

UNITED STATES DEPARTMENT OF EDUCATION

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BORROWER DEFENSES AND FINANCIAL RESPONSIBILITY
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 1

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WEDNESDAY
NOVEMBER 15, 2017

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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

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School of Law

EVAN DANIELS, Assistant Attorney General,
Government Accountability and Special
Litigation Unit, Office of the Arizona
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ALYSSA DOBSON, Director of Financial Aid and
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JOHN ELLIS, Principal Deputy General Counsel and
Division Chief, State of Texas Office of
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ROBERT FLANIGAN, JR., Vice President for
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JULIANA FREDMAN, Bay Area Legal Aid

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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

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

2 (9:00 a.m.)

3 MS. CARUSO: Good morning. All right,
4 so, as you know, we have an open item on the
5 financial responsibility subcommittee considering
6 at least two new members.

7 What we are going to do to get us
8 started, I'm actually going to turn it over to
9 the Department, who has the chair, I believe, of
10 the subcommittee itself, just to say a few words
11 about what the subcommittee will be doing, scope,
12 work of the subcommittee and to answer any
13 questions that you might have. Just so that we
14 make sure that any concerns doubts, questions,
15 are addressed before we move any further.

16 MR. KOLOTOS: Hi, I am John Kolotos,
17 I'm with the Office of Postsecondary Ed and I'll
18 be the Department representative on the
19 Subcommittee. And I just wanted to give you a
20 flavor of the Subcommittee work.

21 There seems to be some continuing
22 confusion about what the Subcommittee is going to

1 do. What we tried to do in the issue papers is
2 articulate the issues before the subcommittee in
3 the best way we could.

4 And if you've read the issue papers,
5 you're probably as confused as most people.

6 Although we did try to make a plain English
7 presentation of the issues, but I don't know how
8 good of a job we did.

9 But in any case, there's two issues
10 from the recent FASB changes. One of them deals
11 with changes to financial reporting for non-
12 profit institutions.

13 So, we know that because part of the
14 changes deals with changes in asset
15 classifications, that we're going to have to make
16 some changes to the appendix, to the financial
17 responsibility standards, to account for that
18 FASB change.

19 So that has operations issues for us.
20 Because institutions report through easy audit
21 their financials. We're going to have to make a
22 change there. And we're also going to have to

1 make a change in the rule.

2 Now, the Subcommittee is going to look
3 at not only that change, but any implications of
4 a change in the asset classifications with regard
5 to that FASB update. So they're going to be
6 taking a look at that to see, does that affect
7 the calculation of the composite score in any
8 way. And they'll report those findings to this
9 committee.

10 The second issue before the
11 subcommittee is on leases. And that's a reason,
12 oh, before I go on to leases I want to say that
13 the non-profit reporting standards, the changes,
14 go into effect for fiscal years beginning after
15 December 15th, 2017. So there's some urgency for
16 the Department to resolve this issue and to be
17 prepared for the new financial statements that
18 we're going to be looking at, after that date.

19 With regard to leases, currently, in
20 an operating lease, the only thing that happens
21 is that there's an expense associated with a
22 lease. Under the new accounting standards there

1 will be an asset and a liability associated with
2 an operating lease.

3 So the committee is going to be
4 looking at what impact does that have, on the
5 composite score. So the point that I'm trying to
6 make is that these are very limited and technical
7 issues that the subcommittee is going to be
8 dealing with.

9 MS. CARUSO: Do we have any questions
10 for Mr. Kolotos? Yes, Barmak.

11 MR. NASSIRIAN: When do you anticipate
12 any changes to the rule itself, to become
13 effective, given the urgency you mentioned with
14 regard to the end of 2017 deadline for
15 implementation of the FASB changes?

16 MR. KOLOTOS: I'll have to go back and
17 look to see when we'll be getting the first
18 financial statements as a result of those
19 changes. One of the problems is that under the
20 FASB rules, schools can early implement.

21 So we'll have to allow for, or have a
22 crosswalk, of some sort, if we don't have it

1 implemented yet, to account for any of the
2 reporting changes.

3 MR. NASSIRIAN: Is it also correct
4 that whatever the subcommittee decides, with
5 regard to any proposed changes, would be brought
6 back here and there would be an opportunity to
7 address the substantive impact of any changes,
8 such as the addition of an asset and a liability
9 on the lease side?

10 You know, I don't take it for granted
11 that we have hit the exact right index 20 years
12 ago and that we're going to make substantive
13 modifications to the composite score as a
14 technical issue, to reflect that change. So
15 whatever happens, this committee would have an
16 opportunity to discuss and decide, right?

17 MR. KOLOTOS: Yes. All of the
18 findings or recommendations of the subcommittee
19 will be presented to this committee.

20 I do want to say though that we're not
21 making changes to the core methodology. We're
22 not making changes to that.

1 And that includes the waiting or the
2 strength factors or anything related to the
3 composite score. We're talking definition
4 changes and treatment of certain components.
5 That's all we're doing here. We're not
6 revisiting the composite score calculation.

7 MS. CARUSO: Dawn.

8 MS. ROBINSON: My question to the
9 Department would be, why not? Because this is
10 such a critical issue in the world of higher ed
11 and not-for-profit accounting.

12 MR. KOLOTOS: Yes. I mean, that's a
13 good question and we recognize that. But the
14 focus of this committee is borrower defense.

15 To do a separate rulemaking for
16 financial responsibility would require extensive
17 research by the Department and other folks. And
18 we'd have to have a committee dedicated to that
19 topic.

20 It's a very long process. It took us
21 over two years to develop the rule that we have
22 currently in place. It would probably take an

1 equal amount of time this time around.

2 It's not something that can be done in
3 three sessions of a negotiating committee without
4 extensive work behind it.

5 MS. ROBINSON: Then, I would urge the
6 Department to begin the process now. Because
7 when I talk to my colleagues across the board,
8 this is an issue.

9 MS. CARUSO: Are there any more
10 questions for Mr. Kolotos?

11 PARTICIPANT: We had two nominees
12 proffered yesterday as being helpful to the
13 subcommittee. From the qualifications that were
14 put forth, none of them were CPA trained.

15 I'm not sure if you've been made aware
16 of the proffered nominees, but would you want
17 such help? Would you find that helpful to bring
18 additional members on the subcommittee at this
19 time?

20 PARTICIPANT: We believe that that's
21 something that the committee is now going to
22 consider, and we don't want to inhibit the

1 committee from considering that. The Department
2 does have a vote on the committee, and I will be
3 voting for the Department on its behalf.

4 MS. CARUSO: Any other questions?
5 Valerie.

6 MS. SHARP: Just a quick question. So
7 really, the fact finding that you're doing is
8 related to the impact on non-profit versus for-
9 profit because the rules are primarily impacting
10 all non-profit institutions?

11 MR. KOLOTOS: One of the FASB updates
12 impacts only non-profits. That's the non-profit
13 reporting standards. The lease provisions affect
14 all institutions.

15 MS. CARUSO: Okay, thank you very
16 much, Mr. Kolotos. Will there be any other
17 nominations to the financial responsibility
18 subcommittee before we put it to a vote? Okay.

19 Are there any other questions,
20 concerns to be raised before we consider both
21 nominees? Very well.

22 Can we get a show of thumbs for the

1 first nominee? Pardon my pronunciation, Dr.
2 Julianne Malveaux.

3 A show of thumbs for the first nominee
4 Dr. Julianne Malveaux.

5 PARTICIPANT: Malveaux.

6 MS. CARUSO: Malveaux, pardon me.

7 PARTICIPANT: And this would be to add
8 to the committee?

9 MS. CARUSO: To add to the
10 subcommittee. I see no thumbs down, and
11 therefore by consensus, Dr. Julianne Malveaux is
12 hereby added to the Financial Responsibility
13 Subcommittee.

14 Can we get a show of thumbs to add
15 Blake Harden to the Financial Responsibility
16 Subcommittee? Okay, we have several thumbs down
17 and therefore do not have consensus around adding
18 Blake Harden to the Financial Responsibility
19 Subcommittee.

20 Yes. Will, please.

21 MR. HUBBARD: Can I just ask the no
22 votes for some reasoning or just so we understand

1 the context?

2 MS. SHARP: I'll go ahead and respond.
3 I think one of the major concerns that we have is
4 that just the lack of relevant educational
5 experience and experience in the long-term market
6 place to understand all of the complex issues
7 that will be discussed at the table.

8 Unlike the first candidate who brings
9 a great deal of background and experience in all
10 of the issues, there would not be as much value
11 add with the candidate we're discussing.

12 MS. CARUSO: Lodriguez.

13 MR. MURRAY: I want echo Valerie's
14 sentiments, and I think that she's spot on from
15 our perspective.

16 MS. CARUSO: Thank you. Moving on.
17 Okay.

18 So, we have Dr. Julianne Malveaux
19 added to the Financial Responsibility
20 Subcommittee.

21 And the next item on our agenda is to
22 continue looking at the issues and the questions

1 within the issues. And there was a request, by
2 the Department, to open it up to anything that
3 you might have developed as a question or concern
4 with any of the first three issues, within and
5 around any of the first three issues that we've
6 discussed.

7 So I will pose that question to the
8 group first, before we continue with Issue 4.

9 MR. KOLOTOS: And again, not to make
10 the opportunity more difficult, we are looking
11 for specific examples or suggestions, or
12 responses to the questions that were posed. It
13 looks like we have Walter opening the floor up.

14 MR. OCHINKO: So, I do want to comment
15 on financial responsibility. I think someone
16 made a comment that when we all came here we
17 should have known that the baseline for this was
18 the 1994 regulations. And I think that's kind of
19 astonishing because I was surprised, and I think
20 a lot of other negotiators I've talked to were
21 also surprised.

22 I guess we anticipated that there

1 would be some things in the 2016 regulation that
2 the Department wanted to change but there would
3 be some things that they wanted to keep.

4 So, directly I want to talk about the
5 financial responsibility triggers, which I
6 mentioned yesterday. And I think one of the
7 goals of the triggers was really to act as a
8 deterrent to bad actors that really prey on
9 students.

10 And I didn't, at the time, have in my
11 mind all of the triggers that were proposed. But
12 I'd like to just read those to the group because
13 I think they're instructive.

14 And I also want to make the point that
15 you can look at these triggers as, looking for
16 trends and patterns. And I think it's very
17 important because none of the triggers is
18 perfect, I think, as many of the people at this
19 table would pause it.

20 So the first trigger is state or
21 federal agency actions. So those could be, for
22 example, some of the settlements that I mentioned

1 yesterday.

2 And I would point out that some of the
3 for-profit, publicly traded for-profit companies
4 on that list, had multiple actions. It wasn't
5 just a single action.

6 MS. CARUSO: Walter, are you reading
7 current triggers?

8 MR. OCHINKO: No. These are the
9 triggers that were proposed in the 2016
10 regulation.

11 MS. CARUSO: That you would like the
12 group, that you would like the Department to
13 consider?

14 MR. OCHINKO: Yes. The second trigger
15 is accrediting agency actions during the past
16 three most recently completed award years.

17 The fourth trigger was loan agreement
18 and obligations. The fifth trigger was non-Title
19 IV revenue. For example, whether or not the
20 school had failed to obtain at least ten percent
21 of its revenue from non-federal sources.

22 A sixth trigger was the cohort default

1 rate. And the 8th trigger was gainful
2 employment. Whether or not they had lost access
3 to Title IV because of schools that didn't meet
4 the gainful employment regulations.

5 Another trigger was withdrawal of
6 owner's equity. And then there was a last
7 trigger that was with other reasonable events or
8 conditions. So I think it was just left open.

9 So, again, I think if you look
10 individually at each of these triggers you can
11 probably find fault with them, but I think the
12 idea behind them was that this was a list that
13 together gave some weight to the fact that there
14 could be an issue or a problem with the school
15 that would require a letter of credit. Thank
16 you.

17 MS. CARUSO: Thanks, Walter. Linda
18 and then Lodriguez.

19 MS. RAWLES: Just a general statement
20 that we all agreed to come here and start from
21 scratch. And I would encourage us all to keep an
22 open mind and do that.

1 MR. KOLOTOS: Just a quick response to
2 that. Starting from scratch is certainly
3 respectable, but as the Department reminded us,
4 we shouldn't forget what we've learned over the
5 last 20 or so years.

6 MS. CARUSO: Lodriguez.

7 MR. MURRAY: I want to be brief in the
8 interest of time. Cohort default rates for us is
9 something that is negative, is closely associated
10 with socio-economical status, historically black
11 colleges and universities.

12 Which are often times taking first
13 generation college students and those who are
14 having, just getting their educational experience
15 started, in a unique way. That penalizes these
16 valuable institutions that are making a
17 contribution to society in a way that I don't
18 know was intended, when cohort default rates were
19 proposed earlier.

20 And also, another trigger which we
21 view to be extremely negative for these types of
22 MSIs is the letter of credit. And so, we just

1 want to make sure that as we move forward, we
2 understand now, with perspective, the negative
3 consequences this could have on institutions to
4 operate a lot closer to the margin.

5 And actually box above their weights
6 in terms of the output of students that their
7 putting in society and the improving of lives
8 that they're making.

9 MS. CARUSO: Lodriguez, I think that
10 the perspective is important for the Department
11 to hear, and one of the reasons why they asked
12 for additional input. What would you use
13 instead?

14 MR. MURRAY: I don't know if there is
15 a single measure where you can have Harvard,
16 Howard and other institutions under one. And so,
17 I would like to pause it that we look at some
18 alternatives that may keep some apples with
19 apples.

20 Some red apples with red apples and
21 some green apples with green apples. If you
22 will.

1 MS. CARUSO: Do you have any examples?

2 MR. MURRAY: I'll try to come up with
3 one by lunch.

4 (Laughter.)

5 MS. CARUSO: Thank you, Lodriguez.

6 Evan. And then Aaron and then Mike.

7 MR. DANIELS: During the 2016 process,
8 my office, along with several other Attorney's
9 General, filed a comment opposing state, the
10 presence of a state action by itself, pre-
11 adjudicative as a trigger. We would continue to
12 oppose that.

