which could
mean a break.

    MS. DOBSON: I'm just having
difficulty understanding how the Department would
be able to arrive at a decision to grant the
defense to repayment claim without input from the
school.

I deal with students all the time, and
they'd say something like, well, this professor
did this to me.

As soon as I get feedback from the
professor, it quickly becomes apparent as to, oh,
I see why you thought that, but here's what
actually happened.

So, maybe you could help me understand
that, but I don't see how the Department could
even arrive at a decision without input from the
other party.

Oh, the other thing is that I don't
think it would have to be a long process.
Working in a school all the time, the Department
commonly gives us deadlines for reporting things
back that aren't an extraordinarily long window.
So, we're used to quick turnaround times and
providing documentation quickly.

PARTICIPANT: Ashley Reich.
MS. REICH: In an effort not to repeat, I agree. And the Department, I believe, and the OCR, when they send a request, I think we have maybe five days for a turnaround.

So, I would say that those type of standards would probably remain. I could never imagine a situation why the Department would, you know, ask for 120 day turnaround.

So, I think that those sorts of standards, that shortened time frame, would probably be appropriate here because you already have that standard.

You already asked that of the institutions to provide that. And then, I just echo everything else you just mentioned.

PARTICIPANT: Danny.

MR. FLANIGAN, JR.: Okay. Hopefully, I won't repeat what other people have said, but I do think the process has to be fair, both from the student's side, as well as from the college.

PARTICIPANT: Do you want to get closer to the mic?
PARTICIPANT: Thank you. I do, I do think the process has to be fair, both from the student's side, as well as from the college side.

And you talk about due process of fairness, I think in fairness, you have to notify the college when a student makes a claim, about what the claim is.

And I heard someone talk about five day turnaround, a 30 day turnaround, 180 day turnaround. I think a turnaround should be quick, like 5 to 10 days, and I think that the Department has to involve both the student and the college in the process of making decisions to what they're going to do.

PARTICIPANT: Michael, you're all set? All right. So, Abby and then, and then we'll have a check-in.

MS. SHAFROTH: Sure. I just wanted to clarify that my position wasn't that the Department shouldn't be able to get information from the school to consider.

By all means, I wouldn't tie the
Department's hands in investigating a borrower defense claim. It's simply that I wanted more clarity around -- it's two points.

That, one, when we're deciding whether the Department should decide to forgive a student's loans, then I don't think that the school has a due process interest in that decision.

I think their interest is in whether the Department is able to hold them liable or to recoup from them.

And second, that if we're going beyond notice to the school, that I'm wary of trying to create a process where the institution has more procedural rights in the decision of how to allocate funds between the Department of Education and a student borrower, especially if we're beginning to talk about appeals of the decision, a decision that is between the student and the borrower.

If the institution isn't a party to the decision, I am not sure why or how they
should appeal that, and that makes it sound, if
we're talking appeal, that makes it really sound
like an adversarial process between the student
and the school, which, again, I won't repeat
myself, but it's going to be very hard for any
student to navigate.

PARTICIPANT: Okay. Mike, you have
something on due process?

MR. BUSADA: No, and I completely
understand where Abby's coming from. The one
thing that I would say though is that, if you are
a smaller institution and you have a student that
goes, and the loans are forgiven, and they come
back to a small town like many of us live in and
they go to the newspaper and say, the Department
of Education agreed with me that fraud was
committed on me.

If we have one student do that in our
small town, we're done. You shut it, I mean,
Katie, close the doors, because it would have
such a big effect.

And so, that's the only place that I
would argue that I think it does have an effect on the school, because if you're a small school in a small town, their reputation is all you have.

PARTICIPANT: Okay. We can take Dan and Bryan.

MR. MADZELAN: No, just to reiterate that, you know, every institution faces at least financial risk, as well as reputational risk. And even if there is not a financial risk in a particular circumstance, a college or university can certainly be facing reputational harm in that circumstance.

MR. BLACK: One of the things that we're very cognizant of is, for example, I went on the internet and typed in student loan discharges, and Student Loan Hero came up. And you know, when we talk about a reputation, of a school having a fine reputation, but having something like that happen in a small college setting, it becomes devastating, just as Michael was saying. Let me give you some little
insight, and the way, for example, grievances are handled.

As an attorney, you have a request for investigation that's done through a written response.

Following that, if they find that there's a threshold merit that's been met, then it goes to a mediation of three attorneys who look at all the facts and the evidence. And then, if they find it's warranted, then it goes to a commission at the last stage.

So, there's always a tremendous amount of due process in everything, and to suggest anything less than that, especially in light of our climate, where we have really seen where students don't necessarily have a complaint against our school, but they want to be discharged of the debt. And so, that's a big concern of ours. Thank you.

PARTICIPANT: So, sounds like we are wrapping up Question number 4. So, back to the Department, it sounds like we've heard some
responses to Question 5 in the course of our conversation. Anything left there? And how about number 6?

PARTICIPANT: The other thing I do want to point out though, for Item 6 is, talking about the opportunity for borrowers with other federal loans to consolidate the loans into the Direct Loan Program, we want to remind people that, yes, we are already doing this as a process, but we want to remind people that a consolidation loan is a new loan.

So, we would want to consider that as our discussion is framed here, that any language we write, we'd want to make sure, if you wanted to include then that consolidation loan, which presumably you would, that that would need to be written into language.

Because again, it becomes a new loan, so the underlying loans are no longer what we would consider.

So, it's just a point of clarification, and happy to hear your thoughts on
that, as well as if you do have anything left on Item 5, Bullet Point 5, whether the school is open or closed and needing a separate process.

PARTICIPANT: Okay. Assuming Bryan's tent is ready to go down, Alyssa, and then Wanda, and then Abby.

MS. DOBSON: I think consolidation is an, is an important piece to remain in there, but my concern or question, or both, is would there still be a process to parse out which loans within that consolidation loan were subject to the misrepresentation, or if a student had a misrepresentation claim and consolidated, would loans that were completely unrelated end up being forgiven in that process?

PARTICIPANT: And my understanding is that there is a way to do that, but that is some of the delay in regards to the current process that we're using, that some of the ones that are taking longer to discharge than others, Mr. Manning referenced that this morning, that that's part of one of the reasons why that can happen.
PARTICIPANT: Wanda.

MS. HALL: A little bit back on 5, the distinction, when you're looking at closed schools is you're going to, you're still going to have borrowers that are not going to be eligible for the closed school discharge because of the timing criteria. So, then you have another, I guess another exit ramp or something, or go this way scenario.

PARTICIPANT: Abby.

MS. SHAFFROTH: I'm glad it sounds like the Department is interested in ensuring a path to forgiveness for student borrowers whose loans are in the FFEL program, as opposed to the direct loan program.

Since borrowers generally haven't chosen the origin of their loans and which type they get, it's very important to ensure that borrowers with FFEL loans have an opportunity to relief.

My preference would be to also revise the FFEL regulations to provide those borrowers
with a direct path to leave, relief, without
having to go through the consolidation process.

    But if, you know, as a sort of second
best, if the Department is not willing to go that
route, allowing a consolidation process and to
treat that direct, new Direct Consolidation Loan
as eligible for relief is very important.

    This also though raises the issue of
refunds for amounts that the student already
paid. I would strongly counsel in favor of
finding a way to provide borrowers who had FFEL
loans and who have already had amounts paid or
collected on those FFEL loans before getting a
discharge with a way to get refunds of those
amounts.

    PARTICIPANT: I do think that the
consolidation is a, is a good idea because if the
student has loans, they have loans, right?

    And the idea is that we're discharging
them from payment based on some type of
misrepresentation.

    I guess the part that I don't
understand is why would we make them go through
the consolidation process in order, before that
discharge is granted?

PARTICIPANT: There are some legal
barriers to discharging it directly from the FFEL
program, and that was the work around that we
were able to come up with to try to provide some
parity.

PARTICIPANT: Ashley Reich.

MS. REICH: When it comes to
consolidation for those that had older FFEL
loans, it actually may be advantageous for them
to consolidate because they could get a lower
interest rate.

And when we've been talking about
administrative forbearance and interest, you
know, capitalizing or continuing to accrue, you
know, while the student is waiting for their
particular application to be processed, that
actually might help them.

Like I said, especially if they have
a lower interest rate. So, just something to
consider there.

PARTICIPANT: Wanda.

MS. HALL: I think one thing that we have to be cautious of is that, generally, what you'll see happen, the borrower may consolidate all of the loans they have.

And so, maybe they have some loans that are legitimate. Loans they don't, you know, they're not going to be dischargeable. Let's put it that way.

If they're working towards a forgiveness plan, then if they consolidate, then that counter is back to zero again. So, it comes down to counseling as well.

PARTICIPANT: Jaye.

MR. O'CONNELL: I seem to recall, the last time, that there was a pre-qualification process through the Department.

So, if someone did not have a consolidated FFEL loan, that they would be advised to consolidate as a result of being approved for discharge. So, I think that could
help with the loss of benefits.

PARTICIPANT: Abby.

MS. SHAFFROTH: I don't think that this is addressed in the regulations that weren't delayed and didn't go into effect, but just as a technical point, there have been some FFEL borrowers who aren't eligible to consolidate into a Direct Consolidation Loan, including those who currently have a FFEL consolidation loan and are current on it, are not in default.

Unless that was already changed and I'm forgetting it, I would encourage the Department to also amend those regulations to permit borrowers who have FFEL consolidation loans to consolidate into a Direct Consolidation Loan in order to be able to access this path to relief.

PARTICIPANT: All right. Looking for any final comments on Issue number 2. We are going to move towards a break after, Joseline?

MS. GARCIA: Sorry, I had to step out.

So, if I could just quickly take it back to the
due process of notification to the institution of
a pending BD claim.

So, I have a question to the
Department. So, if a school were to get notified
of the pending BD claim, would the name of the
student be given to the institution?

PARTICIPANT: I think right now, we're
here more as a listening session, so we're here
to hear your ideas of what you would like to see
in this. We're open to your feedback.

MS. GARCIA: Okay. So, that being
said, I would worry about that. If an
institution found out, like, who the student was
and, again, putting it out there, that some
schools are bad and some schools are good.

I could see some forms of intimidation
or reaching out to the student while this claim
is pending.