13 Merely because we believe the presence
14 of state action pre-adjudication is not
15 necessarily indicative of problems.

16 Investigations happen for a lot of
17 reasons, lawsuits happen for a lot of reasons,
18 settlements happen for a lot of reasons. Absent
19 some adjudicated finding of problems we would
20 oppose using those things as triggers.

21 MS. CARUSO: And, Evan, I would pose
22 the same question to you, that I posed to

1 Lodriguez.

2 MR. DANIELS: I think as the State we
3 would defer to the Department on some of the
4 other triggers that were mentioned. We're not in
5 a position to comment on whether those are good
6 or bad.

7 We simply believe that something
8 that's pre-adjudicative being used as a trigger
9 is not helpful.

10 MS. CARUSO: Aaron.

11 MR. LACEY: So, I don't disagree in
12 the least that there are events about which the
13 Department needs to be informed and that it has
14 to manage its own risk and the tax payers risk,
15 when it learns of those events.

16 What I don't understand is why we need
17 to articulate in regulation a list of events.
18 The Department already has the ability to request
19 all of the information on this list.

20 In fact, they already have accreditor
21 actions, non-Title IV revenue numbers, cohort
22 default rates and gainful employment. And they

1 regularly request from institutions where they
2 have concerns with regard to the risk, the
3 (inaudible) equity and other forms of reporting.

4 My view would be that the Department
5 has the tools in its current regulatory bag to
6 request these items and any other items that it
7 may consider appropriate from an institution. In
8 addition to all the information that institutions
9 already report on a regular basis.

10 And second, and importantly, the
11 department has the ability to act on that
12 information at present. I don't know why we need
13 to create a new regulatory framework to requires
14 that certain triggers result in certain actions,
15 like a recalculation of the composite score or
16 some sort of automatic letter of credit when the
17 Department, right now, can and does request this
18 type of information, in addition to other
19 information, and can and does take action to
20 protect tax payers, with regard to this kind of
21 information.

22 On balance, I mean, there is an

1 obligation here, I think, to try and understand
2 there are certain priorities of the Department to
3 avoid making regulation where it's not necessary.
4 So if the power is there and the discretion is
5 there, my recommendation would be that we not try
6 to craft some additional set of regulations to
7 essentially give the Department the power it
8 already has.

9 MS. WEISMAN: In response to that I
10 would say that the Department has some of the
11 authority that he's mentioned, but maybe not to
12 the extent that it is believed. In some cases,
13 we have limited ability to get additional
14 information.

15 And I believe that the triggers were
16 put in place so that we had an easier time to get
17 to those situations that we thought might do us
18 some help in identifying situations that could
19 lead to trouble in the future.

20 So, I think as an example, cohort
21 default rates. The idea behind including that as
22 a trigger was not to say that they've reached the

1 level where they're no longer eligible to
2 participate in the loan program, it was seen as
3 identifying an early warning before it got to
4 that point.

5 So we'd like the feedback of this
6 committee to say, were there items where you
7 think we got it right, were there items in those
8 triggers where we got it wrong, are there other
9 items that we should consider, what can we do.
10 So any specifics that you have here would be very
11 helpful for us.

12 I think that we're looking for ways to
13 predict behavior, and that is very difficult to
14 do. That's why we're struggling.

15 That's why when the question is posed
16 to people, well, what ideas do you have, people
17 let me say, let me think about that. It's not as
18 easy as it looks, and we certainly recognize
19 that, but we are looking for your help for ideas.

20 And I just want to reiterate that,
21 when we come back to the table for Session 2, we
22 will be brining language. So this is your

1 opportunity to shape what we craft.

2 Certainly, you'll be reacting to it
3 and you'll be contributing to its development,
4 but if you have ideas now, this is your best
5 advantage to get them out there and on the table
6 for us. So, thank you.

7 MS. CARUSO: Mike, Abby, Will.

8 MR. BUSADA: I think it's --

9 MS. CARUSO: Please silence your
10 phones.

11 MR. BUSADA: I think it's important,
12 as was mentioned earlier, that you can't have a
13 one size fits all. And it's some triggers that
14 can easily be attained by some institutions, are
15 going to be very difficult, timely and costly,
16 for other institutions where that may not be a
17 threat from that particular institution.

18 As was spoken to earlier, our school,
19 a large percentage, most of our students are
20 first time students. They're students that are
21 going to a program that was required by an
22 industry, like a pharmacy technician, that a lot

1 of other universities decided to not offer. A
2 short nine months, one year program.

3 And so basically, we're the only
4 opportunity that they have. And a lot of these
5 students, they've never gone to college. They
6 don't meet some of the requirements that they
7 would need to, to get into other universities.

8 And so basically what we're saying is,
9 by using some of these triggers we're saying that
10 the most underserved community should be, you're
11 going to create a situation where universities
12 start to push away from serving the underserved
13 community because there is going to inherently be
14 more risk there.

15 And I think if we do that, we are
16 creating a much larger problem for the future of
17 the country. Our citizens that have been
18 underserved in education should not be penalized
19 more by telling universities, that you shouldn't
20 take on that risk, because it's a risk that we're
21 willing to take and we got great outcomes to
22 prove it.

1 MS. CARUSO: Mike, I hear you saying
2 that it shouldn't be a one size fits all.

3 MR. BUSADA: Yes.

4 MS. CARUSO: Are there any triggers
5 that you feel might apply, specifically to a
6 university like yours?

7 MR. BUSADA: I'm glad you asked that.
8 And this is, I think, where it goes to our
9 subcommittee. Realizing that I am not a
10 professional in terms of some of the accounting
11 standards, I would like to ask our subcommittee,
12 I'd like to task them, with looking at this issue
13 and bringing us back some recommendations
14 reporting it to this committee.

15 MS. CARUSO: Abby and Will.

16 MS. SHAFROTH: So, there's been
17 discussion of whether it's appropriate to apply
18 the same financial protection triggers to all
19 institutions, regardless of type and regardless
20 of what sort of population they serve.

21 I just wanted to point out that in
22 2016 the Department found it appropriate to apply

1 different financial protection triggers to
2 different types of institutions. And
3 specifically found it appropriate to apply
4 different financial projection triggers to
5 proprietary institutions.

6 And they said because there's a
7 fundamental difference in the governance
8 structures, in the missions of the public and
9 non-profit sectors, and the unique nature of the
10 business model under which these institutions
11 operate. So that may address the concerns of
12 some in this room.

13 MS. CARUSO: Will.

14 MR. HUBBARD: Thanks, Moira. Any good
15 business knows that diversification reduces risk.
16 And I think the point that we're trying to get to
17 is that we're not asking for a single trigger.

18 And to Abby's point that you just
19 made, we're actually trying to diversify based on
20 type of school and type of governance structure,
21 which I think speaks to the concern that it
22 wouldn't be a one size fits all. I don't think

1 anybody at the table is advocating for a one size
2 fits all.

3 Additionally, these are flags, not
4 actions. So it's an early warning system that
5 would hopefully prevent future situations like
6 Corinthian where the school that, I think we all
7 agree, bled the tax payer dry unfairly and
8 purposefully.

9 And if we can prevent that in the
10 future that should be the goal, ultimately. It's
11 better for the students. Also better for the tax
12 payers and better for the business frankly.

13 Additionally, based on the
14 Department's own admission, and this may come as
15 a surprise to some, but government agencies can
16 be a little gun shy at times. And to provide
17 explicit authority to them is imperative.

18 One point that the AGs made that I'd
19 like to touch on as well, was that the states
20 ultimately are not, haven't taken action, they
21 haven't necessarily adjudicated. But look at the
22 data, how many of those are ever adjudicated?

1 Almost none.

2 MS. CARUSO: Will, do you have any
3 triggers that you would like for the group and
4 for the Department to consider?

5 MR. HUBBARD: So the triggers I
6 support have already been mentioned.

7 MS. CARUSO: Okay, thank you.

8 MR. HUBBARD: Oh, go ahead.

9 MR. OCHINKO: So, I do have an
10 additional trigger. The trigger that was in the
11 2016 regulations really related to the extent to
12 which schools were dependent on Title IV revenue.

13 But I think another trigger is
14 suggested by some reports the Department of
15 Education issued over the past couple of years.
16 The most recent one was in December of 2016.

17 And it really focused on the extent to
18 which schools were also dependent upon DoD and TA
19 revenue, tuition assistance, which is the DoD,
20 program for education.

21 So, what that report showed is that
22 there is a growing dependence among for-profit

1 schools on DoD and TA funds. And so I think that
2 this could be an additional trigger looking at
3 the extent to which they're not only dependent
4 upon Title IV, but to the extent to which they're
5 getting up to ten percent or more than ten
6 percent of their revenue from DoD and the aid
7 revenue.

8 I'd also, if I can just comment on a
9 couple of points that were made, so, Aaron said
10 that DoD, I'm sorry, that Ed already has the
11 authority. I think that Annmarie's comment is
12 spot on.

13 But I also think that the point of the
14 triggers is important to keep in mind, and that
15 is that they were deterrent. So this is a
16 warning to schools that if you trip one of these
17 triggers than you're going to get a letter of
18 credit.

19 I think the other comment I want to
20 make is that we can bicker about this trigger is
21 bad, that trigger is bad, and I think what it
22 comes down to is that there is no trigger that is

1 acceptable to anybody and so we're left with no
2 triggers. And I think that's a bad option.

3 MS. CARUSO: One note. Aaron, could
4 you turn your mic off, we're getting a little bit
5 of sound.

6 MR. LACEY: Oh, apologies.

7 MS. CARUSO: Thank you. Evan, Kelli,
8 Alyssa, Danny, Chris and then back to Aaron.

9 MR. BANTLE: Just a reminder, after
10 you do speak, if you could put your tags down
11 that would help us out a lot. Thank you.

12 MR. DANIELS: Anmarie's comments made
13 me realize I should be a little bit more clear
14 about what my office opposed in the last, if
15 we're talking about whether state attorney's
16 general investigations or actions are relevant to
17 whether there might be a problem, that's one
18 thing. Certainly they are relevant and might be
19 appropriate to trigger a closer look by the
20 Department.

21 What we opposed was the presence of
22 that triggering some kind of, triggering

1 essentially what amounts to a financial penalty
2 or financial burden on such institutions.

3 MS. CARUSO: Kelli.

4 MS. HUDSON PERRY: Looking at these
5 triggers that were proposed in 2016, it appears
6 that they relate to the fact that an institution
7 is not financially responsible. And all of these
8 triggers are not financial in nature.

9 So, if I'm going to say one that I
10 might support it would be accrediting agency
11 actions. Simply because those are in place to
12 try to identify the bad actors, right? They're
13 looking at programs, looking at things like that.

14 But there is a very big difference
15 between, I think, if we relate this to borrower
16 defense, if it relates to a school closing or it
17 relates to misrepresentation. Because a lot of
18 these triggers are not going to deal with the
19 latter. They're not going to deal with
20 misrepresentation.

21 They might identify some potential
22 school closures, but I would argue that they

1 might not be the right one. So there's been some
2 conversation about each type of situation that
3 might be a little bit different.

4 So when you're looking at the not-for-
5 profit space, we're going to see a real challenge
6 there from a financial perspective. And where a
7 school might close is, are they having issues
8 with enrollment, is their enrollment declining,
9 are their applications declining, those types of
10 things.

11 In the public space, it might be loss
12 of state funding. In the for-profit space, I'm
13 not real well versed so I don't know what that
14 might be there, but it's a situation where these
15 triggers, looking at them from a financial
16 perspective, there's kind of a disconnect between
17 them.

18 MS. CARUSO: Alyssa, Danny and Chris.

19 MS. DOBSON: So, I would suggest if
20 the Department feels that they need the triggers
21 in order to have some sort of a predictive value
22 that, for one, I don't believe that they should

1 be automatic.

2 I think if you need something to bring
3 attention to a school early, then use it for
4 that, but maybe not issue an automatic letter of
5 credit.

6 Allow that for the purpose intended,
7 it will bring it to your attention, you can do
8 some review. If you communicate with the school,
9 allow them to explain why they have some of the
10 triggers. And then also, perhaps, maybe have it
11 be a combination.

12 Because as has already been expressed,
13 we all are very different and I don't know that
14 one of these alone, could signal doom ahead.
15 Maybe have a combination of triggers before any
16 action would be taken.

17 MS. CARUSO: Danny.

18 MR. MADZELAN: Thank you. I want to
19 attend to agree with Alyssa and with Kelli with
20 regards to their comments.

21 The one trigger that sorts of bothers
22 me a little bit is the trigger that comes from an

1 accrediting association with regards to findings.
2 And so every finding that you have in the
3 accreditation association does not relate to
4 dollars.

5 For example, you can have a president
6 who is not being evaluated by the board of
7 trustees. That would be a violation of
8 governance. Does that trigger a financial
9 penalty, I don't think so.

10 Or you can have an issue around fiscal
11 plan. I mean, maybe one of the dorms needs a new
12 roof on it, the accreditors found it violated
13 some policy.

14 So I think you can have the various
15 triggers, but I think when you get down to
16 financial triggers, particularly as it relates to
17 findings from accreditation associations, you
18 have to be very careful. And so I would agree
19 with Alyssa in that colleges and universities
20 should be warned maybe that there are issues that
21 need to be resolved.

22 And if it does resort, result in a

1 letter of credit being needed by the Department
2 of Education, I would also ask you, rather than
3 creating a financial burden on an institution to
4 have a letter of credit, to look at reserves, to
5 see if there are ample reserves within an
6 institution that can support that.

7 MS. CARUSO: Thank you. Chris, Aaron,
8 Michael and then Linda.

9 MR. DELUCA: So, is, just from a
10 background standpoint, in addition to being an
11 attorney I'm also an inactive certified public
12 accounting. So, in looking at these issues and
13 trying to understand this, my biggest challenge I
14 think is, well, a couple of things.

15 Aaron pointed out, and we've got
16 financial responsibility tests right now with the
17 current regulatory system. And that's a measure
18 of whether or not schools are financially
19 responsible.

20 There is additional things. We've had
21 some discussions as far as how far the Department
22 can go, but the Department does have some tools

1 in its tool bag as far as requiring additional
2 information from schools related to finance.