And obviously, the institution is
looking for their self-interest, and the student
could be at risk for other behaviors.

PARTICIPANT: Will, and then Alyssa.
MR. HUBBARD: In response to that, I'd recommend that the Department consider having an opt in option to include the name, otherwise it would be anonymous as a potential concern.

MS. DOBSON: Without an identifier, the school would have no way of which to verify or provide information about timing of enrollment, the information that was being provided at that time, the placement rates at that time, if the student changed their major, when they started, did they culminate in a degree, and any of those really, really important things wouldn't be identifiable.

PARTICIPANT: Aaron, Linda, and Michael.

MR. LACEY: Yes, it's a fundamental component of due process that you can confront your accuser.

Now, you know, there are accommodations that are often made, particularly in sensitive issues. I'm not suggesting they should actually be able to confront the person,
but the reason for that is because, you know, to
the point that was just made.

And I get the sensitivity, but there
is no way an institution could defend itself.
And I understand for scumbag institutions that
have done wrong, this is a crappy outcome.

But for institutions that haven't done
anything wrong, there's no way they can defend
themself if they don't know who it is.

And I think in the existing processes
at the Department, closed school loan discharge,
false certification discharge, you always know
who the student is because it's the only way the
schools can provide evidence and respond.

So, it would be totally consistent
with existent processes to supply the name of the
student.

PARTICIPANT: Linda.

MS. RAWLES: I'm trying not to repeat.

I do agree with Aaron, but you absolutely have to
have that as a component of due process.

But what you can add is an anti-
retaliation provision so that if either party
does something in retaliation, that's an
additional claim. So, you know, that's something
that people deal with all the time.

PARTICIPANT: Thank you. Michael, and
then Danny.

MR. BOTTRILL: The anonymous
complaints that our agency, and I think other
accrediting agencies receive are extremely
difficult to, again, suss out the truth of any
matter.

It just makes it impossible for the
institution to be able to find any relevant
information about the claims being made.

MR. FLANIGAN, JR.: I would agree with
Linda and Michael, and Alyssa. It would be
impossible for the college to amount a defense if
it had no idea who it's dealing with. So, you
have to give us the name.

PARTICIPANT: Okay. Dan and Aaron,
are you taking, thank you.

PARTICIPANT: Yes, I said a moment ago
that, all institutions face reputational as well
as financial risk, and I'm wondering, maybe Aaron
can help me out here.

The other thought I had, and I don't
know sort of which way this plays, but you know,
bond rating agencies certainly take a look at
institutions and their balance sheets and assets
and liabilities.

And I'm just wondering if institutions
are not notified, is that an unknown that plays
one way or the other with the colleges' cost of
capital?

Or, again, I raise that question
because I don't know. But I do know that
investors are very risk averse.

PARTICIPANT: Joseline, and then back
to Danny.

MS. GARCIA: So, I do want to say I
appreciate the comments and perspectives that you
all brought.

And I do also want to respect due
process and the schools and institutions to be
able to defend themselves.

    Again, just looking out for the
students, I'm not a lawyer, so I don't know what
exactly this would look like, but brainstorming
ways that we can ensure that students are
protected, and that they do not be taken
advantage of during that procedure. And it might
be an external entity. I don't really know.

    PARTICIPANT: Sure. That's a valid
concern. Thank you. Danny, you're good? Okay.
So, Valerie, and then Kelli.

    MS. SHARP: I just wanted to respond
to Joseline, and just let her know that in cases
where students have filed complaints and were
given the names, the Department is involved and
watching to ensure that nothing untoward happens
to those students, and that both sides can
respond, but both sides are also protected in the
process.

    And so, that is important for the
students to be protected, but the Department is
involved in ensuring that that happens throughout
the process. And so, I think that is happening today.

MS. HUDSON PERRY: This, some --

PARTICIPANT: Quickly, just to answer your question, a retaliation claim or a whistle blower's claim is a lot for fearsome to a school than what we're talking about here.

I mean, that's one of the easier causes of actions to prove is a whistle blower's claim. So, students, quite honestly, would be protected.

That's the last thing a school would want is to know a student brought a legitimate concern and they were retaliated against as a result of that.

So, I think there's built in mechanisms already, and are jurisprudence to handle that, if that helps you with your answer.

PARTICIPANT: All right. Kelli, and then we're going to try to wrap it up on Issue 2.

MS. HUDSON PERRY: Just to further comment on Dan's comment about assets and
liabilities, it's important that the institution know the name of the, of the individual because they're going to have to evaluate the status of that claim and whether or not that claim is probable.

So, when we get to Issue Paper 3, and we talk about whether or not there's any financial liability for that institution, we then need to be able to determine whether or not that should be recorded on the financial statements of the institution as a potential liability.

So, it would be almost impossible to not know who that student was so that we could determine that probability.

PARTICIPANT: Lodriguez.

MR. MURRAY: Representing the minority students, the institutions that they serve, I have to say that an institution would have to have a lot of moxie to try to intimidate a student after they've initiated a claim with the Department of Education.

And you've got realize what's at stake
for the institution. It's more than just their reputation. Institutions want to continue to have a relationship with the Department of Education, without which, they won't exist.

And so, intimidating a student after they bring a claim and initiating the kind of thing that some around the table are apprehensive of is just almost unconscionable.

It's just the biggest snowball an institution could ever find themselves in. And so, I understand some of these concerns.

We're representing both institutions and students, and we're very sensitive to your needs.

But I want to assure you that if you're looking for something that's evenly weighed, where institutions can defend themselves if they have a leg to stand on, and students can voice their concerns, which are legitimate concerns because they're the reason why we're here today, then you've got to allow some kind of an avenue for this to move forward and the names
to go forth, because schools, real good schools, are just never going to engage in the kind of thing that you're concerned about.

PARTICIPANT: Okay. We'll hear from Will.

MR. HUBBARD: It'll be one second.

PARTICIPANT: Briefly, if possible.

MR. HUBBARD: It'll be very, very quick. So, the point that was made, and which I fully appreciate, is that good schools would never do that, bad schools will always do that.

MR. MURRAY: Short reply. No one that wants to continue the relationship that's necessary with the Department of Education would ever engage in that kind of thing, whether you're good or bad, because good and bad are looking for the same thing in their --

PARTICIPANT: Thank you, folks.

MR. MURRAY: -- relationship with the Department.

PARTICIPANT: Thank you. All right. I believe we are wrapping it up on Issue 2.
Anything left in the questions that the
Department feels need an answer?

PARTICIPANT: No.

PARTICIPANT: You're good on Issue 2?

PARTICIPANT: We're fine. Thank you.

PARTICIPANT: Okay. We are going to
take a 15 minute break. It is now 3:00. Please
come back at 3:15. Nice work, everyone. Thank
you for the progress.

(Whereupon, the above-entitled matter
went off the record and resumed following a brief
recess.)

PARTICIPANT: Okay. So, getting
started again, just to congratulate the parties
on the process made this afternoon, and to note
that, conceivably, if we get five questions
addressed this afternoon, then we are halfway
through the Issues. With that in mind, can we
have the Department start to address Issue 3,
summary?

PARTICIPANT: Yes. So, the issue here
is financial responsibility and administrative
capability.

So, under the Higher Education Act, the secretary establishes standards for financial responsibility and administrative capability that institutions need to meet in order to participate and receive Title IV funding.

We've mentioned here that if an institution violates these requirements, the secretary may, what refer to as an LS&T, limit, suspend, terminate, and/or otherwise set conditions on the institution's participation in the programs.

So, for the current regulations that we have in 685.206, borrower defense discharges are granted when a borrower can show that an institution committed a violation of applicable state law.

When we discharge those loans, the taxpayer is the one who pays on those loans. That then brings up the issue of where we should hold the institution liable for recovery of those funds. So it's, should we do that? If so, how?
We've already had some discussion around the idea of reputation, and what the allegation of a claim could do to an institution's reputation.

We want to be mindful of issues that could increase the likelihood of an institution to close, especially to close rapidly.

We also want to consider the idea of schools that are having difficulty already, may then have difficulty repaying liabilities for claims.

So, we want to keep those things in mind, and then say, what should we, as the Department, do? How do we handle the issue of financial responsibility?

In the past, when we regulated this issue, we talked about the idea of posting surety. So, typically, that's done in the form of a letter of credit.

We also talked about the idea of offset. There are other strategies that we could talk about, so we'd like to know, is that
something that the Committee feels is worth pursuing? Again, if so, how?

So, questions for consideration, I think 1 and 2 kind of come together for us. The first one is under what conditions, or to what extent, should institutions incur liability for reimbursement of borrower defense claims?

And the second one is should the Department require the posting of surety by institutions determined at risk for closure, and/or, I'll say significant borrower defense claims? If so, what metric should be used when you're making these determinations?

PARTICIPANT: Does anyone want to start us off?

MR. FLANIGAN, JR.: I do.

PARTICIPANT: Danny?

MR. FLANIGAN, JR.: I have a question for the Department. There are some financial responsibility ratios that higher education has to its advantage now, and for its use.

Those ratios are being looked at,
probably redefined by the Subcommittee on ratios. So, my question is if we come up with some metrics based on how institutions should be judged and looked at, or penalized, or sureties raised, and et cetera, are we looking at the old standards of financial standards, or are we looking at the new standards, which we've never seen yet?

MS. WEISMAN: I can clarify that. Keep in mind that, first of all, anything the Subcommittee does is a recommendation. So, everything that they do is reported out in some way, here. This Committee is the decision making body. They are not a decision maker. So, also to clarify, they are not really looking at the same things we're looking at.

So, we'd ask you to look at the effect on a composite score as it stands today with the understanding that they are looking strictly at FASB standards, the Financial Accounting
Standards Board.

So, they're not looking at the things that relate back to borrower defense. They are looking at some very unique situations that affect the composite score.

But I think anything we do here would not have overlap on those things. If that were to occur, we could certainly review that again, but I think that the decisions that we need to consider here, or the questions that we need to consider here are unique enough that we can get some feedback now.

But again, we can always revisit if it yields, if the Subcommittee issue work yields some additional questions for us.


MS. HUDSON PERRY: To kind of echo what I had said earlier about kind of a two pathway approach, I think there needs to be consideration, obviously, if a school is closed, and the reason for that, the fact that that
school closed.