3 My biggest challenge is that this is a
4 very complex issue. And in order to determine,
5 we're being asked about, well, what ideas do we
6 have as far as what things out there might be a
7 trigger or might be an indicia of a school that's
8 having financial issues that might come down the
9 pipe six months, 12 months, 24 months down the
10 road.

11 And again, even with my background I'm
12 sitting here saying, I'm not qualified to answer
13 that question. I mean, I think that that's a
14 question that, whether my colleagues suggested
15 the subcommittee, I know Dawn suggested that, and
16 requested that the Department look into the
17 financial responsibility test as a whole.

18 And I would echo that to say, if the
19 financial responsibility testing that we have is
20 20 years old and there are challenges with it,
21 then it seems to me that it's due for an overhaul
22 and there should be people and there should be

1 Department and research and people who know what
2 they're talking about on this topic, experts in
3 this field, to look at it to say, what makes
4 sense in 2017 and 2018, to be able to make these
5 predictions and to be able to come up with tools
6 that are helpful to be able to identify.

7 Because the tools, and again, we're
8 supposed to be starting from scratch --

9 MS. CARUSO: Chris, do you have any
10 suggestions for the Department to consider in
11 terms of triggers?

12 I understand you're saying that you
13 don't have an answer to the question, but is
14 there anything that you --

15 MR. DELUCA: Well, I think it's
16 important to understand, so, we've had some
17 people suggest the tools right now, and so this
18 leads into my comment of saying, in looking at
19 the 2016 triggers, and I know we're supposed to
20 be starting from scratch but then there's been
21 proposal to say keep the 2016 triggers. I say
22 no, don't keep the 2016 figures and have some

1 experts start from scratch to look at this issue.

2 I mean, the 2016 figures, for example,
3 one of the triggers is if there's a lawsuit out
4 there. Well, and Williams made the comment of
5 saying, it's really a red flag, it's not an
6 action.

7 Well, no, those triggers are action.
8 If there's a lawsuit out there and you've got a
9 small school, one lawsuit that whether or not,
10 I'm not getting to the validity of it, but
11 lawsuits take time to play out to figure out what
12 the consequences are going to be.

13 But one lawsuit can be an existential
14 threat to a small school. Because now you've got
15 to go through the whole process, you've got to
16 put it on there, you have to recalculate your
17 composite score.

18 If you fall below a number on some
19 hypothetical liability, that you might have two,
20 three years down the road, now you've got to get
21 a letter of credit. Which requires you to go to
22 a bank and post collateral and --

1 MS. CARUSO: Chris, I'm sorry. So
2 your suggestion is that they get some experts and
3 figure it out?

4 MR. DELUCA: I'm saying that the 2016
5 rules, we should not be using those and we should
6 get experts to look at the process and come up
7 with a better system. That's --

8 MS. CARUSO: Okay. Thank you, Chris.
9 Aaron.

10 MR. LACEY: So, I know a lot of folks
11 in the room know this but I think it's worth
12 restating. So, this committee does not have the
13 ability to grant authority to the Department,
14 right? Congress grants authority to the
15 Department to do things.

16 So I would like to ask the Department,
17 if the Department does not believe that it
18 presently has the authority to request the
19 reporting of all the items that have been
20 articulated already, or if the Department does
21 already believe that it has the authority if it
22 learns of one of those items, to take action and

1 require an institution to post a letter of
2 credit, I would ask that you let us know that.

3 Because if you don't have the
4 authority, it doesn't matter what triggers we may
5 come up with, you don't have the ability to
6 request that information or take action on it.

7 Conversely, if the Department
8 currently has the authority to request all the
9 information that's been listed, and currently has
10 the authority to ask for a letter of credit based
11 on concerns raised by the reporting of that
12 information, then, my original point would stand.
13 That I don't think we need to be articulating
14 things in regulation that you already have the
15 authority and are asking for and can act upon.

16 MS. CARUSO: All right, Michale.

17 MR. MCCOMIS: So, I understand the
18 importance of these early warnings. There's
19 really nothing worse than a precipitous school
20 closure.

21 And I think that, from my experience,
22 the school closures that we see come through

1 instability, finances. The triggers, the red
2 flags, the warnings can be very useful.

3 But with regard to the points that
4 have been made here, it's just very difficult to
5 have that one size fits all. So my only
6 suggestion is, if the Department feels like it
7 needs to articulate a list, can that list be
8 illustrative and not definitive?

9 And that is to say, these are the
10 kinds of things that we're going to look at.
11 We're not limiting our self to this, but it
12 doesn't automatically mean that one lawsuit or a
13 cohort default rate is automatically going to
14 trigger a letter of credit.

15 It's going to trigger a review
16 process. And that's kind of how accreditation
17 works. So, from our advantage point it's
18 injecting more subjectivity and more nuance
19 review, at the Department level.

20 Some people are more comfortable and
21 some people are less comfortable with that idea.
22 I'm in the more comfortable camp.

1 I think the Department has exceedingly
2 dedicated and smart folks that can look at these
3 issues and make some determinations that A plus B
4 plus D equals concern. C not so much and E not
5 so much, but these things, in our calculus, lead
6 us to believe that a letter of credit is
7 necessary.

8 So I would just ask for the Department
9 to consider, again, an illustrative list or ideas
10 as opposed to something definitive that kind of
11 locks you in to if, this, then, that.

12 MS. CARUSO: Okay. Linda, Walter and
13 then back to the Department. And then we've got
14 Kimberly as well.

15 MS. RAWLES: I know that you guys are
16 doing your job and you're saying the Department
17 wants triggers, but that presumes that we all
18 support triggers. And we're here to provide our
19 expertise and our experience.

20 And so I think it's fair for us to sit
21 here and say, no, or whatever we think, without
22 being pushed to provide triggers. Because that

1 already makes the presumption that some of us
2 don't necessarily agree with.

3 First of all, I loved Aaron's question
4 about authority so I would encourage the
5 Department maybe to come back with an answer on
6 that on a later date because that's very
7 intriguing.

8 I also agree with Mr. McComis' view of
9 factors being illustrative and not definitive.
10 So I would not sit here and say that there
11 shouldn't be some type of early warning system.
12 If it were easy, we could just go to Corinthian
13 and say, what happened there, and make a list.

14 I mean, we're all capable of doing
15 that. But the fact that we're not doing that
16 shows you that every situation is unique.

17 So I don't care if the lists the
18 Department comes up with is five pages and you
19 take every issue that people in this room have,
20 as long as we realize that every situation is
21 different, and those should simply trigger a
22 conversation with the school and not necessarily

1 a draconian action that could have serious
2 consequences and snowball to the very end point
3 that no one wants, because as soon as there's an
4 automatic trigger, even with the small school,
5 big school, whatever, that trigger can, in
6 itself, cause issues that become other triggers.

7 And I know the Department doesn't want
8 to put a school out of business that wouldn't
9 have to go out of business. And I'm not saying
10 that happened before, I'm saying it could happen.

11 So I think the key is that the
12 triggers be a point of conversation and not an
13 automatic draconian action.

14 MS. CARUSO: Walter. Oh.

15 MS. WEISMAN: If I can, I'd like to
16 step in and just correct some, I think what were
17 inadvertent mischaracterizations.

18 First, I'd like to just clearly state
19 that it's not that the Department is looking for
20 triggers, we are here to listen to your ideas.
21 We are not saying that the Department wants to
22 have triggers, we are saying, what do you want to

1 have. Do you think triggers are a good idea, if
2 so, what would those triggers be.

3 Walter suggested revisiting the 2016
4 triggers. So there is some conversation around
5 that, and we're happy to engage in that
6 conversation. But I do not want it to be out
7 there that the Department is seeking triggers or
8 the Department wants our triggers. We're looking
9 for ideas.

10 Maybe triggers is the way we decide
11 we're going to go, but we're still looking for
12 feedback. And so I think it's important that
13 we're not seeking to articulate a list here. But
14 if you have items, please bring them forward.

15 It's not an easy task, and again, we
16 recognize that. So we thank you for the
17 conversation, but we do want to be clear about
18 that.

19 Regarding Aaron's statements about
20 authority that we have, yes, our authority comes
21 from Congress through the Higher Education Act.
22 That gives us certain space in which we can

1 regulate further, which we have done.

2 There are some items that we can
3 request from institutions when we need more
4 information. Some of that is limited to follow-
5 up questions on audits. Some of it is
6 information we gather at program reviews.

7 There are various sources, other
8 mechanisms with which we can gather information.
9 But in some cases, we are limited in what our
10 response to that can be.

11 There seems to be a misconception that
12 we can get a letter of credit any time we seek
13 it, and that is not accurate. The majority of
14 the reasons that we would get a letter of credit
15 would be due to failing financial responsibility
16 ratios. So, failing score.

17 So I want to be clear, we haven't been
18 given a specific list to review and say yay or
19 nay. If we need to do that we could.

20 I think that's not going to move the
21 conversation forward though. I think, again,
22 we're looking for ideas, we're looking for what

1 you think would be useful.

2 I don't necessarily want to revisit
3 everything that we've done previously, but again,
4 if somebody thinks it's useful and wants to have
5 a conversation, I'm willing to do that.

6 MS. CARUSO: Thank you. We're going
7 to go Walter, Kimberly and trying to close out,
8 again, Issue Paper 3.

9 MR. OCHINKO: So I want to address
10 Aaron's point and give an example of something
11 that the Department really doesn't have easy
12 access to. And that really is the federal and
13 state settlements.

14 There's not really any official
15 website or channel of communications that the
16 Education Department knows that a state has
17 settled with a for-profit school. And this is an
18 issue that we've worked on for a couple of years
19 because we've asked both VA and the Department of
20 Education to post settlements as caution flags
21 for veterans and students.

22 And there was a lot of push back

1 because they didn't have an official source of
2 data. So I think this is just an example.

3 The other thing I'd like to do is I'd
4 like to submit for the record, and be distributed
5 to everybody, the list of triggers. Because, I
6 think in summarizing them I did it quickly and
7 they sound very blunt. I don't think they're
8 quite that blunt. I think that a lot of thought
9 was given to developing these triggers.

10 And so for example, on accreditation,
11 the accreditation actions that would result in a
12 trigger are, the schools required by the
13 accrediting agency to submit a teach-out plan.
14 It's a very specific concrete action on the part
15 of the accrediting agency.

16 Another one is that they were placed
17 on probation or issued a show cause order. And
18 if they don't correct that within six months,
19 that sets off that trigger.

20 So these triggers aren't, they weren't
21 blunt triggers. I think there was some thought
22 given to developing them and putting them into

1 the regulation. And so I'd like to have those
2 distributed to the negotiators so that they can
3 actually take a look at them.

4 MS. CARUSO: Okay, we have Kimberly
5 and then Mike and then Aaron. I do want to
6 stress, not necessarily triggers, but something
7 new. If I'm not hearing something new I will
8 redirect. Thank you.

9 MS. BROWN: Hopefully this is
10 something new. Whether triggers or not, one of
11 the items I wanted to make sure is out there is
12 just the consideration for the uniqueness of
13 medical education.

14 I know in 2016 one of the items that
15 was going to trigger, if you will, a warning to
16 current and perspective students is the borrower
17 defense repayment, the loan repayment rate
18 calculation, which was based on the same formula
19 as the gainful employment calculation.

20 There are some proprietary
21 institutions of medical education. Medical
22 residency typically lasts between three to seven

1 years and students would typically have their
2 loans in a forbearance state at that time.

3 They would never be able to meet the
4 formula because of the interest that's accruing
5 while those loans are in forbearance. And if
6 that calculation was applied to all medical
7 institutions across the board, none of them would
8 ever be able to meet that formula.

9 I have examples if anyone is
10 interested. Just a quick one. If someone has
11 \$250,000 in debt, they put it in forbearance at a
12 5.3 percent interest rate, they're accumulating
13 about \$13,250 per year in interest.

14 And the formula is indicating that the
15 borrower would need to reduce their balance from
16 graduation by \$1 within that window, and they
17 would never be able to meet that because of the
18 accumulating interest each year. So I just want
19 the uniqueness of medical education and other
20 health professions education to be considered.

21 MS. CARUSO: Thank you, Kimberly.
22 Mike.

1 MR. BUSADA: First I want to say,
2 Kimberly, I appreciate those comments
3 tremendously. My wife is a resident and you're
4 exactly right, and all those things have to be
5 taken differently.

6 In terms of the mechanisms that we're
7 talking about and the different triggers I just
8 want to say, as far as a new idea, that as we're
9 looking at these I think we need to put a lot of
10 emphasis on whatever we come up with. Whether
11 it's a trigger system, which I'm not in favor of,
12 an automatic trigger.

13 I think it's kind of like the legal
14 community faced when you did mandatory minimums
15 and they back fired tremendously because you got
16 rid of discretion. But I think that there needs
17 to be, whatever process that we come up has got
18 to be a deliberative process where you bring
19 people into the fold and have those discussions
20 and look at unique circumstances.

21 Because at the end of the day, with
22 all due respect to settlements, and I understand

1 where William is coming from, I mean, I'm sorry,
2 Walter is coming from, with settlements, if
3 you're a smaller entity and you're up against
4 somebody much bigger or a class or a plaintiff's
5 lawyer that's going, trying to put a lot of
6 people together, I can tell you that, this is not
7 the case, we've never had a situation like this,
8 but there's a lot of small schools, you settle
9 because you can't pay attorneys. I mean, you
10 settle because you just don't have the money to
11 go to court.

12 Thankfully we've never been in that
13 situation, but I can tell you that, keep in mind,
14 going to court is very, very expensive. So not
15 all settlements are bad.

16 And also, not all, that doesn't hold
17 all institutions equally because you're not going
18 to see settlements across the sector. Because
19 attorney generals represent the public
20 institutions and so it adds a conflict.

21 And there's nothing wrong with it, I'm
22 just saying let's make sure that we look at

1 everything equally. And I don't think this looks
2 at everything equally.