    However, with that, if an institution
is found to be misrepresenting something where
the discharge is appropriate, I do think that the
institution should be held liable for the
discharge of those loans.

    However, the institution needs to be
able to participate in that process, and not go
so far as an appeal, because hopefully they're
included at the process from the very beginning,
but if they're not, they need to be able to
appeal that process to make sure that their claim
or their defense is part of that record before
that discharge actually happens.

    Tying this borrower defense issue to
financial responsibility, as the way that the
current rule is written, is difficult, because
with the current ratios that are calculated in
their current format, and I understand the
Committee's going to talk about the new FASB
requirements, as it relates to those.

    There's issue with the calculations as
they currently exist in the fact that the
Department is not being consistent in their
interpretation of those across schools, and also,
from the perspective of -- there's not clear
interpretation of what the accounting rules
actually say.

So, for example, you have schools out
there that will pass the financial responsibility
ratio and probably are not financial responsible,
and you also have schools out there that are
failing that financial responsibility ratio who
are not at risk of closure, and won't be.

So, to tie these two together, I think
there needs to be a very clear distinction of the
difference between whether or not a student, or
an institution is considered financial
responsibility based on that score, and what
surety the institution would be expected to
provide, based on borrower defense.

Because, at the time, you don't know
what the potential liability is. So, to ask an
institution to provide surety, in what amount?
You know, it's going to be different for all institutions. You could have some institutions where I think the 2016 rule had a materiality threshold of $750,000.

For some schools, that's not material. For others, that's very material. So, without having a hard number to say, this is your potential liability, as it relates to borrower defense, providing surety behind that is very difficult to quantify.

MS. ROBINSON: So, Kelli just echoed my sentiments, but I want to add one other thing. When we talk about the rule, the rule fails to establish clear standards for how the relief and recovery will be calculated, and that's going to lead to significant inadequacies, inequities, if borrowers and institutions are treated differently. So, I would like for the Department to respond.

MS. WEISMAN: I think we're at the point where we're trying to gather information from you, so we'd like to hear what you would
propose as an alternative to that from happening.

MS. ROBINSON: I would like to take some time to think about that and come back and answer, but one alternative that I do think that we can look at when we talk about fairness is, if you're going to have an institution be held liable for a claim, then we really need to start looking at the rules and the tactics, and maybe tactic is the wrong word.

But we need to come up with something that's uniform, and I think we also probably should have two different avenues and I don't want to call anyone out, but I think for privates and HBCUs, you might look at one list of standards, and then for for-profits, look at something else.

PARTICIPANT: Dan.

MR. MADZELAN: A long time ago, I worked at the Department of Education, and my first boss came to Washington to get the National Defense Student Loan Program, now the Perkins Loan Program, up and running.
And he told a story that after a
couple, three years, they realized, we have a
loan program and there's got to be repayments of
those loans, and we don't know anything about
that, and we don't know anything about what we
should expect from borrowers. Let's go ask some
people who do know. So, they met with some
bankers.

And so, they explained the program to
the bankers, and the bankers said, let's get this
straight. You're lending money to 18 year olds
with no employment history, no credit history, no
collateral, no cosigner?

Yes, that's right. Any default rate
less than 100 is good. So, and now, today, we
have a program that is also an entitlement.

Colleges and universities, except in
some limited cases, a case by case basis, cannot
say no. You are in an eligible program. You are
otherwise eligible, not in default. You fill out
a FAFSA, all that kind of stuff. Here's your
loan.
So, now I think what the Department is looking for some information on, is whether or not, in this regulation, we should establish some sort of risk sharing scheme.

Colleges and universities cannot limit lending. One of the things that the Department can do is perhaps a more vigorous job on the front end, some of their gate keeping activities to identify colleges that maybe are not up to standards.

But instead, what is being proposed, I won't say being proposed, what is here for discussion is, again, as I say, some kind of risk sharing scheme, to have colleges and universities cover some portion of successful borrower defense claims.

Well, with any risk sharing scheme, you have to be prepared to address two issues. If you're not careful in the construction of, well, you need to address the issues so you can be careful in the construction of your scheme.

Number one, it'll raise prices for colleges.
Somebody's got to pay.

If the college is paying something to the Department of Education, that's one. The other one is, a response from a college that is likely is limiting access.

So, again, somebody has to pay, either in a dollar and cents way, or in a reduced opportunity way.

So, again, these are the kinds of issues that, over the recent past, that the relevant congressional committees have been struggling with, as well.

My last comment is, in the Issue Paper there's a statement that excessive borrower defense claims may be an indication of an increase in the likelihood of an institution closing.

And of course, that's what our financial responsibility standards are about, to help prevent the sudden and precipitous closure.

I'm just wondering if anyone has any evidence that a borrower defense claim, or
something like that, is an indication that a
college or university is in immediate danger of
closure.

And I say "something like that"
because we know there have been instances where
there have been some what we call, well, the
private label loans, non-federal student loans,
where institutions have been effectively
guarantors and, you know, writing off --

PARTICIPANT: Dan, just because of the
time that's elapsing, can we get a direct answer,
either to Question 1 or to 2? Under what
conditions or to what extent, or should the
Department require the posting of sureties?

MR. MADZELAN: I think, unless the
Department can come up with a scheme that ensures
non-negative outcomes in terms of price and
access, that is something that they should not
pursue.

PARTICIPANT: Michael.

MR. BOTTRILL: So, with regard to
Bullet number 2, more than one, you had Annmarie,
mentioned that the posting of surety that you used, the Department uses now, is in the form of the letter of credit.

And I don't have any experience with any other kind of surety that I've seen the Department use.

So, by putting that forward, I'm assuming that you're looking potentially at opening up to other kinds of sureties, like a bond or some other kind of opportunity.

And where there can be some difficulty with that goes to the point that, I think Kelli made, which is that the current metric that's used for financial responsibility needs some work, and I'm glad that that's going to happen through the Subcommittee and through this Committee.

And it also seems to be fairly binary. If you're below the 1.5 composite score, you move into, you know, the heightened cash monitoring.

And whether you're at 1.4 or -0.5, there may be some degree, and there's some
gradation to the percentages that you may have to pay, or some gradation to whether you're going to, immediately into HCM2, but maybe there could be some thought about additional gradations within that composite score so it doesn't feel as binary or as limited as it, as it may be.

And I, well, what I think that we see, because we use the composite score as an accrediting agency because it, to parallel with the Department and not create an additional burden.

And essentially, we see institutions "managing to the composite score". So, they, you know, move money in ways that, you know, give them the best opportunity to make that.

And it's not always a great indicator of the full financial health of an institution. And we've seen, on more than one occasion, precipitous closures from institutions that just, three or four months earlier, had reported, you know, greater than 1.5 composite scores and we completely missed it because we just didn't see
the financial stress that was there.

So, again, I'm happy that that's going to be looked at. The last thing that I'll say is maybe there's more opportunity for the limit, as opposed to just suspend and terminate.

And I think that, again, this goes back to my idea around gradation and differentiation, which is one of the things that, in the accreditation community, we've been talking a lot about differentiation and accreditation.

And so, that's not so binary, and I'm not fully convinced that we'll get there fully, but it's something that we're talking about.

Maybe there are ways, and I know it's difficult because it's an entitlement, and I know that folks around the table have already said, well, you can't limit a student.

But maybe there are limit actions on the institutions to the extent of how much more liability, how many more loans can be given out at that institution when some kind of distress
has been identified, when some kind of deficiency
has been identified, or when some other kind of
care has been brought to light.

PARTICIPANT:  Aaron?

MR. LACEY:  Yes. So, you know, and I
think a lot of the folks in the room already know
this, but the Department already has pretty broad
authority under existing regulations to require
reporting and letter of credit where they see a
financial responsibility risk.

I mean, I have clients now that I work
with that provide the Department on a bimonthly
basis with cash flow analyses, pro forma
financial statements, by student, by program, by
campus enrollments.

You know, I think that the amount of
reporting and attention to institutions that are
potentially distressed, on the part of the
institution, on the part of the Department has
increased in recent years, which is probably a
good thing.
But where I'm going with this is, you know, I don't, I don't think that there is a great need at this point to expand or develop in the regulations a series of instances or events or anything along those lines that would specify a reporting, you know, a certain, in other words, I think you've got that authority.

And I think that the discretion to exercise that authority, at present, without boxing yourself in with certain regulatory triggers or what have you, is probably preferable.

I could understand the Department wanting internally to develop more protocols and think more further about, or think further about exactly what types of situations would warrant further reporting, but I don't think that needs to be in the regulation. If anything, again, I think it boxes the Department in.

So, this is to 2. With regard to sureties, you know, I know there was some conversation the 2016 round, and it looked like
in the, in those regulations that were developed about affording institutions alternatives to the traditional letter of credit.

I think that's great. I encourage the Department to consider other forms, and that could be cash and escrow, there are insurance products that are being developed. That could be bonds.

But I think all of that is good, as long as the Department is getting the security that it needs. But it does give institutions more flexibility to try to provide the Department with the comfort that it needs.

I think you have to be really careful about requiring whatever form of surety you might think is necessary prior to, in the example of borrower defense claims, there being actual determinations that the borrower defenses are valid.

That it can be, if you go and require some sort of letter of credit or surety in the amount, and this can be, you know, hundreds of
thousands of dollars, depending on the amount of
Title IV an institution pulls down, which is
typically how it's calculated.

That can be an enormous penalty that
you're, you know, and burden that you're putting
on the institution.

And I believe that, prior to, if
you've got a bunch of borrower defense claims
that have been lodged against the institution,
until those are adjudicated and a determination
is made, I could understand heightened reporting
requirements, because I know you want to
appreciate the risk.

But I think actually requiring that
the, that the institution post that surety would
be a penalty being placed upon the institution
before anything had actually been determined.

PARTICIPANT: And I believe the
Department had wanted to respond.

PARTICIPANT: Just a very brief
response. I want to clarify that we did, in the
2016 regulations, kind of leave the door open for
the idea of alternatives to letters of credit.

The feeling was that, first of all, we
wanted to be flexible in terms of something that
was not available at the time might possibly
become available later.

And as Aaron mentioned, he said he
believed that there might be insurance products
that were in development or that might be
available.

Right now, we're not aware of, also,
Michael had brought up the issue of bonds. We
are not aware, currently, of any bond product
available.

We met with some people in that
industry, and they were interested in what we
were looking for, but we're not aware, currently,
of anything that exists.

So, I think that one of the things
we're open to is the idea of, you know,
considering alternatives.

The idea of having cash reserves, we
had talked previously about the idea of offset.
There are things that are possible.

But again, there are some things that we might be open to, but we just aren't aware of the product being available. So, keep that in mind.

If you have suggestions on things you'd like to see, certainly let us know, and keep that in mind as we go down the path of pursuing language.

The other thing I would like to remind everyone, again, is that, and I don't want to repeat too much, but the idea of the Subcommittee, just to please keep in mind and refer to those Issue Papers if you have questions. But their scope is limited to those discussions.

So, they would not be revisiting and recalculating the score, looking at those kinds of issues.

They are looking at the FASB standards, the Financial Accounting Standard Board, the changes that they've had in their
standards.

So, they will be bringing things back to you here for that discussion, so we will have a full discussion of those issues, especially during the second and the third sessions.


MS. HUDSON PERRY: While not in favor of this concept of the, of the surety, the one thing that I will say and I haven't heard mentioned is the concept of the use of unrestricted endowment as something that a school could possibly put up as collateral.

PARTICIPANT: Michael?

MR. BOTTRILL: So, while not all, many, maybe even most of the precipitous closures that my agency has experienced have been linked to financial soundness, or you know, more specifically, the lack thereof.

And so, I appreciate the Department's, you know, position to try and be able to identify that.
But Aaron, to your comments, if the number of claims reach some point that puts the institution, or potentially puts the institution in such distress that it, that there is a likelihood that it would close, should those, should the institution be found liable, then I think it’s reasonable for the Department to have some kind of threshold to, again, limit, or letter of credit or some kind of surety with regard to that.

And so, the way that you use percentages, you know, if the, if the number of claims exceeds 10 percent of the Title IV, you know, distributed the previous year, like you do with the letter of credit requirements, that might be a metric that you could, you could look at.

You know, some percentage that, if it gets to be so high that there is a, that there is a concern, that should the institution be found liable for those, there is a likelihood of closure, and precipitous closure.
PARTICIPANT: Danny and Walter.

MR. FLANIGAN, JR.: I like the idea of being able to put cash and reserves or quasi-endowment up as a surety if the Department so needs one.

But I have another question, and I keep coming back to this. The way the Department interprets the financial standards is different from the way the Financial Accounting Boards account for those standards and interpret those standards.

Are you trying to move to interpret the standards in the same way of the Financial Accounting Standards Board, or are you going to continue to interpret them differently from the Financial Accounting Standards Board?

PARTICIPANT: Based on the work that we've outlined for the Subcommittee, I don't think our plan right now is to revisit any of those other standards.

So, I would not look for the way we've characterized issues related to financial
responsibility to change at this time.

PARTICIPANT: Okay.

PARTICIPANT: Walter?

MR. OCHINKO: I just wanted to make a point about endowments. Not all sectors have endowments.

So, the other point I wanted to make is that when we were discussing financial responsibility and the triggers during the last negotiations, I think one of the points in favor of the triggers was that they acted as a deterrent.

So, it's not just that, you know, you would actually have to have a surety bond or some kind of financial commitment on the part of the institution, but that it would deter bad behavior on the part of institutions, and I think that's an important goal to keep in mind.

PARTICIPANT: Any additional, any additional thoughts on Items 1 and 2?


PARTICIPANT: Barmak?
MR. NASSIRIAN: I missed part of the conversation, so I apologize if I'm out of order or whatever.

But with regard to 668.15, leaving aside the issue of, I don't know why the Department wants to track contingent liability associated with future successful borrower defenses to standards of financial responsibility.

I would think the Department's interest is to ensure that all participating institutions are financially sound on the basis of the totality of their circumstances.

And I think, you know, intellectually, I think what happened 20 some years ago was that we got so mesmerized with precipitous closures, that if you look at the metrics that are in current regs, they're all focused on liquidity and short-term cash flows.

And I think the lesson we may want to take away from the crises of the, of our more recent vintage is that financial soundness
transcends just a current ratio and the absence of prior bad triggers.

So, I would suggest what you really may want to look at is something along the lines of what, I think Michael was hinting at.

Some ratio analysis that focuses, in the case, but depending on sector, on either adequate capitalization, vis-a-vis loan volume, or available resources in the case of a non-profit, vis-a-vis the liabilities that are generically created. I think that's one of the problems we have.

You can, you can, you can pass the current ratio test through manipulation of resources, and very quickly strip out the operation and become insolvent in three months. I mean, that's what happened.

Corinthian, if my, it was either Corinthian or ITT. I recall very vividly that I could've bought it, like, you know, the equity in my home was less than the market cap, like, two weeks before collapse.
And that's one of the problems, I think, with the, with the standards we now have. I don't know that that has anything to do with borrower defenses. I think that's just a matter of bringing the 668.15 up to date.

And then, I think the concerns that my colleagues in the for-profit and the not, nonprofit sectors have raised, that financial accounting standards have changed and the Department has just not caught up with them. I think that's accurate too.

PARTICIPANT: Okay. Additional comments from the Working Group on Items 1 and 2? Okay. And we do understand that it is extremely hot in here. We hope that's not quelling conversation. The thermostat is not set to the current temperature, and we have sent someone out to hopefully address the issue.

Do you want to open up Item 3 for us, Annmarie? Or do you have any further questions on 1 and 2?

MS. WEISMAN: So, I think we are
interested in hearing a little bit more about
Bulletin Point one. I think that we didn't quite
get as much as we were hoping for there.

So, if anybody has additional thoughts
on Bulletin Point number 1, we would certainly
invite you to let us know about that, as well as
Bulletin Point number 3, which is should the
Department take additional steps to protect
taxpayer interest? And I'll elaborate there and
say, if so, then what, specifically?

We're looking for, again, this is,
this is really our listening session where we
hear from you, what your concerns are, what your
reactions are to these papers.

So, we're looking for as much detail
from you as we can get on these. Again,
especially on Item number 3 and 1.

PARTICIPANT: As a public institution,
I'm fairly insulated from the financial
standards, but is this the section under which
you would potentially consider those triggers for
the letters of credit, or do we not have to talk
about those? Because nobody's really saying --

MS. WEISMAN: You can certainly, you can have a discussion about that.

PARTICIPANT: And you know, from the school perspective, broadly, I think we should have a conversation about that because what we ended up with was something that was kind of not ideal for access institutions, for one thing.

I think, should the Department utilize letters of credit to protect taxpayer interest, that it should be carefully delineated to not capture schools whose mission puts them at risk of meeting the letter of credit just by the very virtue of student that they are serving.

PARTICIPANT: Linda, and then Aaron. Do you want to sit down?

MS. RAWLES: No, thank you. Just a suggestion, depending on what other process is in place or what other standards, I think this also, you should have a placeholder for possible defenses, affirmative defenses to liability by institutions.
Perhaps there is where we talk about whether they have a robust compliance program. There was no intentionality or even reckless disregard. They make a good faith effort to have, you know, information out for students.

I don't know what all of them would be. It would be a nice discussion to have, but I think that we should consider affirmative defenses to liability.

MR. LACEY: Yes, I mean, I, speaking to the triggers, I think the idea of listing a list of events and tying those automatically to the posting of some sort of surety or in the final rule that came out in '16, you know, to some sort of automatic and interesting recalculation of the composite score, which we seem to all agree needs work, I think is a bad idea.

I just think it's very problematic and it hems in the Department, in a sense, because it forces automatic behaviors.

But I think, you know, it seems like
the real concern here is, and the real fear, given past events, is that you could have a situation where you've got a school that's in serious financial stress, or there's a problem and the Department wouldn't know.

You know, the point I made earlier, I will reiterate, even though I'm not supposed to, and that is the Department has the total power and authority to do that now. I mean, it has, and it is doing it now.

I think if you wanted to develop, I would say, not in the regulations, but in the sub-regulatory guidance, but even in the regs, a list of events that, if they occur, they have to be reported to the Department. I mean, that makes sense.

And then, the Department is formalizing and saying, if anything, if these things occur, we want to know.

But I wouldn't tie them to an automatic outcome, understanding that the Department has the authority, under financial
responsibility, that if it sees something that
gives it concern about the institution's
solvency, and by the way, it doesn't even have to
go through the composite score.

I mean, today, if the Department
thinks an institution's in risk of closure
because their accreditor is taking an action, for
example, or something along those lines, they can
put them on HCM1. They can go ahead and proceed
to a surety.

So, these tools are in the tool bag,
and I would, I would encourage that the
Department resist putting together a bunch of
automatic triggers, or boxing itself in. I think
it has that authority already.

PARTICIPANT: Lodriguez?

MR. MURRAY: Just to give this
thought, injected, speaking of the automatic
triggers, I want to speak from the perspective of
the minority-serving institutions, specifically
private colleges and universities, and even more
specifically, private historically black colleges
and universities.

    Having to pledge those letters of
credit based on those triggering events may not
even relate to the financial condition of the
institution.

    And we believe that having the
triggering events, they're already building upon
even more flawed standards previously existing at
the Department.

    We believe that because of the status
of the students that we have, oftentimes first
generation college students, et cetera, that
private historically black colleges and
universities can be in a more precarious
financial position.

    And having to have these letters of
credit come up can put the schools in a position
where they are having problems with investors.
They're having problems with their Board.
They're having problems moving forward, and it
has unintended consequences on institutions
simply because they have to put forth those
letters of credit.

   We think that is, and when you talk about the triggers, that's just something that we, as a subgroup of the MSIs, just really have to make sure that everyone understands that it's very problematic for us.

   It may not be problematic for other institutions, but private historically black colleges and universities foresee this being a huge issue for us moving forward if it stays in any way, shape, form, or fashion near the regulation.

   PARTICIPANT: Walter, then Michael.

   MR. OCHINKO: Sure. I don't really know or understand the history of this, but I just wanted to point out, just because the Department of Education already has these financial standards and can, you know, require surety bonds doesn't mean that they always do. And I would just point out in the case of Corinthian, there was no surety bond.