3 MS. CARUSO: Aaron.

4 MR. LACEY: You cut me off if you
5 don't think this is new. I think it's a useful
6 data point.

7 So, I think actually circulating the
8 2016 triggers is helpful. And I wanted to focus
9 on, Walter brought up the accreditation example.
10 And this is a really good example of why I'm very
11 uncomfortable with the idea of trying to come up
12 with some sort of list that we put in regulation.

13 MS. CARUSO: Okay, but, Aaron, that's
14 not new.

15 MR. LACEY: Well, can I comment on the
16 complexity of the accreditation point as an
17 illustration? Is that okay? Okay, good.

18 So, for example, under the 2016
19 proposal, Walter mentioned that it bootstrapped
20 the idea that one of the triggers was it you had
21 to provide a teach-out plan to your accreditor,
22 and that's an old regulation. And one of the

1 conditions of requirements for having to provide
2 a teach-out plan to your accreditors if you close
3 a location. Not the whole school, any location.

4 I know we're very focused in some
5 instances on for-profit institutions, Corinthian
6 and ITT, but keep in mind, this applies to every
7 school, every private non-profit in the country.

8 You have schools with lots and lots of
9 location. Domestically and around the world.

10 Every time any one of those schools would want to
11 close one of those locations, right, maybe they
12 have one on a Military base, Military base says
13 we're moving out, et cetera, they have to report
14 that to the Department. That triggers the teach-
15 out plan requirement. Which means it satisfies
16 the trigger.

17 So you've got an administrative
18 burden, the school has to supply this teach-out
19 plan plus now they're reporting to the Department
20 that one of these triggers has been satisfied.

21 It creates a need for conversation.

22 And worse, if it locks in to some sort

1 of automatic action, it creates that automatic
2 action. Without regard to whether it has any
3 potential implication for the institutions
4 financial wherewithal.

5 It also creates a perverse incentive
6 for institutions to keep locations open. Right?
7 Even though it might make sense to responsibly
8 close that location and pull it off the ECAR,
9 because you have a concern that it might
10 constitute a trigger.

11 Walter said, and it's a fair point,
12 part of the idea here is these serve as
13 deterrents. But as has been pointed out several
14 times, everything we do creates potentially an
15 incentive.

16 And this creates an incentive, or
17 would in this example, for institutions to leave
18 locations around that should not be there
19 anymore, because they don't want it to result in
20 some sort of negative consequence.

21 It's just an illustration of how
22 complex, and this point's been made, this can be.

1 And that's why I like leaving it to the
2 discretion of the Department.

3 MS. CARUSO: Okay, thank you, Aaron.
4 Barmak.

5 MR. NASSIRIAN: Unrelated to the
6 comments just made, one of the lessons I hope we
7 take from the circumstances of the last few years
8 is that significant financial duress can cause
9 bad outcomes for both students and taxpayers.

10 And, unfortunately, when we look at
11 the sectors, we tend to lump institutions
12 together. We, for example, routinely talk about
13 for profit without understanding that there are
14 significant differences within that sector in
15 terms of financial underpinnings and in terms of
16 behavior.

17 First of all, I totally support the
18 notion that we need an early warning system that
19 is non-mechanical, that does not automatically
20 trigger any particular adverse action so that the
21 Department can look or see whether a teach out
22 plan was voluntarily submitted as an orderly

1 management issue or imposed on an institution
2 because an accreditor is concerned about
3 precipitous closure.

4 But the one new idea I want to put on
5 the table is are we encouraging the Department to
6 talk to some folks who know something about
7 corporate finances, because particularly with
8 regard to publicly traded entities where we've
9 had two catastrophes already on the record.

10 I would look at share price
11 fluctuations and I would look at block trading
12 were you obviously, because we constantly sing
13 the praises of the private sector in terms of its
14 nimbleness and its superior insight into the
15 future. And that is the market voting that
16 trouble lies ahead.

17 When you see significant and
18 consistent fluctuations, that should say
19 something. Doesn't mean the Department should
20 require anything, but it means the Department
21 should take notice. Block trading, the same
22 thing. That's an off market, opaque transaction

1 that is meaningful in some way. It may be
2 nothing, it may be a very significant event.

3 MS. CARUSO: Okay. Thank you. So I
4 would ask the Department at this time, is there
5 anywhere else you would like to explore within
6 issue Paper 3 or anywhere else that you feel you
7 want more additional comment?

8 PARTICIPANT: No, I think we're fine.
9 Thank you.

10 MS. CARUSO: Okay. We're going to
11 take our morning break before we get into Issue
12 Paper 4. Please take 15 and come back at 10:20.
13 Thank you.

14 (Whereupon, the above-entitled matter
15 went off the record and resumed following a brief
16 recess.)

17 MS. CARUSO: Okay. Can we have a
18 brief introduction into Issue 4. Annmarie,
19 please. Thank you.

20 MS. WEISMAN: Issue Paper 4 is about
21 pre-dispute arbitration agreements, class action
22 waivers, and internal dispute processes. We've

1 given you statutory and regulatory citations in
2 the paper. Just a quick summary of this issue,
3 again, trying to keep it on a non-legal level and
4 keeping it policy focused.

5 Some institutions require students to
6 sign an enrollment agreement prior to enrolling
7 that requires a student to pursue arbitration or
8 an internal resolution process with the
9 institution before the student can go to outside
10 entities, government agencies, or others. Or
11 even go to court.

12 Those causes may also require students
13 to waive their right to file a class action
14 lawsuit. Prohibitions on pre-dispute arbitration
15 agreements and class action waivers have been
16 found to violate the Federal Arbitration Act.

17 There have been actions by the
18 Department of Justice as well as the Supreme
19 Court governing these issues. In addition,
20 Congress and the President have recently
21 interceded in this area. And the Department
22 notes that the Higher Education Act does not

1 address arbitration agreements or class action
2 waivers.

3 As many of you have already discussed,
4 the 2016 regulations that we covered in this area
5 of borrower defense, did include information
6 about arbitration agreements as well as class
7 action waivers, and in fact banned that behavior.

8 Those regulations also prohibited
9 schools from requiring students to use an
10 internal complaint process before seeking
11 remedies from either accrediting agencies or
12 state or federal agencies. And some have argued
13 that having regulations about these types of
14 procedures would actually promote transparency
15 and collaboration between students and
16 institutions that would help to resolve them in a
17 quicker way and a less expensive way that would
18 potentially save money down the road.

19 Others have argued that if the student
20 believes the grievance is strong enough that it
21 needs the attention of outside agencies, that it
22 should be brought there, and could do so without

1 going to the institution first.

2 So the Department would like to
3 discuss two issues related to this. The first
4 being, apart from outright prohibition on the use
5 of pre-dispute arbitration agreements and class
6 action waivers, are there other measures that the
7 Department could do to promote the interest of
8 borrowers?

9 And should the Department regulate
10 schools' internal dispute resolution processes
11 such as requiring that students go to an
12 institution first, or prohibiting going to an
13 institution first.

14 And I think because these questions
15 are so linked, it's fine to certainly take them
16 together and discuss and you like.

17 MS. CARUSO: Aaron.

18 MR. LACEY: I was just wondering if
19 the accrediting folks and maybe SHEEO and the AGs
20 would talk a little bit about the extent to which
21 accreditors and the states may have provisions,
22 and reflect on, you know, the provisions that

1 would reflect internal dispute processes at
2 schools.

3 PARTICIPANT: So, I'll speak for my
4 agency, and I'm not sure that it's completely
5 uniform across the board of accreditors. But I
6 think generally, we're in the same ballpark.

7 Accreditation requires institutions to
8 have a complaint process. Our agency requires
9 both an internal complaint process, but also to
10 point students to our agency as another avenue
11 and opportunity. And also if the state has a
12 complaint process, to reference that as may be
13 required by state requirements.

14 Not all agencies handle complaints the
15 same way. But largely, we look at all complaints
16 that we receive anonymous and otherwise and try
17 to make some determinations about whether or not
18 it's a violation of an accreditation standard.

19 If we can't make a determination that
20 it's a violation of an accreditation standard,
21 but appears maybe to be in the camp of another
22 regulatory body that we're aware of, i.e., state

1 or federal, we'll forward that information onto
2 those agencies as well.

3 So this is what Robert was talking
4 about yesterday with the triad and the
5 collaboration. And I think that there are very
6 sincere efforts, particularly amongst the states
7 and accreditors to strengthen those lines of
8 communication.

9 But we've also seen, I think, very
10 earnest attempts from the Department to open up
11 communication lines as well so that, you know,
12 when an issue arises, not every single individual
13 student complaint, but when issues arise and
14 patterns emerge, that we're sharing information
15 to identify any issues that might be of concern.

16 PARTICIPANT: Yes. I'll just echo
17 what Michael just said there. I think our
18 communication channels are getting better. I
19 think over the past few years there's been a lot
20 of frustration and a lot of finger pointing,
21 particularly with some of the regional
22 accreditors, our SHEEOs as well some people in

1 the federal office.

2 We kind of approach similar issues
3 from a different vantage point and who our client
4 is to a certain degree. What we are vowing to
5 work on together is to instill a list of best
6 practices of how we can forward information to
7 one another in a cogent manner to help with
8 authorization, to help with accreditation, and to
9 help to make sure the taxpayer's being protected
10 through all of this.

11 So this conversation's really starting
12 last month. A group of us met in Indianapolis to
13 have some conversations around this with Lumina
14 Foundation. And we've vowed to continue those,
15 and to work on this network. And anything that
16 comes out of this process that instills better
17 communication between that triad I think is a
18 proactive and a positive step.

19 MS. CARUSO: Okay. We've got
20 Stevaughn, Ashley Reich, Abby, Will, and Walter.

21 MR. BUSH: Good morning, everybody. I
22 just want to say on behalf of the students, I do

1 not believe that it is in the best interest of
2 students to have institutions force students to
3 submit to pre-arbitration dispute processes. We
4 believe that, as my colleague, Joseline, has said
5 time and time again, it creates a David and
6 Goliath situation.

7 You have students who have very few
8 resources going against big institutions who have
9 a lot of money and very secretive processes.
10 And, you know, we can talk about a lot of the
11 spillover from that, but, you know, I think
12 internal grievance processes are acceptable, so
13 long as we leave a clear path to legal recourse.
14 Thank you.

15 MS. CARUSO: Ashely Reich.

16 MS. REICH: I would just speak from a
17 state authorization perspective. Currently,
18 right now, for us to participate in the state
19 reciprocity agreement, we are required to have
20 the student resolve or exhaust all avenues at the
21 institution first, before moving to the state
22 level or beyond that.

1 So, you have some conflicting things
2 that might need to be discussed there as well.
3 And from an institution's perspective, it has
4 been extremely helpful to be able to have the
5 opportunity to work with the student and to try
6 to resolve the complaint with them.

7 We are a large institution and we
8 handle complaints, I handle complaints all day
9 long. And, you know, we've been able to come to
10 some sort of resolution there. So, I think it's
11 very important to still maintain that internal
12 complaint resolution process with the
13 institution.

14 MS. CARUSO: Abby.

15 MS. SHAFROTH: So, I was hoping for a
16 clarification from the Department. The way the
17 questions in Issue Paper 4 is set up appears to
18 me to suggest that the Department has taken the
19 position that it's no longer willing to consider
20 retaining the limited restrictions on pre-dispute
21 arbitration or class action waivers that were
22 established in 2016, and is only willing to

1 consider alternatives that do not include any
2 limitations on pre-dispute arbitration agreements
3 or class action waivers. Is that accurate?

4 MS. REICH: So, because the prior
5 regulations are under litigation on this specific
6 topic, we're not really able to comment on
7 extensive information regarding where we are with
8 arbitration right now. But because of that, we
9 are looking to hear from the Committee other
10 ideas that they might have as alternatives.

11 MS. CARUSO: Will, and then Walter.

12 MR. HUBBARD: Thank you. Pursuant to
13 Section 492 of the HEA, and in the interest of
14 collecting diverse and informed perspective as
15 per the agreed upon protocols in 2 Subsection C,
16 I would like to propose to the group to invite
17 Remington Greg, a respected consumer rights
18 counsel, to share his perspective on this topic.

19 MS. CARUSO: I'm sorry.

20 (Simultaneous speaking.)

21 PARTICIPANT: Member of the public.

22 PARTICIPANT: For an expert.

1 MR. HUBBARD: An expert.

2 MS. CARUSO: Okay. We're not there
3 yet. We're not at public comment yet. You're
4 requesting that --

5 MR. HUBBARD: So recognizing --

6 MS. CARUSO: -- an expert address the
7 Committee?

8 MR. HUBBARD: Yes. Recognizing it is
9 not public comment, but for participation it says
10 in our agreed upon protocol with approval by
11 consensus of the committee, individuals including
12 specialists, the relevant piece --

13 MS. CARUSO: Yes.

14 MR. HUBBARD: -- who are invited by a
15 member, may participate in Committee or
16 Subcommittee meetings as needed.

17 MS. CARUSO: Okay. Thank you. So
18 does the committee have any questions about the
19 proposal before we ask for a consensus? Yes.
20 Michael.

21 PARTICIPANT: Yes. Question. Who is
22 he? What's his background? Why do you perceive

1 him as an expert versus anybody else? Can we get
2 some more context?

3 MR. HUBBARD: Sure. Excellent
4 question. So he is a, as I mentioned, respected
5 consumer rights counsel. He presently is counsel
6 for civil justice and consumer rights at Public
7 Citizen. I can share his full bio if that's the
8 Committee's interest.

9 MS. CARUSO: Do we have an interest?

10 PARTICIPANT: Can I just ask what, in
11 general terms, the content of what we expect him
12 to say and how that is, plays into the
13 deliberations?

14 MR. HUBBARD: Sure. Absolutely. I
15 think given the discussion arbitration, his
16 expertise which he can speak to in great detail,
17 I think is relevant for our current discussion,
18 and timely.

19 PARTICIPANT: Do we expect him to
20 offer potential alternatives to pre-dispute
21 resolution or to comment on potential
22 alternatives to those concepts?