   So, the Department is on the hook for
all of the money that has to be refunded under
defense to repayment.

PARTICIPANT: Okay. You're still,
your name's still technically up.

MR. BOTTRILL: Technically.

PARTICIPANT: Okay, thanks.

MR. BOTTRILL: I mean, we may have the
cart a little bit in front of the horse here
because, I think, again, there's, we might
actually have consensus that the financial, you
know, composite score needs some work. I won't
ask for a temperature check. I think it's warm
enough in here as it is.

(Laughter)

MR. BOTTRILL: So, you know, having
said that, and not wanting to harm institutions
that are falling below the 1.5 composite score
because of other considerations or an inability
to meet some of the ways to manage that
appropriately.

I would still look for ways that, when
an institution has reached a level of financial
distress, HCM2 and reimbursement is one way of limiting access, but it's still full access.

And what I'm suggesting is a different approach of, again, a graded approach to access to full eligibility, not dissimilar to the way that it's used when you trip the measures for default rates and you go, you know, 40 percent, and then you can only be Pell eligible and you can't be eligible for a loan.

Maybe there's another way to limit access to it to put more taxpayer dollars on the hook, and more student debt when the situation is dire enough that we, that the Department has concerns that that money is not being well-distributed.

PARTICIPANT: Kelli, Valerie, then Robert.

MS. HUDSON PERRY: I'm afraid to talk into it.

(Laughter)

MS. HUDSON PERRY: Just because I've heard some echoes around the table of the fact
that the current responsibility ratios need some work, I know that we've tasked the, or you've tasked, the Department has tasked the Subcommittee with looking at new financial accounting standards, specifically one for financial reporting and one on leases, which I think in potentially looking at the changes to the financial reporting one will address some of the others.

      But there are FASB changes that have occurred over the last 20 years that also have not been addressed.

      So, I would like to ask the Department that when the Subcommittee does start to talk about these, if there's not a way to address those changes as well within one of these Issue Papers, that they be allowed to look at those FASB changes as well, as they specifically relate to that calculation.

      PARTICIPANT: Valerie, and then Robert.

      MS. SHARP: As I listen to everyone
discussing the issues today, I think we all can agree on a point, and then we get stuck and the next point. And so, maybe I don't have a solution.

I'm asking maybe if the Committee could start to brainstorm solutions. And I've heard a few ideas around the table, but I think that all of the table can agree that those bad apples who have a blatant disregard for students and the taxpayers and everybody involved, have and should have some liability for that blatant disregard of everyone around the table.

But where it becomes tricky is in trying to set some type of liability for those institutions who have had a blatant disregard for the rules and for students, and even the government money that is involved.

That, now, we are capturing within that net, institutions who were maybe, did make an innocent mistake, but still harmed a student, or you know, those types of things.

So, how do we protect a taxpayer and
the students who have had a, have committed
grievous fraud, but also provide some type of
different standard or, I don't know what the
process is.

As I'm sitting listening, I'm
thinking, we have to have something to protect
the taxpayers from maybe a Corinthian and the
millions that are involved there.

But the other claims that may put a
small school at tremendous risk, or those who are
serving students who are minorities or first
generation, we don't want them to lose their
access.

We do not want those schools to have
a purpose to be forced to close because of
financial pressures over a small amount of claims
that weren't fraudulent on purpose, that just
happened.

So, how do we, is there any way even
to differentiate that in our discussions and in
the regulations that we put in place, because we
are talking about two very different types of
issues, and we don't want to cause undue stress to small institutions who are serving a public that maybe everyone else isn't and forcing them out of the market that desperately needs them. But we do want to hold accountable those who are committing fraud against our students.

PARTICIPANT: And I, and I think, just from the facilitator's perspective, that is the question that we're here to, here to answer, and hopefully the Working Group can provide those methods of distinction, or at least suggestions for it.

MS. SHARP: Just say, I think one thing is, you know, we just talk in generalities. I'd like to see us kind of parse that out a little bit more is maybe why I made the statement.

PARTICIPANT: Robert.

PARTICIPANT: Thank you. I have the answer. No.

(Laughter)

PARTICIPANT: Echoing a little of what
I've heard, but putting, I guess, a little bit of a twist on it, maybe from a state perspective and my vantage point and working in state systems, and now for a national organization representing states.

It's no mystery here, and it's not an unknown fact, that we have had persistent equity gaps for years and years in our nation.

Our first generation low income minority underserved populations do not succeed and are not accepted as high of rates, particularly success-wise, even when they have better economic, I mean academic qualifications when they enter college.

There are these persistent gaps that we have to address, and I think this ties in in meaningful ways in this conversation that we're having today.

Most of these students end up in lower resourced institutions that don't have as much bandwidth, and they struggle more anyway.

And we're starting within the academic
side of the house to see some paths forward that
seem to be getting traction around intrusive
advising, degree maps, the way we're changing
developmental education.

And some of these different issues,
and the difference we're making here, tie in
directly to taxpayer interests and making sure
that we're not ignoring this population and we're
getting them through the educational pipeline.

Dan mentioned yesterday, the triad
that exists, this whole idea of the federal
interest for the taxpayers, and you have the
regional and specific accreditors that exist, and
then the state systems and interests.

And frankly, we have to have better
communication and better dialogue on a regular
basis between these three entities if we're going
to develop any type of system or approach that
works for all of us.

That's how we're going to protect
these students who need it the most. These
institutions can't face situations to where they
no longer exist because of some of these financial pressures and strains that exist, but have to be held also to adequate approaches and what we know to be best practices.

So, furthering these conversations is a part of this, the ability to protect taxpayer investment due to best practices that are taking place, I think, should be a part of any solution that we discuss here.

PARTICIPANT: Okay. And looking forward, both a Questions 1 and Questions 3, specifically with Question 1, can the Working Group identify any specific conditions the Department should be considering as they look towards language in the future?

Or with Question 3, steps or criterion that would facilitate or necessitate an additional layer of protection for the taxpayer?

Alyssa?

MS. DOBSON: I just, I think we're having trouble identifying them because very different schools can have the same looking
criteria.

And so, I think Aaron probably said it best when, instead of the Department trying to find definitive benchmarks, you know, using their own authority, if it, if it sounds like a duck, walks like a duck, that kind of thing, and that would avoid encapsulating the institutions who may look but aren't actually the bad actors in the game.

And so, I think the reason why we're having a hard time coming up with those criteria is because they just don't exist.

PARTICIPANT: We have to get better, overall, as a nation too, in measuring what actually is taking place in higher education, what is being learned.

Aaron commented earlier about widgets and, you know, we can look at credits, and we can look at these degrees and this credentialing, what learning is actually taking place?

For some of our institutions that accept students maybe with lower academic
standards coming in, perhaps they're quite value
additive in what they provide, and we have to get
better at measuring learning, and I think this
could tie in with a lot of this as far as
taxpayer's interests and examining what actually
happens within that often black box of higher
education. So, I hope this is something we could
consider moving forward as well, value additive.

PARTICIPANT: Kelli.

MS. HUDSON PERRY: One of the other
reasons that I think it's difficult to, in
speaking with, you know, should the Department
take additional steps to protect the taxpayers, I
think it goes back to the concept of, how do you
identify the bad actors? Right?

So, without knowing who the bad actors
are around the table and, you know, why types of
claims are coming for discharge and reasons why,
are there, are there rules or are there, you
know, mechanisms on the forefront to put in place
so that those bad actors can't do what they're
doing?
So, I don't, I don't know if we have enough information to actually give a great, at least I don't think I have, to be able to give a great recommendation, because I don't know who they are and I don't know what rules they're not following or what rules you could potentially put in place so that they don't become bad actors.

PARTICIPANT: Wanda, and then Abby, and then back to the Department. But I would ask that if you're going to offer something, please offer something specific and concrete. We do need to move on.

MS. HALL: This is pretty concrete, and it's a dirty word, but we did talk about this last time a little bit.

You know, additional steps to protect taxpayers, I mean, there are program reviews and audits that are performed.

And when you're performing a program review, there's things that you look at, and maybe that needs to be increased a little bit. I mean, as I said, it's a dirty word.
We see it, you know, we have program reviews as well. We have SSAE 18s. We've had stations, and all of that stuff looks at, you know, our administration of the program, our capabilities from a servicer's side, for sure.

PARTICIPANT: Abby, then Karen.

MS. SHAFFROTH: So, I'll try to speak to point. Bullet 1 and Bullet 3, on Bullet 1, under what conditions and to what extent should institutions incur liability for reimbursement of borrower defense claims, Linda asked me to make the point again when we got to this issue that there should be a, that I believe there should be a separation of determination of liability, or a determination of relief for the student and determination of liability for the school. So, I am. I still, sorry --

PARTICIPANT: That's okay.

MS. SHAFFROTH: Oh, okay.

PARTICIPANT: Go ahead.

MS. SHAFFROTH: No, I don't want to mischaracterize you. So, I would just say that,
you know, the Department could create some conditions under which it determines that it makes sense to seek recoupment from the school after a student is, has their student loans forgiven through the borrower defense process.

And it may be that, you know, it doesn't make sense to go through that process if there's just one individual borrower defense claim that has been approved for that school, that it's not worth the Department's time and that it's not a good use of taxpayer resources to seek recoupment from the school in that instance, but that if there is a, you know, evidence of widespread misconduct where there are, you know, a large number of successful borrower defense claims relating to the same institution, then it does make sense.

Or if there's evidence from a state attorney general's investigation of that sort of misconduct, then maybe it does make sense in those circumstances. So, those are just a few, a few possible ways to approach Bullet Point 1.
In terms of Bullet Point 3, and should the Department take additional steps to protect taxpayer interests, I was going to make a similar point to Wanda, just that the Department has an enforcement unit.

Being really proactive and investigating misconduct at, or allegations of misconduct, or other evidence of misconduct of institutions, to try to deter and stop that misconduct before it impacts more borrowers and sets up more potential claims for borrower defense relief. It seems like a really important piece of protecting the taxpayers and protecting student borrowers.

PARTICIPANT: Okay. And as usual, Colleen, kind of the end of the discussion has gotten some more, some more tags up, so we will go through them. Karen, Walter, Jaye, and then back to the Department.

MS. PETERSON SOLINSKI: So, I'm really speaking to the third bullet, and which is, how do you protect taxpayer interests for the future.
And yes, it's a little bit of a crystal ball exercise to try to figure out which institutions in the future might give rise to borrowers defense claims.

I can tell you, it's not financial ratios. Why? Because we have about five institutions go, unfortunately, over the edge every year, often with very low composite financial ratios. What are they? They're small religious institutions, minority serving institutions.

It's unlikely, I think, that they're going to give rise to borrowers defense claims. I would be surprised if they did. They're financially risky, but they're not at risk of misrepresentation or fraud. That's a different kind of issue.

And so, I think we have to look at the ones that have gone through this already, like a Corinthian, like an ITT.

I know about one of those cases, and I know that they were indicia, Barmak is right.
They were indicia that we might have seen, and hindsight's 20/20, right?

But there were indicia that we might have seen, had we all been looking more carefully, not only at the kind of things you're talking about, market cap, but also a program reviews and all of that data.

And so, I think, before we task a lot of small institutions with higher letters of credit when they're not really the risky ones we're trying to get at, we ought to be looking at our history here.

What could we have done differently in the cases that we did have? What were the things we should have seen and flagged?

I know some of them because I know a little bit about those cases. I won't say them here, but I know some of those indicia that we could have seen, and where we might have imposed some kind of letter of credit or other kind of surety that would have protected taxpayers for the future.

MR. OCHINKO: Yes. I agree with the comments that Karen made. And I just want to point out, I don't remember all of the triggers that were in the borrower defense rule that was promulgated in November last year, but I do remember two of them, and I think they really go directly to this whole issue of, how do we identify bad actors?

One of them, I think, is one that my colleague mentioned, and that is, you know, either lawsuits, investigations, or settlements. Particularly settlements.

I mean, I distributed a list this morning. A lot of these schools are still, you know, participating in Title IV, and they have settled with the Department of Education.

I think another trigger that was identified was, you know, exceeding the 90 percent ratio.

There's a cap on the amount of Title IV revenue that a school can get from the
Department of Education. And schools that exceed
that, I think, were, would have set off one of
the triggers. And I'm sure there are others. I
just don't remember what the other triggers were.

PARTICIPANT: Okay. Linda, and then

back to the Department to wrap it up.

MS. RAWLES: If we're going to look at

settlements, we have to look at incentives.

Again, you know, many people do settle lawsuits

for lots of reasons other than culpability.

And if you do look at settlements,
you're going to have an incentive not to settle
and we're all going to be in a lot more

litigation. So, I think you have to be careful

with that. That's all I wanted to say.

PARTICIPANT: Okay. Noting that we do

have some administrative matters to kind of take
care of at the end of the day here, I want to
turn it back to the, to the Department, just to

kind of finalize Issue 3.

Are there any points, obviously,
specific suggestions or proposals are accepted
and encouraged, that the Department would like
the Working Group to consider this evening, you
know, as some homework, before we go onto Issue 4
tomorrow morning?

PARTICIPANT: I think that we probably
have what you have in mind right now, but if you
do think of other things, I'd be certainly happy
to reopen this discussion in the morning if there
are further areas that you think about overnight.

I know this is probably all you want
to think about all day and all night, but
seriously, if things do come up, if you think of
some specific issues that you feel you didn't get
a chance to raise today, I'd be happy to circle
back on this one tomorrow morning.

I think that, while it may appear that
we have not paced the conversations as well as we
could, in looking at the issues, we do feel that
Issues 1 through 3 were the ones that would take
the most amount of time and the most significant
discussion.

Not to minimize the other issues, but
I think that the point was made earlier that, you know, by getting through this paper today, we're getting through about half of the issues.

So, I think that we are on track, and I appreciate the contributions that you've made. I appreciate the thought and the significant effort that you've made to cover the territory that we've covered already, and look forward to doing more of that tomorrow.

That said, I do know that we have some other administrative issues, some kind of housekeeping issues as well, and I want to make sure that we have time to devote to that, as well as public comments. So, I'll hold any other further comments until tomorrow.

PARTICIPANT: Okay. I believe, yesterday, I believe, yes, that was yesterday, Ashley Harrington had raised the question of making a petition for a member for the Subcommittee.

She touched base with me today just to make sure we could make time for that. So, we
will open the floor to you, Ashley.

MS. HARRINGTON: Thank you. So, I actually have two individuals that I would like the Committee to consider adding to the Financial Responsibility Subcommittee. Two experts that I think could really add to that conversation.

Representing constituencies that I don't think are represented or are not represented currently, which is in this list, minority-serving institutions and consumers and students.

So, I have two people, and I'll let them speak for themselves. Dr. Julianne Malveaux and Blake Harden.

They are both here, and they'll introduce themselves, and then I hope that the Committee will seat them on this Subcommittee. Thanks.

PARTICIPANT: Yes. And just a note on process, so we can have both individuals come up, provide us an introduction, some background, why they want to be on the Committee, and then the Working Group can ask questions, and we'll take a
consensus vote. Michael, question before?

MR. BOTTRILL: I have a quick question.

In determining who or the types of groups that are going to be represented on that Committee, is there a specific reason why that these particular areas were left off, or is there more discussion around the fact that, it's my understanding that this Committee is really just to discuss changes in accounting principles and rules and how they affect the current composite scores and come up with recommendations for future.

So, therefore, it's really, it's not that they're creating new policy, they're just simply providing context for changes in FASB. Is that correct? Is my assumption correct there?

PARTICIPANT: Your assumption is correct. The goal of the Subcommittee is to make recommendations to this Committee.

So, anything that they discuss is really just to conserve the time of this Committee to take issues that we thought were very specific to one industry where we needed to ensure that we
had the people with the expertise to discuss
those issues.

Generally speaking, we would expect the
members of the Subcommittee to have an accounting
background or something very related to that.
So, we were interested in keeping the Work Group
fairly small.

Again, we did not dedicate significant
resources to that because it wasn't something
that we initially set out to do. It was
something that kind of grew out of the
conversation.

When people heard that financial
responsibility was going to be discussed, it's,
oh, let's take an opportunity here.

We cannot revisit the entire composite
score and how that's calculated. That would be a
significant effort, and that would need its own
process. That would have its own rulemaking
session apart from this one.

We felt that those issues were far too
significant, would take far more time than we had
to devote within this Committee.

So, we gathered a set of individuals that we thought met what we thought was reasonable, in terms of getting together a small Working Group.

But again, knowing that they were only set out to making recommendations and that all of that full discussion then about those recommendations would occur here in this Committee in Sessions 2 and 3.

So, also, to clarify, the Subcommittee is going to meet this Thursday and Friday, and then, they will meet prior to our second session that we have here with the full Committee.

So, they'll have two opportunities to meet for a couple of days each before we come back together again.

And hopefully, they'll have some initial thoughts for us then to be able to share with us, but that we could then have the full discussion at that time as well.

PARTICIPANT: Kelli.
MS. HUDSON PERRY: Just quickly, when
the two individuals introduce themselves, I'd
just like to ask that they provide their
credentials as it relates to understanding the
accounting literature as it exists.

PARTICIPANT: Do we have the
individuals? If, I guess, one of the individuals
wants to come up first, and then we'll have the
second individual come up.

DR. MALVEAUX. Well, good afternoon.
I'm Dr. Julianne Malveaux. I am President
Emerita of Bennett College for Women. It is the
oldest historically black college or university
that serves women.

People know Spelman a little bit better,
but we are older and have an equally
distinguished history.

I was president from 2007 to 2012. And
I'm especially concerned about how the rules will
impact historically black colleges and other
minority-serving institutions.

My background is that I have a Doctorate
in Economics from MIT. I do not have an accounting degree, and I don't want one.

But I think that the background that I have makes it possible for me to be a contributor to the conversation. It is something that I am deeply concerned about.

I would note that I did apply earlier for the full Committee and was not accepted, but I remain very interested in these issues and I'm happy to take any of your questions.

PARTICIPANT: So, just because the, I'm, so the Subcommittee is designed to be a Working Group to talk about the, specifically, the changes in the ASU.

So, if you're not an accountant and you don't necessarily understand those, what, can you explain a little bit more as far as what contribution you feel you would make?

DR. MALVEAUX: The fact that I'm not an accountant doesn't mean that I don't understand. I think that's a little bit presumptuous, with all due respect.
Essentially, having worked in and
administered, having had financial aid people and
other lending people report to me, I do think
that I can look at these issues and bring
something to the table.

Just in listening for the past few
minutes as I heard people talk about some of the
loan issues and which institutions are the
Corinthians, as opposed to which are the, let's
say, Morris Brown College.

And a very big difference in those kinds
of colleges and the kind of challenges that they
face. I think that that's the kind of texture
and context that I would bring to the
conversation.

PARTICIPANT: Thank you for your
information there, and your background is
extremely impressive.

So, thanks for volunteering for the
position, but I think the concern here, and
again, please correct me if I'm wrong here, is
this specific Subcommittee is specifically
looking at changes in accounting structure.

And I'm assuming that most of the people, and again, I haven't taken a look in detail, but I'm assuming that most of the people on that Committee are either accountants or CPAs, and have a significant understanding of those particular principles and how they're going to be applied. And that's where it ends, as far as I know.

And then, that, just that simple data, right, data is brought to the group, to be able to look at and interpret. Is that correct?

PARTICIPANT: Yes, I can definitely say that is correct. And I think that, again, we do not have a representative from each of the constituencies that we have here, but the thought is that the Subcommittee, again, is reporting back to this full Committee.

So, because this is the decision making body, all parties are being considered, and all constituencies does have a voice because the body that is the Subcommittee is only making
recommendations to this full Committee.

PARTICIPANT: Joseline?

MS. GARCIA: I don't have a question to you, per se, but more so to the group. Who here has a master's in public policy? Like, raise your hand if you do.

Okay, no one, but we're talking about policy. So, I don't think that folks who want to be in the Subcommittee need to be accountants to be a part of that conversation because those of us who are on this Committee, we obviously don't have a master's in public policy.

PARTICIPANT: Ashley, and then Danny.

MS. HARRINGTON: So, first I would like to say, I think Dr. Malveaux is communicating that she is very familiar with these standards, having ran a college for five years, having all of these kind of parts report to her, having dealt with all number of reports and standards, she is very familiar and can contribute to all of these things, and is able to do so and willing to do so.
But I think the other thing is, though all of the recommendations have to come back to this Committee, I think we've been talking about this since yesterday.