1 MR. HUBBARD: Yes. I believe that's
2 anticipated.

3 MS. CARUSO: Well is there an
4 expectation as to the time requested of the
5 Committee for this address.

6 MR. HUBBARD: Yes, I think two minutes
7 would be sufficient.

8 MS. CARUSO: Okay. I'll ask for
9 thumbs from the Committee as to whether we will
10 hear from the individual that Will is proposing.
11 I see no thumbs down. And therefore, we can
12 proceed. Around two minutes. Thank you.

13 PARTICIPANT: Yes, we lost --

14 PARTICIPANT: Here it goes --

15 MS. CARUSO: Don't worry, your two
16 minutes have not started.

17 MR. GREGG (Phonetic): Okay. Thank
18 you, then I will. So just to give you just one
19 more data point --

20 MS. CARUSO: Can you say your name
21 again?

22 MR. GREGG: Yes. It's Remington A.

1 Gregg. I'm counsel for Civil Justice and
2 consumer rights at Public Citizen. And we're
3 consumer advocacy organization. And more
4 specifically, I wanted to take the opportunity to
5 address the group because we have, obviously, a
6 deep policy and legal experience as well as
7 having argued before the Supreme Court on the
8 Federal Arbitration Act and on the industry's
9 Procedures Act.

10 So that, I hope, will give you some
11 context that we're coming to this from the
12 viewpoint of how the intersection of the law and
13 policy has developed over the last few years.
14 Okay? So I shall make this brief. But thank you
15 for the opportunity to present comments.

16 The main thing is that Issue Paper 4
17 is fundamentally flawed because the Paper asserts
18 that the Department does not have the appropriate
19 legal authority to prohibit force arbitration
20 agreements and class action waivers, because the
21 Federal Arbitration Act establishes a liberal
22 federal policy toward favoring arbitration

1 agreements that applies Congressional mandate to
2 override that presumption, as previously stated.

3 This Department made clear in both as
4 borrowed defense and PRM and the final rule, that
5 the basis for its authority to require schools
6 that choose to participate in the student loan
7 program to agree not to rely on forced
8 arbitration agreements and class action waivers,
9 is its authority under the HEA to impose
10 conditions on a school to participate in a
11 federal program.

12 None of the cases cited in the Issue
13 Paper are applicable then to a circumstance where
14 an agency has authority to impose conditions on a
15 private party's participation in a federal
16 spending program and uses that authority to
17 require agreement to forego arbitration.

18 Crucially, Title IV states that no
19 institution shall have a right to participate.
20 Participation in a program is conditioned on a
21 school's agreement to terms that form of contract
22 between the federal government and a school.

1 Congress requires the Department to
2 ensure that such agreements, "protect the
3 interest of the United States and promote the
4 purposes of the direct loan program."

5 This is exactly what the final rule
6 did and does. For-profit colleges, such as
7 Corinthian and ITT technical, used forced
8 arbitration provisions and class action waivers
9 to stop students from having their day in court.

10 As a result, students who alleged that
11 these schools committed, for example, fraud or
12 abuse against them were forced into secretive
13 proceedings, are prohibited the banning together
14 with similarly situated students.

15 MS. CARUSO: I just want to point out
16 that we've passed the two minutes. But, Mr.
17 Gregg, do you have any suggestions as it relates
18 to the two questions that are posed in the Issue
19 Paper?

20 MR. GREGG: So, well see, that's the
21 problem because Issue Paper 4 mis-characterizes
22 the law and the policy as it relates to pre-

1 dispute arbitration. So starting from the
2 baseline of there is no other alternative, really
3 does mis-characterize the state of the law as it
4 relates to "Supreme Court Precedent and Policy."

5 MS. CARUSO: Bearing that in mind, do
6 you have any suggestions as it relates to the two
7 questions?

8 MR. GREGG: Well, I would need to find
9 that once more. And the first question was,
10 sorry. Thank you.

11 The best alternative is outright
12 prohibition. There are other measures that could
13 increase transparency. And that is, of course,
14 incredibly important. That's the point ensuring
15 that we don't ban pre-dispute arbitration because
16 there is currently no transparency when it
17 relates to the fraud or abuse that pushes these
18 disputes into its proceedings such as gag
19 clauses.

20 So there has to be, fundamentally, an
21 alternative that has unobtrusive transparency for
22 those who seek to vindicate their rights.

1 MS. CARUSO: Thank you. Suzanne,
2 you're next.

3 MS. MARTINDALE: Thank you, Remington,
4 for that presentation. I think it was incredibly
5 germane to the discussion. I wholeheartedly
6 agree with him. I think that you're right on the
7 law and the policy and just wanted to state as a
8 member of the Committee, fully acknowledging
9 Annmarie's statement about ongoing litigation.

10 I find it problematic that there has
11 been a very serious reversal in the Department's
12 position with respect to its authority under the
13 HEA to condition Title IV eligibility. And I
14 find it troubling that there has not really even
15 been a rationale stated for doing so.

16 I also wanted to point back to
17 something that we were discussing yesterday,
18 which I think ties in here which is when we were
19 talking about the process for applying for
20 borrower defense, what the student should have to
21 prove up. So, the burden of proof.

22 There's a lot of discussion from many

1 people around the table about the importance of
2 ensuring due process for all parties. And it
3 sounded like some of the folks in the room,
4 particularly those with a legal background, were
5 kind of falling back on the notion of, you know,
6 and adversary proceeding, going to court.

7 So, if folks think that would be
8 important in the context of applying for a
9 borrower defense claim, that sure does sound
10 quite a bit like the borrowers seeking redress in
11 a public court of law as is their 7th Amendment
12 right.

13 MS. CARUSO: Walter.

14 MR. OCHINKO: So, I'd like to address
15 the issue of should the Department regulate
16 schools' internal dispute resolution processes.
17 I don't think that was really the intent of the
18 requirement and the rule that was issued last
19 November.

20 The issue came up because we brought
21 up the point that ITT had reached out to a
22 student who filed a complaint with VA. And in

1 responding to the complaint in writing to this
2 Veteran, they said that you had signed an
3 enrollment agreement. And in the enrollment
4 agreement, you agreed that you would use our
5 complaint procedure process. And you didn't.

6 And I think our only point was that no
7 student should be obligated to use an internal
8 dispute resolution process, that the Department
9 of Veteran's Affairs has their own complaint
10 tool and process. And a Veteran should feel free
11 to reach out to that for whatever reason.

12 Students can choose not to use the
13 school's grievance process because, in fact,
14 they've had some experience with the school and
15 perhaps they don't find that it's going to be
16 very responsive to their complaint.

17 So that was the intent. Not to
18 interfere or design what the internal complaint
19 process should be. Of course, there should be an
20 internal complaint process. But the student
21 should not be mandatorily required to use that
22 first. And that was the point of the provision

1 in the final rule.

2 MS. CARUSO: Thank you. John, and
3 then Aaron, Abby, Gregory and Michael.

4 PARTICIPANT: Thank you. Recognizing
5 the Department's situation of having a policy
6 discussion about a matter that's subject to
7 litigation, I can't express how much sympathy I
8 have having been in that situation many times.

9 I was just wondering if the Department
10 could give us an idea of what the Department
11 might think its specific statutory authorizations
12 to engage in regulations of the kind they're
13 seeking right now might be?

14 Could they point us to that authority
15 so that we can get an idea as we're trying to
16 make recommendations to the Committee of what
17 authority the Department thinks it has here?

18 MS. WEISMAN: I think the Department's
19 position here is that it will depend on the
20 options that are put forth. Certain policy
21 decisions may lead us in one area of statutory
22 authority, and other options may lead us

1 somewhere else.

2 So as we're discussing policy options,
3 if anyone has a concern that we may not have the
4 authority to regulate in that area, certainly let
5 us know. Or if we hear something that gives us
6 cause for concern, we can raise that as well.

7 MS. CARUSO: Aaron.

8 MR. LACEY: As an initial matter, I'd
9 like to say that I think the Department
10 definitely does have the authority to regulate
11 the temperature in this room. And I encourage
12 them to exercise that authority at every possible
13 chance. I will come more prepared in January.

14 I just wanted to comment on Number 2,
15 should the Department regulate internal dispute
16 resolution processes. As an initial matter, I
17 want to say I'm, I cannot stress enough, I
18 believe it is absolutely essential that a school
19 have a clear and workable and, you know,
20 functional internal resolution, dispute
21 resolution process.

22 I tell my clients that all the time.

1 I mean, they have every incentive to do that. To
2 have a muddled process is bad for students, but
3 also terrible for institutions. So, you know,
4 there's no doubt.

5 But speaking specifically to your
6 question about whether the Department should
7 regulate it. My concern is that, first of all
8 institutions are incredibly complex. I mean, how
9 are we going to tell Ohio State that its internal
10 resolution process needs to look like Miss
11 Betty's Beauty School down the street with 12
12 people and six staff members?

13 The variation there is extraordinary
14 in institution type. Also, there is
15 extraordinary variation in dispute type. I
16 mean, you know, we're sort of focused on this
17 idea of fraud. And we're talking a lot about the
18 two public companies, et cetera.

19 But when you talk about dispute, I
20 mean, that's everything. That's sexual
21 misconduct. That's, you know, all kinds of
22 stuff that could come up. Also, there are other

1 laws out there already are speaking to this. I
2 mean, the Clery Act, for example, has something
3 to say about how institutions manage internal
4 dispute resolutions in the instance of sexual
5 misconduct apart from what may be going on with
6 Title IX.

7 And finally, the creditors and the
8 states alike, I think, other members of the triad
9 do make an effort to already speak to this. So
10 what I'm suggesting is, I think there are a lot
11 of voices already there. I think that schools
12 have a very strong incentive to design a process
13 that works well, as Walter pointed out.

14 I don't think the intent previously,
15 from the last negotiations, was suggested that
16 the Department should be regulating in this area.
17 So I sort of land on no as my answer. I don't
18 think it's something that you guys should be
19 focused on.

20 MS. CARUSO: Abby.

21 MS. SHAFROTH: Thank you. I'd like to
22 address point two, or question two and then

1 question one. On question two, the internal
2 grievance procedures, I think the key here is
3 that it was an important step forward for, in
4 protection for student borrowers in the 2016
5 regulations that to ensure that they would not be
6 prevented from moving forward with either a
7 borrower defense claim, bringing that before the
8 Department, or filing a claim in court on the
9 basis of the school's trying to force them to,
10 instead, go to the school first and work through
11 internal grievance procedure and exhaust that
12 process.

13 I discussed this previously, so I
14 won't go into too many details other than, again,
15 if a student has been scammed by a school telling
16 them that they have to go back and work through
17 that school first before they try to get relief
18 from the government or in an impartial court of
19 law, is extremely harmful to the student and is
20 likely to hurt that individual student and their
21 prospects for getting fair and timely relief, and
22 to silence and cover up the type of misconduct

1 that we should want daylight to, that we should
2 want to, sorry, that we should want to bring to
3 the public attention so that the Department is
4 better able to identify schools that are engaging
5 in misconduct early on and to protect future
6 students and to protect the taxpayers at the same
7 time.

8 On point one, the question is apart
9 from outright prohibition on pre-dispute
10 arbitration agreements and class action waivers,
11 are there other measure the department could
12 take?

13 In 2016 the Department said that
14 nothing, in the comments opposing regulation of
15 these areas demonstrates that the substantial
16 problems created by use of class action waivers
17 could be reduced or eliminated by other more
18 modest measures.

19 So the Department has previously taken
20 the position that it can't prevent these abuses
21 with other measures short of those that it took
22 in 2016. I agree with that.

1 I also don't see any basis for a legal
2 reason for departing from the 2016 limitations on
3 arbitration class action waivers because the
4 cases that are pointed to in Issue Paper 4, the
5 CompuCredit case and the AT&T versus Concepcion
6 case are from 2011 and 2012.

7 Obviously, those cases preceded the
8 2016 rules and they were considered by the
9 Department at that time and determined that they
10 did not create any restrictions on the
11 Department's ability to promulgate regulations
12 creating these limited restrictions on use and
13 abuse of pre-dispute arbitration and class action
14 waivers within the context of the direct loan
15 program.

16 MS. CARUSO: Gregory.

17 MR. JONES: Thank you. Notwithstanding
18 the Supreme Court and the Congressional Review
19 Act, I tend to lean with Aaron on this. If I had
20 to answer both of these questions for you, I tend
21 to lean no.

22 Now, with that being said, are there

1 any ideas on which the Department might engage
2 with regard to regulating an institution's
3 internal policy? Perhaps it might develop a
4 framework. Perhaps it might develop a minimum
5 floor.

6 We've talked about that a little bit
7 on Monday. And I think you'll still have an
8 issue there with some of our State's Attorneys
9 General because consumer protection still lies
10 with the state. But it's an idea and it's a
11 concept that the Department might want to move
12 forward with. Thank you.

13 MS. CARUSO: Michael?

14 PARTICIPANT: So wade into the waters
15 on arbitration, a mere liberal arts major. But,
16 you know, what I talked about before had to do
17 with the triad. And past analogies have talked
18 about the triad in terms of three legs of a stool
19 or three slices of a pie.

20 And I think that the emerging thinking
21 around it is more along the lines of a Venn
22 diagram with the student at the center, and where

1 you have the greatest amount overlap amongst the
2 regulatory community around and over student
3 interests.

4 So with that in mind, and looking for
5 ways to promote interest of borrowers, but also
6 to promote collaboration, I think that there are
7 ways that the Department can potentially and, you
8 know, you'll all have to take these comments with
9 what potentially you can do with them.

10 But maybe through the PPA there's an
11 opportunity to say that your eligibility to
12 participate in the Title IV Student Assistance
13 Program is contingent upon, and you have a whole
14 list of things that are there. And one of those
15 things could be a complaint policy that the
16 institution, that's clear, that seeks to resolve
17 complaints.

18 And whether or not it should be
19 mandatory for the student to use it, I'll leave
20 that to the discretion of others. But it could
21 be something, I think, that could be included in
22 the PPA.

1 And that would align with
2 accreditation and with state oversight as well so
3 that all three members of the triad were, in
4 unison, identifying the importance of effective
5 student complaint resolution processes as a
6 contingent component of their eligibility for
7 that oversight and regulatory agency's approval.
8 So state, federal and accreditation.