Transparency is extremely important in this process, and because this Subcommittee, we've already said, is not going to be public, and all of the voices cannot be represented.

And yes, every Committee member can go to those, can go to those meetings. I, personally, as the consumer advocate representative, don't have time to go to all of those meetings, and will not be able to.

And I'm sure there are other people at this table who will not be able to go to all of those meetings.

And so, I think having as many voices at that table that represent the constituencies that are, that have a stake in these issues, is important.

And even if they are just making recommendations, the people have to be at the
table to create the correct recommendations, and
to create a full set of recommendations.

PARTICIPANT: Okay. Danny, Will, Linda,
and then I want to get to our other, our other
candidate, just to, just to continue moving
things along as the facilitator, so we can ask
questions for the other candidate, and then reach
a decision as a Working Group.

And then, we can go onto the other
agenda items that we have for the rest of the
day, administrative things, and still have time
for Working Group, or public comment.

MR. FLANIGAN, JR.: Okay, good. Can you
hear me? I am the vice president of a very small
college called Spelman College, and I've been the
vice president and treasurer for probably 15 to
20 years.

I've had a chance to work with the good
doctor. She's up a Bennett College, which is one
of our competitors, and I will tell you, when we
have a had a chance to converse and to have
conversations about finances and accounting and
ratios and other stuff, she may not be an accountant, but she's very conversing in the conversation.

And so, I think she would bring value to the Committee. I think, she's not an accountant, but I think her words and her wisdom would be welcome. Thank you.

DR. MALVEAUX: Thank you. And we're not competitors. We're sister schools.

MR. FLANIGAN, JR.: Yes.

(Laughter)

MR. BANTLE: Will, but can you turn your mic off?

MR. HUBBARD: I'll keep it brief. The question I would propose to the audience is, and to the Committee, really, is what risk is there in including a mind who accomplished an economics degree from MIT? What risk?

MR. CARUSO: Okay. Thank you for all the questions. Thank you, oh, Linda, sorry.

MS. RAWLES: This is a bit of an awkward situation because I mean no disrespect to your
credentials at all. I'm sure you're everything that you say.

But all the constituencies here could bring up equally qualified people. Unless there is, you know, an additional add to the Committee, if one constituency is adding another person to the Committee, I ask that we all have an opportunity to bring people up and add someone to the Committee.

MS. HARRINGTON: And I would say, under the protocols, every member of the Committee does have that opportunity to bring forth an expert and have them voted on by the Committee, and I would be happy to, as speaking for myself, consider your expert.

MS. HARRINGTON: I believe in the protocols, it said they could be brought in for the financial, for Financial Responsibility Subcommittee, and within the Federal Register notice that they could be brought in. It didn't say when they had to be brought in and at what point. So --
MR. BANTLE: Just a facilitator's note, this was a conversation that I do recall from tomorrow, or from yesterday. Not tomorrow.

(Laughter)

MR. BANTLE: It's been a long day. From yesterday, and we did keep the option open for this Financial Responsibility Subcommittee, you know, for these two days before the Committee does start. So, by the discussion yesterday, that would be open tomorrow as well.

MS. RAWLES: I think, maybe I should've been a little clearer. My point is that, unless there is a specific value add to the expertise that the Committee is considering, this is going to open up a door that I don't think we're all going to want to go down because it's going to force other constituencies to do the same thing, and I think we're going to get off track.

MR. BANTLE: Okay. I want to, Michael.

MR. BOTTRILL: Just in conclusion to this, for me, you know, it is a bit of an awkward situation because, again, I'm sure your
credentials are fantastic. I'm not, I'm actually positive they're fantastic, and congratulations on those. And I'm sure there is a great value add that you could bring.

And to your point, Will, there is, there is no particular risk, to say, to add to another person.

But what I find is it's just breaking protocol, for the most part, in terms of the fact that a Subcommittee has been created.

If, and there's an implication, it seems, that you don't feel there's enough representation from your particular constituency within that Subcommittee.

So, again, I'm struggling with why that's felt, and why do we all feel that there has to be, in a Subcommittee talking about some financial implications in terms of changes in FASB, why is it that we all feel we have to have some form of a voice there to have transparency?

And that's the part that I'm struggling with, that your comment was about lack of
transparency if you don't have your own
representative on a Subcommittee talking about
changes in accounting principles.

MR. BANTLE: Okay.

MS. HARRINGTON: My point was about --

MR. BANTLE: Just --

MS. HARRINGTON: -- transparency in
general, and the fact that we voted to not have
that Committee be, in and of itself, public,
Subcommittee, in and of itself, public.

This is something that was noticed and
commented and nominations were requested. And I
would also like to point out that your
constituency group does have representation on
the Financial Responsibility Subcommittee.

MR. BANTLE: Okay. I understand there
are still some name tags up. We do have a lot to
get through for the rest of the day.

Dr. Malveaux, I want to thank you for
introducing yourself. We'll go onto the next
candidate, and then we can, we will, we will get
to a consensus check from the group.
DR. MALVEAUX: Okay. Thank you very much for your consideration.

MR. HARDEN: Hi, my name is Blake Harden. I'm admittedly less distinguished than Dr. Malveaux.

(Laughter)

MR. HARDEN: But I formally served as a policy advisor with the Department for just under five years, and I was working on institutional accountability and other oversight issues, largely representing the issues of consumers and taxpayers.

I've done a number of projects related to the financial composite score and other related regulations in the scope of financial responsibility, the financial responsibility rule and administrative capability.

More recently, I have been engaged in a research project to understand the history of financial responsibility rules and the particular impact of all of the ASUs in the last two decades on that rulemaking, the present rulemaking.
As far as my financial background, apart from the work that I did at the Department, and working with a number of financial experts there, I have a financial background participating in the management of two businesses, and I also a degree from the University of Pennsylvania, and took courses in the insurance and risk management division of that school.

MR. BANTLE: Okay. I would like to open it up to the Working Group for questions.

PARTICIPANT: My question is very simple, regard value add, would you say that you have both experience in the public and private sectors that pertains to the direct topics of the Committee, the Subcommittee?

MR. HARDEN: Yes, I do. On the topic of private businesses, I haven't been involved in private for-profit education or the institution side, but I have worked inside a for-profit business, which is also subject to FASB standards.

MR. BANTLE: Aaron?
MR. LACEY: What do you think about the composite scores?

(Laughter)

MR. HARDEN: Well, I mean, I think it's very clear that the composite score needs to be updated to reflect the new FASB updates.

I think it's hard to say without additional analysis about, you know, changes to the weightings and the ratios that were ultimately chosen in the '97 regulations. I think that ultimately is outside the scope of the Subcommittee.

But you know, the financial composite score's served its purpose, at least for a number of schools over the past two decades, albeit, you know, there have been failures, most notably, one a few years ago.

PARTICIPANT: Since we asked our other candidate, we'd like to ask you also your background. You said you had a degree from University of Pennsylvania, but could you tell us the subject matter of that degree?
MR. HARDEN: Yes, I studied political science with a focus on public policy. I completed two, or was awarded two fellowships while I was at Penn, also related to public policy and analyzing the administration of the University itself.

MR. MURRAY: You mentioned you were at the Department for five years. Which five years were you at the Department?

MR. HARDEN: That was the past five years prior to January 2017.

MR. BANTLE: Okay. Any additional questions? Okay. Thank you very much, and I thank the Committee for their questions.

At this point, per the protocols, we have to do a show of thumbs, and for Subcommittee members to be added, it has to be by a consensus of the Working Group. Aaron, did you have a comment?

MR. LACEY: Well, I guess my question is, do we want to make a determination on these individuals before we've heard folks who might be
presented by other individuals?

I mean, I don't have anyone to present, but I don't know if other folks do have someone to present.

Wouldn't it make sense to be making a decision on the composition of the Subcommittee all at once, as opposed to making a decision on folks now, and then people later, because that could change the mix?

MR. BANTEL: I would open that up to the Working Group. We are in uncharted territory. Obviously, additions to the Subcommittee would have to be provided by tomorrow, as the Subcommittee starts working Thursday morning, and we would obviously have time, have to have time for all parties to make, you know, adequate considerations prior to taking consensus check.

MR. LACEY: Well, for my part, my recommendation would be that we wait until anyone who's going to be proposed to be on the Subcommittee, all those proposals have been made, and then we make a decision on the composition of
the Subcommittee all at once.

MS. WEISMAN: Do we anticipate people having others to propose? Because I think, just to restate where we were earlier, our intention was for the Subcommittee to be a very small Working Group.

We have a very small room reserved. We have made many attempts to secure other space at no cost, and have been unable to do so. So, our intent was to keep it a very small Working Group who would, again, come back and report everything that they wanted to recommend to this Committee.

PARTICIPANT: Okay.

MR. MURRAY: I agree with Aaron that maybe we could wait until tomorrow and do this vote.

I also want to state for the record that we did have a very explicit conversation about the fact that my colleague expected to offer an additional individual or individuals for this specific Subcommittee at length yesterday, where
questions were asked, they were answered.

And so, this was a very public exchange,
and I think that we all knew that my colleague
was going to offer individuals for the
Subcommittee.

And so, just in case, now that we've had
this extensive discussion, anyone would like to
offer anyone, I think it would be best if we
delayed the vote until tomorrow, giving anyone
else an opportunity, even though this is supposed
to be a very small group, give all of my
colleagues their opportunity, and maybe
overnight, we can all remember that discussion
and evaluate the individuals that are proposed or
could be proposed on the merits that they come to
us with.

MR. BANTLE: Okay. Just a little
facilitator prerogative here, unless I hear an
objection to waiting to tomorrow, we will do
that, and then we will use our limited time to go
through a few items very quickly, and then
provide time for public comment.
So, that being said, if any other Working Group members do have petitions for Subcommittee members, please, I'd let the facilitators know as quickly as possible, so just we can, we can take care of that. Michael?

MR. BOTTRILL: Point of context on that. So, if, as you've pointed out, apparently I have representation on the Subcommittee already, shouldn't we then, if the concern is around transparency and having your particular, oh, whatever, you know the word I'm trying to say.