9 MS. CARUSO: So it's Brian, John, and
10 then Will. But, Caroline, did you have a direct
11 response or just a general comment?

12 MS. HONG: I just had a question, to
13 just ask for some clarification from, actually
14 from Gregory Jones. You had mentioned that maybe
15 the Department could develop a minimum floor or
16 framework.

17 And I wasn't too sure, were you
18 talking about the internal dispute resolution
19 process or were you talking about the uniform,
20 the federal standard? Or I wasn't too sure what
21 you were talking about.

22 MR. JONES: The internal dispute

1 process. And the Department might wish to
2 develop a framework of the elements of what they
3 typically would want to see in a internal
4 consumer dispute process. Much like state
5 licensing authorities as well as accreditors.

6 MS. HONG: So you mean a framework in
7 terms of process or in terms of, because when we
8 were talking about the minimum floor, we were
9 talking about standards. So that's a little
10 different.

11 MR. JONES: Standards, elements the
12 Department would want to see in any sort of basic
13 or universal approach. A federal standard, if
14 you will. So saying these are the elements that
15 we want to see in institutions' consumer
16 complaint process.

17 MS. HONG: Okay. Thank you for the
18 clarification.

19 MR. JONES: Yes, ma'am.

20 MS. CARUSO: Brian.

21 PARTICIPANT: I do have some
22 experience in arbitrations and in actual

1 litigation in both the state and federal level.
2 And at the outset, I want to say that our
3 internal procedures for resolving complaints, we
4 even have a student council, have been very, very
5 helpful.

6 Second point is, as to arbitrations,
7 of all the lawsuits that I've had to actually
8 defend or participate in defending both at state
9 and federal level, many times, virtually every
10 time, the Judge has ignored the arbitration
11 clause and found that it wasn't fair to the
12 plaintiff.

13 Secondly, when you do go through an
14 arbitration awarded as subject to attack, you can
15 go back to a court of law, file a lawsuit, and
16 challenge the arbitrators award. The standard is
17 high, but just the same that is available.

18 And to me, arbitration is quite
19 honestly, it's everywhere. It's a time honored
20 mechanism. For example, the lawsuits that I've
21 been involved in, and again, I'm almost looking
22 at the size of the institution. It seems to me

1 that even for, perhaps, veterans, maybe they
2 should have some preference in this area.

3 But big institutions are, I think, at
4 a different level than the smaller institutions.
5 Many of our claims were for under \$20,000. And
6 it was so efficient and economical to ask them to
7 sit down with us, even go through student
8 council, do the internal complaint. If they
9 didn't wish to do that, they went to court and
10 the arbitration agreement clause was not honored
11 by the court.

12 Quite honestly, the Judge would say
13 many times we're here now and you almost did a
14 disservice to your entire platform, your defense
15 of the case by relying on an arbitration. So
16 there are options out there for students to
17 exercise to get out of arbitration clauses.

18 Finally, the federal litigation I'm
19 involved in actually involves the Fair Labor
20 Standards Act, is students that have claimed that
21 they are actually employees. To my knowledge,
22 our attorney fees on that on a global basis are

1 about a million dollars. And quite honestly,
2 that could cripple a small school, just as we
3 come from. We just don't have the resources to
4 do that.

5 So honestly, it's a time honored legal
6 modality. There are some ways to get relief from
7 it. And it's our position that we think it
8 should stay. Thank you.

9 MS. CARUSO: John.

10 PARTICIPANT: At the risk of making
11 this too lawyerly of a conversation, it was
12 accurately pointed out that the last, or that the
13 last time this rule negotiation took place on
14 this topic some of the precedents discussed in
15 the Issue Paper were in existence and the
16 Department reached the conclusion that there
17 wasn't a conflict there.

18 As a state that's been involved in
19 litigation with the past several administrations
20 in various departments, the Supreme Court has
21 decided in our favor several times that the
22 Department's conclusions about such matters are

1 not always accurate.

2 MS. CARUSO: Will, and then Juliana,
3 and Ashley Harrington.

4 MR. HUBBARD: Thank you for the
5 opportunity. To start off with, I want to
6 clarify something that I think is being confused
7 in this conversation, which is to say that
8 there's a discussion about getting rid of
9 arbitration or the opportunity to address
10 internal disputes at all.

11 I haven't heard anybody recommend
12 getting rid of the internal dispute process. I
13 don't think that's the conversation. So let's
14 just make sure we're on the same page with that.
15 Certainly, we in the military connected community
16 are not proposing that. I think having a strong
17 internal dispute process is both necessary and
18 good.

19 That being said, having a forced
20 process in which the student has no opportunity
21 to pursue other action, whether in tandem,
22 parallel, or otherwise, I think is a major

1 mistake. I would propose to the Department for
2 consideration that a tandem or parallel process
3 be considered. I'm not necessarily proposing an
4 outright ban on pre-dispute arbitration, but
5 potentially considering a parallel track that the
6 student can also seek relief in tandem with that.

7 On the piece as it relates to internal
8 dispute resolution processes, I think the
9 Department can and should require that an
10 independent party is appointed on behalf of the
11 student versus the other party appointing them
12 themselves. I think there's tremendous conflict
13 of interest when an opposition party is the one
14 who's bringing in the advocate, if you will, on
15 behalf of the opposing party.

16 MS. CARUSO: Juliana.

17 MS. FREDMAN: So I think we're talking
18 here a lot in hypotheticals. And I think that
19 bearing in mind that we're keeping the taxpayers
20 and the students kind of at the foremost of our
21 thoughts, it's instructive to look at actual
22 concrete data that we do have.

1 Many schools don't use forced
2 arbitration agreements and class action waivers
3 in their contracts. But let's look at one that
4 we know that did, which are the Corinthian
5 schools which account for 75 percent,
6 approximately, of the hundred thousand borrower
7 defense claims.

8 Where I'm from in California, and
9 where I've dealt with hundreds of borrowers, you
10 know, you can go on the district court web site
11 and you can find multiple class actions that were
12 filed by students alleging inflated job placement
13 rates, mis-representations to Veterans, mis-
14 representations about job placement, about
15 transferability of credit.

16 And those class actions were filed in
17 2010 and 2011, and they were removed to
18 arbitration. In 2015, the Department of Ed found
19 that many of those claims were true. And those
20 students are now subject to a streamline process
21 for discharge of their loans, assuming they can
22 attest to certain facts about how they took those

1 loans out.

2 So I think we have to look at the fact
3 that forced arbitration agreements and class
4 action waivers could potentially have cost the
5 taxpayers and the students hundreds of millions
6 of dollars, and really think about that and the
7 financial responsibility of this Committee when
8 we discuss this topic. Thanks.

9 MS. CARUSO: Ashley Harrington.

10 MS. HARRINGTON: So, yes. I think
11 we're doing a disservice by the way these
12 questions are worded because they're worded in
13 such a way that we don't get to the real issues.

14 I think most of us would agree that we
15 don't want to regulate a school's internal
16 resolution process. And students should be given
17 the option, as well as the school, to go into
18 arbitration, if they would like to.

19 But we should never force a student to
20 go into an arbitration. And I think it's been
21 clear through the comments that the Department
22 has the authority to say what a student or school

1 was forced to do, if anything has to do with the
2 direct loan programs.

3 I think that's not even the issue.
4 The issue is what do we do now. And it should
5 not be that a student is forced to do either of
6 these things, to exhaust either of these remedies
7 before they get remedy on the loan that the
8 Department agreed to give them through their
9 school. I think that's absolutely ridiculous.

10 I think, you know, arbitration has
11 been used. It is a tool, and it can be an
12 option, and it should be an option for some
13 students. But for some students, they don't want
14 that. They don't want to be forced into doing
15 that. And we should put the consumer first, the
16 student first, and the taxpayer first.

17 MS. CARUSO: Okay. Abby.

18 MS. SHAFROTH: Yes, I just wanted to
19 talk a little bit about why it's important to
20 borrowers and why, I believe, it was important to
21 the Department to have this, put in place these
22 limited restrictions on arbitration agreements

1 and class action waivers, first, so that we're
2 all on the same page.

3 What the rules did in 2016 was they
4 didn't prohibit schools from having arbitration
5 agreements generally. They said nothing about
6 agreements with the schools employees, agreements
7 that could cover other issues.

8 All they said is that if an
9 institution wants to participate in the direct
10 loan program, then they cannot enforce
11 arbitration agreements against students with
12 direct loans who are bringing claims that could
13 also arise to --

14 MS. CARUSO: Abby, --

15 (Simultaneous speaking.)

16 MS. CARUSO: -- this isn't directed
17 just towards you. It's directed towards
18 everyone. And I request going forward, if we can
19 just limit the comments to things that the
20 Department should consider as they are drafting
21 these regulations and coming back for us to
22 negotiate.

1 MS. SHAFROTH: Okay. So I think that
2 the Department should consider that it made
3 appropriate findings in 2016 that limited
4 restrictions on pre-dispute arbitration
5 agreements and class action waivers as they
6 relate to borrower defense claims are important
7 protections to protect both students and
8 taxpayers against the potentially bearing the
9 burden of invalid debt for taken out on the basis
10 of predatory conduct, including fraud. And that
11 these regulations were brought up in large part
12 to protect the federal fisc (phonetic).

13 They were part of the discussion
14 around financial responsibility, and that if
15 institutions like Corinthian and ITT had not been
16 allowed to silence students who were raising
17 complaints in 2010 and 2011, then we wouldn't be
18 in the position where we are today where there
19 are now tens of thousands of claims for closed
20 school discharges and borrower defenses related
21 to Corinthian and ITT that the Department is
22 going to be on the hook for.

1 MS. CARUSO: Stevaughn, and then Will,
2 and then Joseline. Oh, no. I'm sorry. Joseline
3 after Stevaughn.

4 MR. BUSH: So I favor a prohibition on
5 pre-dispute arbitration. I appreciate the good
6 man's experiences as an attorney, which I am not
7 yet. But legally speaking, I think that it is
8 very hard to challenge a valid arbitration
9 clause, especially in light of the recent Supreme
10 Court ruling that we just got.

11 And also to my second point, I believe
12 that it is well documented that students lose out
13 on relief that they might have otherwise been
14 entitled to in a secretive process such as
15 arbitration. And as a representative of
16 students, I cannot, in good faith advocate for
17 something that students would, in essence, be at
18 a disadvantage going into.

19 And to my third and final point, to be
20 brief. You know, again to the secretive nature
21 of arbitration, we as the public deserve to know
22 exactly what led to the grievances that that

1 student might have had against an institution.
2 And arbitration deprives us that. And so, yes.
3 I would just keep it at that.

4 PARTICIPANT: Just as a facilitator
5 note and to reaffirm what Moira had said. We
6 understand there are concerns with the frame of
7 the questions themselves. And we understand the
8 various positions kind of that have presented,
9 both supporting arbitration and opposing
10 mandatory arbitration agreements.

11 So with those two positions,
12 obviously, prohibiting mandatory arbitration
13 agreements is one option. Allowing mandatory
14 arbitration agreements is another option.

15 What we're looking for, and just
16 hoping the discussion can provide, with or
17 without respect to these specific questions, is
18 what are the options in the middle. Obviously,
19 you know, understanding those two positions.

20 So I can tell you as just
21 facilitators, if we get commenters or negotiators
22 offering either position, right, mandating

1 mandatory arbitration or prohibiting mandatory
2 arbitration, we're going to say that's kind of an
3 ask and answered situation and try and get some
4 ideas in the middle. Just for discussion
5 purposes. Joseline?

6 MS. GARCIA: Thank you. I appreciate
7 that. And I don't think there is a middle. If I
8 were to try to create one, it would be that I am
9 opposed to forced arbitration, I think optional
10 is okay. And I also have some data points that I
11 think is important for us at the table, but also
12 the Department to take into consideration.

13 So since the arbitration process is a
14 secret process, students are often barred from
15 sharing their stories. With law enforcement or
16 the press allowing big companies to cover up
17 widespread fraud.

18 Also, the few consumers who can pursue
19 arbitration are stuck in the reg system where a
20 firm has handpicked by the corporation, decides
21 what the outcome will be with little hope of
22 appeal. And since these firms rely on the

1 companies for repeated business, it is no
2 surprise that they side with the corporation 93
3 percent of the time.

4 So the Government has spent three
5 years compiling and analyzing data resulting in
6 the most comprehensive empirical study ever done
7 on arbitration. The study clearly reveals the
8 serious harms to consumers that result from
9 forced arbitration and class action bans.

10 And I'll list out the key findings
11 very quickly. So students and consumers lose in
12 almost every arbitration, even when they win --

13 MS. CARUSO: Joseline. Joseline, I'm
14 sorry. So I hear you mentioning closed
15 arbitration, and that that's an issue. Are you
16 proposing open arbitration? What are you
17 proposing? What would you like the Department to
18 consider as it drafts its relation and in terms
19 of options?

20 MS. GARCIA: So I think forced
21 arbitration, I am not for. I think optional
22 arbitration can be okay. But I would like to

1 finish my data points. I don't think it's in the
2 interest of this group to silence a student voice
3 at this table.

4 So, I'm almost done. So the few
5 consumers who can pursue arbitration are stuck in
6 the reg system, I already said that. Students
7 and consumers lose in almost every arbitration
8 fight.

9 Only nine percent of consumers
10 actually get any affirmative claims in
11 arbitration, got any relief, recovering an
12 average of just 12 cents to every dollar claimed.
13 In contrast, 93 percent of companies won in
14 arbitration receive an average of 98 cents on the
15 dollar.

16 Students and consumers are blindsided
17 by forced arbitration. Fewer than seven percent
18 of people studied realize that these clauses
19 restricted their rights to hold banks and lenders
20 accountable in court.

21 And that being said, the data is clear
22 that forced arbitration is not simply an

1 alternative forum, these are rip off clauses,
2 particularly those with class action bans. Thank
3 you.

4 MS. CARUSO: Chris, and then Kay, and
5 then Shelly.

6 MR. DELUCA: I wanted just to make a
7 couple of comments getting into the schools'
8 internal dispute resolution. And looking at, one
9 of the things the last set of regulations did is
10 that it created a prohibition from schools having
11 an internal dispute resolution that required a
12 student to go through the school's process before
13 filing a complaint with the state or the
14 accrediting agency or anybody else.

15 And I would like to kind of revisit
16 that because my experience with an accrediting
17 agency is not at this table. And I want to speak
18 for the accrediting agency, but just to my
19 experience in working with them and working with
20 schools on an internal complaint process is that
21 prior to the changes in 2016, that agency had a
22 requirement that a school's internal dispute

1 resolution process needed to require that the
2 student come to the school first to try to
3 resolve it before going to the accrediting
4 agency.

5 That was what the accrediting agency
6 standard was. And again, not speaking for the --
7 my understanding of the reason for that was for
8 efficiency, and for an opportunity for the school
9 to work with the student to resolve that issue
10 before engaging the resources of the accrediting
11 agency.

12 So I guess my -- and now that may be
13 an issue with the states as well. Again, not
14 speaking for the states, but it seems to me that
15 if a state regulatory authority or with an
16 accrediting agency, if looking at their processes
17 and the way that they monitor and manage schools
18 and oversee schools, that if in their best
19 interest they believe that it would be in the
20 student's best interest and in the interest of
21 trying to resolve that and in the interest of
22 recognizing the resources that it takes, that as

1 part of the process.

2 Again, not ultimately, you know, the
3 student would still, obviously, have the
4 opportunity to make complaints. And you know
5 they don't, if they disagree with and still have
6 the opportunity to go to those oversight
7 agencies.

8 But, again, I guess my point is I'd
9 like to put that authority back to the
10 accrediting agencies and to states to where it
11 was before 2016.

12 MS. CARUSO: Kay.

13 MS. LEWIS: So I was part of the group
14 that looked at this last time in 2016, and fully
15 agree with conclusions we came to about the
16 problems with a forced arbitration.

17 But one of the things I wanted to ask
18 about today is there are a number of places where
19 the Department of Education, CFPB, and others
20 have been required schools to participate in and
21 have set up quite large endeavors for students to
22 submit their complaints to.

1 And what I don't understand is if you
2 allow schools to still have their pre-arbitration
3 clause where they can ban students from going
4 down that road and that they have to stay
5 internally, how does that relate to all the other
6 parts of the federal government's efforts to find
7 out about complaints, and about servicer and
8 school issues, and that schools right now have to
9 respond to?

10 So I want to make sure that we don't
11 limit students from using those options to report
12 their complaints, and that that should maybe give
13 them another voice or another way to do that.

14 Secondly, I would say, if we're forced
15 to say or if we end up in the point that we say
16 that pre-arbitration agreements can occur and
17 students can be limited in their options, then
18 that seems to me that that should go back to the
19 triggers, or the list of triggers that we're
20 thinking about looking at in terms of worrying
21 about whether there's a warning light out there
22 in terms of a school possibly engaging in conduct

1 that they shouldn't be engaging in or having
2 troubles with their students.

3 As I understand, it's a very small
4 percentage of schools that uses, and that those
5 that have used in the past have had major
6 troubles. It seems like it should be on that
7 list of possible triggers to be looked at.

8 MS. CARUSO: Shelly.

9 MR. REPP: Yes. Thank you. Solely
10 for the purpose of suggesting a middle ground
11 here, what I heard from the expert, Remington
12 Gregg, was the need for, one of the things he
13 said was the need for more transparency. What I
14 also heard across the table here is the concern
15 about the secrecy of the arbitration process.

16 I also point out, somebody just
17 mentioned the CFPB, the CFPB in their arbitration
18 rule, which of course, is no longer in effect,
19 but one of the things in there is that if you do
20 have arbitration, that the arbitration process,
21 there need to be a reporting process with respect
22 to the arbitration proceeding, that reports would

1 be given to the CFPB. That might just be an
2 example.

3 But I guess the middle ground here,
4 that I'm suggesting, is that there be more
5 daylight with respect to arbitration proceedings
6 and resolutions so that more people would know
7 about them so that they wouldn't be secret.

8 MS. CARUSO: Michael.

9 MR. BOTTRILL: I agree with Sheldon.
10 If again, as a condition of the participation is
11 to have an open or less secret arbitration, maybe
12 that is the middle ground. And I don't agree
13 that the accreditation community requiring
14 institutions to go to the institution first is
15 uniform. Maybe that's an agency's, but it's not
16 the uniform approach, and I would not advocate
17 for that amongst the accreditation community.

18 We have a process whereby there's no
19 requirement that a student has to go to the
20 institution first. They are always welcome to
21 provide us with any information that they feel is
22 relevant with regard to their experience.

1 PARTICIPANT: My point was not that
2 it should be uniform. My point was that it
3 should be at the discretion and decision of the
4 states and the accrediting agencies.

5 MS. CARUSO: Okay. We've got
6 Stevaughn. Can we get Shelly's name tent down,
7 please. Thank you.

8 MR. BUSH: Just to response. So, I
9 believe that there should be less secrecy, of
10 course. You know, just entertaining the idea of
11 arbitration. But also, we need protocols
12 promulgated by the federal government to also
13 address the imbalance of power inherent in
14 arbitration proceedings.

15 MS. CARUSO: Walter.

16 MR. OCHINKO: Yes. I just wanted to
17 point out why complaint systems by federal
18 agencies are so important, because they are an
19 early warning sign. I think they could easily be
20 used as triggers.

21 I'm aware of several instances in
22 which complaints filed with VA resulted in a

1 request by VA for the state approving agency to
2 go in and conduct an investigation. And those
3 investigations resulted in actions against the
4 school in which new enrollment for the JAG bill
5 was cut off for a period of time until the school
6 came into compliance.

7 So, you know, you can see patterns in
8 complaints, and the federal agency can take
9 action based on those patterns that they see.

10 MR. BANTLE: Joseline and then Jay.

11 MS. GARCIA: So, I do think
12 transparency is a big part of it, and the
13 secrecy, but also again, like, being forced to
14 have to go through this process with the
15 university.

16 When students are enrolling, most of
17 them, I can guarantee you don't know what
18 arbitration is. And the fact that they have to
19 be forced and they have to sign this in order to
20 enroll to the university is just wrong.

21 Do these institutions here, like, do
22 they offer a teaching to students and say this is

1 what arbitration is, this is how it can impact
2 you, this is what you need when you find yourself
3 in this position?

4 I actually don't think that's going
5 on, and a lot of the language is talked about
6 arbitration, again, is not broken down and is
7 very inaccessible and difficult to understand for
8 a student who is just trying to go to school.

9 MS. CARUSO: Jay.

10 MS. O'CONNELL: So I just wanted to
11 offer perspective as a student loan provider and
12 guarantor in terms of the complaint process. So
13 we obviously were subject to complaints come into
14 us through Attorney General's Office, Better
15 Business Bureau, the CFPB.

16 And we have customer experience, I'll
17 call them metrics, but we've centralized those as
18 an organization. We have dashboards. Those are
19 things that we are monitoring internally. And I
20 just think the ability to do that on a broader
21 level is part of one of these early warnings that
22 makes a lot of sense and it works if you're

1 paying attention.

2 MS. CARUSO: John.

3 PARTICIPANT: Thanks. I was just
4 wondering, in light of my question and the
5 Department's response earlier in response to the
6 proposal that the Department regulates or
7 transparency in reporting requirements for
8 arbitration clauses, if the Department would be
9 able to get back to us at some point about what
10 it thinks its legal authority is to regulate in
11 that area to the extent it can do so consistent
12 with the litigation that's ongoing.

13 MS. CARUSO: Thank you. All right.
14 We're going to do a check in with the Department.
15 Anywhere else you would like to address
16 specifically within Issue 4?

17 MS. WEISMAN: I'm not sure that we
18 heard much from the first bullet point. I think
19 we've covered the second point adequately, and it
20 may be that people don't have ideas right now.
21 But if there are other ideas, I think we could
22 use a little more on bullet point one.

1 MS. CARUSO: So, we are looking
2 specifically for other measures that the
3 Department could take to promote the interests of
4 borrowers as it relates to Issue 4. Yes, Will.

5 MR. HUBBARD: Just as a point of
6 clarification, it sounds like some other people
7 proposed it as well. I just want to confirm that
8 we tracked the parallel, or tandem option for
9 that. Thank you.

10 MS. CARUSO: I'm seeing some nodding
11 heads. So we're tracking that? Thank you.
12 Stevaughn.

13 MR. BUSH: I preserve legal recourse
14 for borrowers as much as possible, whether that
15 means prohibiting pre-dispute arbitration, not
16 enforcing mandatory internal grievance
17 procedures.

18 MS. CARUSO: John, is your tent up
19 again or are you down? Okay, thank you.
20 Anything else for the negotiators? Yes, Dan.
21 And then Barmak.

22 MR. MADZELAN: This is more of a, this

1 is sort of a general statement. Probably applies
2 to both bullets. But, I think we need to keep in
3 mind, you know, downstream effects, future
4 effects.

5 And this occurred to me in the context
6 of the discussion we had a little bit with the
7 accreditors and with respect to the accreditors
8 where, you know, it's a standard that an
9 accreditor has to meet to be recognized by the
10 secretary that they have to review the complaint
11 process at a school.

12 Now, the secretary doesn't tell the
13 accreditor what that complaint process looks
14 like. We've heard that sometimes it's one way
15 and other times it's another way.

16 But, if there is one of the things I
17 think about in this area, thinking to the future
18 is, if there is some sort of effort by the
19 Department to, in some fashion, regulate the
20 dispute resolution processes on campus. And if
21 that process is different from what accreditors
22 see on campuses, will that over time, sort of

1 push the accreditors over towards the federal
2 approach?

3 Obviously, it's easier to enforce, you
4 know, a single standard than multiple standards
5 in a particular area. And I also think about
6 this in the context of the ongoing creep of
7 federal deputization of the accrediting agencies
8 that basically started in 1992.

9 So there is a set of federal
10 requirements that accreditors are required to
11 look at as a condition of their recognition. And
12 I'm just concerned that, you know, that set of
13 federal requirements that accreditors are to look
14 at will, you know, it's already expanded. I'm
15 concerned about further expansion.

16 And I'm concerned about this in the
17 context of the, you know, the Department's
18 Organization Act specifically prohibiting the
19 Department from regulating the, sort of,
20 activities of accrediting agencies. Not to say
21 that the secretary can't have standards that
22 Secretary's needs to meet

1 MS. CARUSO: Dan, any additional
2 measures for the Department to consider.

3 MR. MADZELAN: This is what I'm just
4 offering what we think about this.

5 MS. CARUSO: In a sound bite. Okay.
6 Thank you. Abby and then Valerie. My apologies,
7 Barmak.

8 MR. NASSIRIAN: Just wanted to suggest
9 first of all, of course, that we do oppose the
10 imposition of mandatory pre-dispute arbitration.

11 But to the extent that the Department
12 wants some middle ground, if it chooses not to go
13 that route, I would strongly urge the Department
14 to heed Shelly's comment in terms of mandating
15 some reporting and, more importantly,
16 preservation of evidence, because what we've seen
17 is that these tend to be very early warning
18 indicators that the Department only catches up
19 with when the horse has already left the barn.

20 So it would be helpful to, at the very
21 least, preserve the evidence in order to help
22 borrowers. At that point the entity is already

1 out and there's nobody that you have recourse
2 against. But at the very least, you can post-
3 facto use that evidence to make some
4 determination with regard to discharges and
5 relief for victims.

6 MS. CARUSO: Abby. Abby.

7 MS. SHAFROTH: Thanks. So if the
8 Department is not willing to restrict use of pre-
9 dispute arbitration agreements and class action
10 waivers as they relate to student borrower claims
11 that could form the basis of a borrower defense,
12 then in the alternative, then I think the
13 Department is going to have to be the one that's
14 going out and enforcing the laws.

15 Private litigation and private class
16 actions to enforce student's rights and to
17 enforce the laws that, the consumer protection
18 laws and the regulations intended to protect
19 students are one way of ensuring that those laws
20 are enforced and that students get relief.

21 And also that institutions are
22 deterred from bad conduct because they know that

1 they know that they are exposing themselves to
2 liability if they engage in misconduct.

3 If students aren't able to bring those
4 lawsuits and if they aren't able to bring class
5 actions, then challenging systemic misconduct,
6 then the Department is going to have to invest a
7 lot more resources to do that work.

8 MS. CARUSO: Valerie.

9 MS. SHARP: I'm just addressing the
10 other measures, and I want to ensure that it is
11 listed there because it was discussed earlier
12 that it would, in order to prevent, kind of,
13 being proactive in particular but also in
14 researching maybe borrowed defense claims that
15 the transfer of information really be formalized
16 between the Department and accrediting agencies
17 and the state.

18 As was mentioned today, talking about
19 the three, the triad and that things are
20 improving. I think that maybe if there is more
21 formalized process, similar to the agencies after
22 9/11 formalized their transfer of information

1 processes to protect the public. That if this is
2 indeed that important that there be some
3 formalized process between all those agencies
4 that protects all borrowers.

5 MS. CARUSO: Joseline.

6 MS. GARCIA: Another thing to know is
7 the Department could also prohibit class action
8 bans. You know, I do want to uplift the
9 institutions who do have, make an genuine effort
10 to settle these internal disputes. However, I've
11 seen many cases where it just doesn't work and
12 students are taken advantage of.

13 Being a student organizer at the
14 University of California, Santa Barbara, I was a
15 part of many of those internal disputes and
16 having to react to the situation where the
17 University did not handle those internal
18 proceedings correctly.

19 MS. CARUSO: Keli and then Ashley
20 Harrington and then John.

21 MS. PERRY: To address bullet one with
22 the other measures, if the Department is not

1 willing to prohibit the arbitration agreements,
2 one of the things that they could do in the
3 program participation agreement would be to say
4 that if you are going to have these agreements,
5 the institution is then required to notify the
6 Department if they enter into an arbitration with
7 a student.

8 And it could also require, and I don't
9 know how practical this is, but it could also
10 require that a member of the Department is
11 present via phone or something during that
12 conversation.