If that's the concern about transparency and the group that you represent, and if they're already represented, shouldn't we limit that to any areas that are not being represented, and there's a concern there, rather than just anybody bringing forth another person?

MR. BANTLE: I would open it up to the Working Group, although I would say, as a facilitator, I think that could be evaluated at the time of the consensus check.

That would be a factor that would,
people would, Working Group members could consider when casting their vote.

Okay. It is 4:50. We want to leave 10 minutes for public questions, or public comment. But we do have a couple items just to run through quickly for the, that I wanted to run by the Department.

We had a couple information requests today. Could we just get a quick status update on that, and then, I know there was a request for Mr. Manning's remarks, a status update on that as well before we go to public comment.

MS. WEISMAN: We made note of a couple of data requests. We have made those requests to the appropriate offices within the Department, and we are waiting for word back on the answers to those questions.

Regarding Mr. Manning's remarks, we will be posting those to our website. That addresses this rulemaking effort.

So, I don't know, necessarily, if we'll have paper copies to give out to everyone, but
they will definitely be on the website.

I know we've been asked for both, and so, I'm waiting to hear back on that as well. Unfortunately, as we go to break, I end up talking to numerous people, and so I don't always get to circle back with everyone on my list.

So, it's not that we did not hear the concern. They are all in progress. And again, we will be posting those at a minimum, and that way they'll be available for everyone to see. And I do appreciate the requests, but we are working on all of them.

MR. BANTLE: Yes. And just as a facilitator with information requests, process requests, and other requests, we are keeping a tab. I am keeping track of that on the side.

PUBLIC COMMENT

MR. BANTLE: So, with that, I would like to open up the floor to any public comment. As we did yesterday, could we get a show of hands, just so we have numbers? Okay. Come on up.

MS. GOLDSTEIN: Hi. I'm Alexis
Goldstein. I work at Americans for Financial Reform.

We're a coalition of over 200 faith groups, consumer groups, consumer advocacy organizations that work for a safer and fairer economy.

I was here for the last negotiator rulemaking on borrower defense. Quite frankly, I am astonished that we are doing this again.

I'm hearing a lot of the same arguments. I'm hearing people re-litigating a lot of the same points. This whole exercise strikes me as an extraordinary waste of time and money.

But all that being said, we are where we are. I wanted to bring the voices of some students to this room.

I've heard a lot today. I've heard a lot of martyrdom. I've heard a lot of victimhood from the representatives of for-profit colleges and other institutions around this table today talking about these poor schools and how we're trying to do so many horrible things to these
poor schools, and we can't box them all in.

And I'm hearing a lot of suggestions to create this process by which students have to go up against their institution before they can bring a grievance, before they can file a claim with the Department, with the government.

And that's, quite frankly, a rigged game. We see that in forced arbitration, which is an area that my organization works in a lot. That's a rigged game too. Most consumers do not get anything when they go to arbitration.

I know that that's a thing that we will discuss at a future date, at this negotiated rulemaking.

But I don't see how a student who is almost never going to be an attorney, going up against an institution that has millions in dollars, tons of legal counsel, tons of legal expertise, is ever going to have a fair shot if they have to adjudicate that before they can bring in a complaint to the Department of Education. That just seems entirely unfair to
I also just want to read some quotes from a new report that came out today from the offices of Senators Durbin and Warren. These are some students who, you know, who couldn't come today.

Last negotiated rulemaking, a lot of students that I had talked to had some hope that the Department of Education was actually going to discharge their debt.

We know now that there's 95,000 students who are still waiting for relief. This current administration has discharged none of their debts.

There's thousands of applications who have been approved. The Department is sitting on them.

You all are talking here in this negotiated rulemaking about potentially doing partial relief instead of full relief.

These are people whose lives have been ruined, and I want to bring some of their voices
to you today.

So, this is Amy Schneider. She attended the Illinois Institute of Art. This is an EDMC school.

She says, this school defrauded me, plain and simple. In class, we did not learn the schools we were supposed to be learning.

Despite being on the Dean's List and graduating with honors, Amy found it nearly impossible to find a job upon graduation.

Employers didn't see it as a reputable institution. If it is on my resume, it looks bad or they don't care. The degree has never opened up any gainful employment.

She is saddled with debt, even though she was told that they would get grants and they wouldn't have any loans. $76,000 was the tuition they quoted, but she ended up with loans over $100,000.

She said, they just took us out of classes and had us sign things. My loans ran out. They had my mom come in and write a check
for $5,000, end quote.

Since graduating, Amy has recalled being harassed by Navient about her student loans. They would quote, robo-call me all hours of the day, sometimes 20 times a day. They called my grandparents in Florida who have nothing to do with my loans, end quote.

Amy's financial struggles have caused her significant distress. She and her mom fight a lot. She got really depressed and she says quote, I thought maybe I am better off dead, end quote.

Then there's Heather Beckstead who's from Arizona. She attended the Art Institute of Phoenix. Again, an EDMC school. She has $67,000 in federal debt, and $21,000 in private debt. She says quote, I was defrauded, I was lied to, I was promised something I didn't get. My government should care about that. I want to feel that my government has my interests in mind, but it does not feel that way now, end quote.

The Art Institute did not provide
students the resources necessary to succeed. Heather writes quote, there were not enough tools to be successful. I would show up to class, there would not be enough computers. I went a whole semester fighting for a seat at a computer.

All of the tools were old. They were outdated, they were broken, and they did not make any attempts to fix them. Some teachers had work experience in the field, but their knowledge was very limited, not as qualified as we were led to believe.

A lot of the times, students teaching the, taught the class, students taught the class or we watched tutorial videos on YouTube.

And finally, this is Nino from California. He attended ITT Tech. He said quote the whole education was basically a scam. It ruined my life and I wasted two and a half years of my life.

They didn't even say I would be in debt after graduation. At the beginning, they told me not to worry about having a loan, because I was
eligible for the highest financial aid.

Nino has $29,000 in debt. He attended ITT because he wanted to pursue a bachelor's degree in computer network systems, and upon graduating, ITT told him it was guaranteed that he would have a job. He quote, won't be in debt, end quote and, the credits would transfer to most universities, none of which was true for Nino.

These are three students. There are thousands of students with stories like that. I know a lot of them.

I know a lot of them who have been waiting for their debt cancellation for over a year, sometimes two years.

They're waiting for this Department to act. This Department has not acted. We now know that there are 95,000 applications that are just sitting there in limbo.

These are people whose lives are ruined, whose credit is ruined, who cannot move on, who cannot take out other lines of credit because they have exhausted it, and if I seem
exasperated, it's because I am exasperated
because these are my friends. These are my
colleagues.

They are not people just trying to scam
you. They are not trying to pull one over on
you.

They are people who tried to better
themselves, improve the life for their family,
and they can't because they're stuck. And
they're stuck in debt that this Department has
the power, has always had the power to discharge
the debts of, and you sit and you wait and it is
frozen.

And I am, I am so frustrated with this
process. I understand we have a negotiated
rulemaking to do. We will do it. We will
continue to do it.

I appreciate everyone's perspectives.
But peoples' lives are on hold, and this
Department has the opportunity to stop having
their lives on hold and give them full relief,
not partial relief. And I beg you to do so.
These are people who just wanted to make a life better for themselves. We, they believe what we told them. Education is the path to a better life. And that is not their experience. Their experience is that it has made their life worse, and that they wish they never went there, and they take these schools off of their resume.

Many of these schools, which are still open, by the way, I am not just talking about ITT and Corinthian. Art Institution is still a functioning institution. There are a lot of other schools out there just like that.

So, again, I implore the Department of Education to discharge these debts as soon as possible. These students have waited entirely too long to move on with their lives. Thank you.

MR. BANTLE: Any additional public comment at this time? Okay. Hearing none, it is 4:58. As usual, we are trying to be respectful of your time.

So, I want to wish everyone a great
evening. Thank you very much for your perspectives today, and please use the additional last two minutes that we're giving you to review Issue Papers 4 through 8 for tomorrow morning.

(Laughter)

MR. BANTLE: Thank you very much.

(Whereupon, the above-entitled matter went off the record at 4:58 p.m.)
Neal R. Gross and Co., Inc.
Washington DC
www.nealrgross.com
targeted
taller

52:19
talked

234-4433
Washington DC
www.nealrgross.com

390
2017 1:8 343:11
2017-2018 1:3
20th 9:11
21 153:22
21,000 354:16
29,000 356:2

3
3 27:3 30:18 32:1 49:8,9
49:13 231:12 236:19
263:6 266:19 295:19
296:7,17 311:11,16
315:8 317:1 321:20
322:19 327:10
3:00 266:7
3:15 266:8
30 64:15 244:9
300,000 64:8
33 9:9

4
4 49:9,13 87:21 195:13
231:12,13 248:21
322:3 359:4
4:50 348:3
4:58 358:20 359:8
40 304:7
400 50:14
455 100:8
456 98:19

5
5 73:8 74:14 91:13
102:11 244:11 249:1
250:2,2 251:2
5'2 114:7
5,000 121:15 354:1
50 76:10 77:15 78:12,14
80:17 82:12,13 84:9
84:17 210:10
508 29:20
54 98:20 100:7
550 1:11
56 228:6

6
6 20:10 73:8 102:11
111:15 115:3 249:3,5
6(c) 22:12 23:7 25:15
60 192:20 193:14
600 92:21
61 17:12
65 13:8
65,000 8:22
668:15 293:4 295:5
67,000 354:15
682.211(I)(7) 197:17
685.206 140:14 267:14

7
7,400 121:16
750,000 274:4
76,000 353:17

8
8 85:7 152:10 359:4
80 41:14,18 45:4

9
9:00 1:11 5:2
90 183:16 197:2 320:19
90s 69:13,15 85:15
95,000 13:7 82:9 83:3
352:11 356:17
97 342:10
CERTIFICATE

MATTER: Borrowers Defenses and Financial Responsibility Negotiated Rulemaking Committee 2017-2018

DATE: 11-14-17

I hereby certify that the attached transcription of page 1 to 395 inclusive are to the best of my professional ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording; further that I am neither counsel for, nor related to, nor employed by any of the parties to this action in which this proceeding has taken place; and further that I am not financially nor otherwise interested in the outcome of the action.

______________________________
Neal R. Gross