13 MS. CARUSO: Ashley Harrington.

14 MS. HARRINGTON: Just to be clear, I
15 support the language from 2016. But if you're
16 looking for other measures, I would agree that
17 someone from the Department should be there.

18 And also for the disputes related to
19 the direct loan program, or the phrasing of
20 services for the direct loan, they should insure
21 that the arbiter that is used is completely
22 independent and neutral. So therefore, not

1 selected just by the school.

2 MS. CARUSO: John.

3 PARTICIPANT: Just falling back on
4 something that I mentioned as we were discussing
5 yesterday, I do think one measure the Department
6 could take to protect the interest of students in
7 a consumer protection context is exploring any
8 avenues it has available under its current
9 authority to refer misconduct it learns about
10 through this process to stay enforcement
11 authorities who are well placed to address those
12 issues.

13 MS. CARUSO: Any other suggestions for
14 the Department's consideration? Okay. Joseline.

15 MS. GARCIA: There was a
16 recommendation asked by Aaron earlier on the AC,
17 do you know if it's going to get fixed. It's
18 very cold.

19 PARTICIPANT: It did get turned up.
20 It was adjusted. I apologize. We can, hopefully
21 over lunch, you know, take a temperature, a
22 literal temperature check of the room and figure

1 out how we need to make further adjustments.

2 MS. CARUSO: Is it too cold or too
3 hot?

4 PARTICIPANT: Too cold.

5 MS. CARUSO: I'm going to redirect
6 that.

7 PARTICIPANT: The temperature has
8 been adjusted up since the low point in the
9 earlier adjustment down.

10 (Laughter.)

11 MS. CARUSO: Okay.

12 PARTICIPANT: Yes. I would like to
13 remind everyone of yesterday's afternoon
14 temperature.

15 MS. CARUSO: I'd like to point out, I
16 have a sweater behind me. If anyone would like.
17 Abby?

18 MS. SHAFROTH: Just brainstorming
19 here. One more idea. If the Department is not
20 willing to limit class action waivers, it could
21 put something in the program participation
22 agreement, would make clear that to the extent

1 an institution utilizes or enforces, it utilizes
2 class action waivers in its agreements with
3 students, that those institutions would be
4 subject to borrow defense group discharge
5 processes brought by the Department of Education,
6 and potentially by other representatives that
7 might be recognized to proceed on behalf of
8 borrowers in group discharge proceedings.

9 MS. CARUSO: Back to the Department.
10 Never mind. Aaron.

11 MR. LACEY: We really haven't talked
12 about group actions brought by the Department. I
13 will just note that, you know, it is my view that
14 absent the existence of claims, it is beyond the
15 statutory authority granted by the Borrower
16 Defense Statute for the Department to bring a
17 group action. So that solution I would find
18 problematic.

19 I'm not suggesting adding disclosure
20 requirements or things that the DPA would be
21 beyond that statutory authority, but insofar as
22 we're talking about in the absence of an actual

1 claim, the Department unilaterally bringing an
2 action, I think that would need to be a separate
3 conversation.

4 PARTICIPANT: I think I would like to
5 hear a little bit more about that before me move
6 on. Can you expand on that please?

7 MR. LACEY: Yes. The statutory
8 language, which I think we have it, I don't know,
9 it's the beginning of Issue Paper 1? Let me see
10 if I can find it here. The secretary shall
11 specify in regulations which acts or admissions
12 of an institution of higher education a borrower
13 may assert as a defense.

14 When you're talking about the
15 Department unilaterally initiating an action
16 absence the presence of a claim that has been
17 brought by a borrower, I don't see how that fits
18 within the authority granted by this statute.

19 That's not a borrower asserting a
20 defense. That's the Department acting
21 unilaterally based on its own observations with
22 regard to the institution.

1 PARTICIPANT: I just have a quick
2 clarifying point. Are you talking about the
3 language that is in the second paragraph that we
4 had discussed as our starting point, because that
5 language is regulatory and not statutory.

6 MR. LACEY: I'm looking at HEA 455H.

7 PARTICIPANT: Okay.

8 MR. LACEY: Oh, this is not the
9 original. I thought this was -- it says the HEA
10 directs the secretary. So I'm looking at --

11 PARTICIPANT: If you're in the
12 paragraph that starts --

13 MR. LACEY: -- the statutory section.

14 PARTICIPANT: -- notwithstanding,
15 that is the statutory language.

16 MR. LACEY: Yes. That's where I am.

17 PARTICIPANT: Okay.

18 MR. LACEY: Yes. That's my point is
19 it's a prerequisite to a borrower defense action,
20 I think you have to have a borrower asserting a
21 defense, in other words, bringing a claim.

22 So just insofar as the suggestion was

1 you would modify the PBA to require institutions
2 to be subject to group claims brought by the
3 Department in an absence of a claim, I think
4 there would be an issue with the statutory
5 authority there. And that would require further
6 discussion. Or not.

7 PARTICIPANT: I appreciate the literal
8 reading, but nothing precludes the secretary from
9 notifying people that he/she recognizes the
10 existence of a valid defense. Right? I mean the
11 secretary could make that determination wholesale
12 and notify people so that they could sign
13 something asserting that particular defense.
14 Right?

15 I mean, if your objection is just
16 technical and lawyerly, that would address it.
17 Wouldn't it?

18 MR. LACEY: So the idea is does the
19 Department, if its, I guess just in the ether
20 determines based on whatever it seems that it
21 believes that borrowers have a defense --

22 PARTICIPANT: I'm going to give an

1 example all of us are familiar. Every other day
2 I get a notice from somebody telling me my data
3 was breached. My air bag doesn't work. My car
4 doesn't have brakes. It shouldn't --

5 (Laughter.)

6 PARTICIPANT: Other than that, I'm
7 solid. This is why I ride a bike. So, the fact
8 is that the secretary may well be better
9 positioned than individual victims to know that
10 mass victimization has taken place somewhere.

11 I think you're correct that the
12 statutory language requires the assertion of a
13 preexisting claim that constitutes a defense.

14 But I don't think the suggestion that
15 was made is completely foreclosed by that
16 language because if the secretary is privy to
17 that kind of a wholesale knowledge, you could
18 just as easily have the secretary notify people
19 just like we are all notified every other day
20 that a valid finding has been made which entitles
21 people to relief.

22 MR. BANTLE: If I could just jump in

1 as the facilitator. I think we have probably an
2 understanding of that concern on both sides.
3 Without having the full statutory language in
4 front of us, we're probably not going to get a
5 definitive answer. And even if we did, we could
6 probably still debate it.

7 Does the Department have another
8 question?

9 MS. WEISMAN: No. I think we're good.

10 MS. CARUSO: Okay. So time check,
11 it's 11:39. Do we wish to begin with Issue 5 or
12 take an early lunch and come back at 12:40?

13 I hear whispers of an early lunch.
14 Okay. We are going to go ahead and take lunch
15 and come back at -- we have Will with a comment
16 or a question or request?

17 MR. HUBBARD: Unrelated to that topic
18 and that request. I just wanted to put out
19 another data request to the Department as it
20 pertains to the audio recording. I just had a
21 quick point or clarification, if there was any
22 update on when that will happen?

1 Secondly, if as mentioned by Annmarie,
2 it will be 508 compliant. So I wanted to
3 clarify, does that mean there will be a
4 transcript. Or what does that say, practical
5 implication of that?

6 MS. WEISMAN: On the time frame, I was
7 told that we could expect it within two weeks of
8 the end of the session. I believe that was about
9 the same time that we expected to receive the
10 meeting summary as well. So think that should
11 coordinate at least. I do not know the answer to
12 the question about the transcript. So I'll
13 pursue that information as well.

14 MR. HUBBARD: Thank you.

15 MS. CARUSO: There's another question.
16 Stevaughn.

17 MR. BUSH: And I'll be really brief
18 because I'm very hungry as I'm sure everybody
19 else is. Did anybody get back to you about the
20 data that we requested, Joseline and I, about
21 outreach efforts? I think it will be very
22 relevant to discussion surrounding our next

1 point.

2 MS. WEISMAN: I believe I'll have that
3 information for you right after lunch.

4 MR. BUSH: Okay. Thank you.

5 MS. CARUSO: We're going to give you
6 an extra four minutes for lunch. Please come
7 back at 12:45.

8 MR. BANTLE: And we'll have the
9 temperature up to 90 by then, so don't worry.

10 (Laughter.)

11 (Whereupon, the above matter went off
12 the record and resumed following a brief recess.)

13 MS. CARUSO: Okay. Welcome back,
14 everyone. So we're ready to start our afternoon
15 session. But first I want to take a literal
16 temperature check. How is the temperature in
17 this room good? Getting better? Yes? Okay.

18 MS. WEISMAN: If I could report out to
19 that, I actually have the stats here. People are
20 constantly asking me for data and always say I'll
21 have to get that from someone.

22 I can tell you that the temperature is

1 currently 71 in this room. It is currently set
2 though, however, at 69. Yesterday, we seemed to
3 have an issue when we adjusted it from cool to
4 warm. And at that time it seemed that when we
5 turned it to warm, it kept going up and up and
6 up. And the setting seemed to have no real
7 relevance in reality.

8 So what I would suggest is, if people
9 start to get too warm, we could turn it back over
10 to cool and try to turn the temperature up a
11 little bit on the cool factor. I could also
12 delegate my authority to those sitting over near
13 the thermostat because the one over there is the
14 one that controls the room.

15 If we need to get a sense of it, I'm
16 happy to make those adjustments. But I'm feeling
17 the same as all of you, so I'm in it with you.

18 MS. CARUSO: Thank you, Annmarie. So
19 with that, why don't we open up Issue Number 5.

20 MS. WEISMAN: Actually I have a couple
21 of follow up issues. Little more housekeeping
22 things that I just want to announce so that we

1 can get a couple of things crossed off my list so
2 that it doesn't look quite so long at the end of
3 the session.

4 Just before we broke, Will asked about
5 the audio recording. They are including a
6 transcript with that service. It will be 508
7 compliant when posted to the web site. So we're
8 expecting that within about two weeks from the
9 end of the session that we will have both the
10 audio and the transcript included on our website.

11 Keep in mind that it is not a
12 transcript exactly the way we order it for public
13 hearings. It will not include necessarily every
14 single word that someone said. It may not always
15 capture the speaker name, for example. They're
16 doing the best they can and I think they're doing
17 a good job. So we've done what we could do. And
18 hopefully that will help with the concerns that
19 we had earlier.

20 The other thing we had was a request
21 for information from Stevaughn and Joseline about
22 outreach information and some other, somewhat

1 related questions regarding misrepresentation and
2 substantial misrepresentation. If it's okay, I'd
3 like to take just a couple of minutes to
4 summarize what I've learned.

5 The first question that we had
6 received was for borrower defense claims that
7 have been adjudicated, how many were approved
8 based on misrepresentation? So, as I mentioned
9 earlier and as Mr. Manning mentioned when he was
10 here, the borrower defense claims that have
11 approved at this point have been primarily from
12 Corinthian claims and related claims.

13 A couple other smaller schools also
14 included in there. But because they were looking
15 all at ones that met certain conditions, at this
16 point we believe that all of the claims approved
17 have been based on misrepresentations.

18 Not yet. Also for borrower defense
19 claims that have been adjudicated, how many were
20 approved based on substantial misrepresentation?
21 That was kind of the follow up question.

22 Keep in mind that substantial is not

1 an element of the current version of the
2 regulation which is all based on state law. So
3 remember, we're looking back at those 1994
4 regulations.

5 So for claims that have been approved
6 to date, substantial was, in fact, a component or
7 requirement of the state laws that were involved
8 in the claims that we've adjudicated so far. So
9 again, we believe that all of the claims approved
10 to date have been based on substantial
11 misrepresentation.

12 The third question was, are there
13 incidents and examples of program review findings
14 of misrepresentation? The date parameters that
15 they were able to run for this question were
16 October the 1st, 2008 through October 31st, 2017.

17 So almost a ten year period, about
18 nine years. Program compliance has issued 29
19 final determinations with misrepresentation
20 findings contained within.

21 Also as of November 1st of 2017, there
22 were 15 open program reviews that had pending

1 misrepresentation findings. Now keep in mind
2 those are not final determinations. Schools
3 still have an opportunity to appeal. But that's
4 what we have currently that has some open
5 finding.

6 From December 4th, 2015 to the
7 present, there were also 11 re-certifications
8 that were denied and one fine action associated
9 with misrepresentation. It is important to note,
10 though, that five of the re-certification denials
11 were related to schools that were included in the
12 29 final determinations mentioned earlier. So
13 there's some overlap there.

14 Also we want to note that the program
15 reviews are based on a program review control
16 number. So that is the overarching number that
17 governs that review or that activity. So it
18 could be that because that is based on a school
19 that could have multiple locations, you can't
20 assume that they all come from one specific
21 location of the campus.

22 The re-certification denials are all

1 based on the main location. And again, conduct
2 could or may not be occurring at other locations.

3 Another question that we had was what
4 actions are the Department taking or has the
5 Department taken to make students aware of their
6 rights under borrower defense. I think first and
7 foremost, the information is contained within the
8 promissory note that the borrower signs.

9 Additionally, the Department has
10 created and maintains a website which is
11 studentaid.gov. And that has information
12 including sections entitled Who Qualifies For
13 Borrower Defense to Repayment Loan Forgiveness.
14 It contains the borrower defense application,
15 Options For And Implication of Forbearance And
16 Stopped Collection Status. And Information And
17 Resources For Help. And again that is all on a
18 student focused website.

19 And then the follow up question that
20 we had was what, if any, outreach efforts are
21 being undertaken. And we would just note that
22 all of the outreach has coincided with large

1 school closings.

2 For example, in 2015 the Department
3 conducted an email outreach campaign to over
4 50,000 borrowers who attended Heald College from
5 2010 until that time to let them know that they
6 might be eligible for debt relief.

7 There was also a postal mail campaign
8 in 2016 as well as some other outreach efforts
9 such as partnerships with state attorneys
10 general, Facebook outreach information going out
11 from the loan servicers, and the development of a
12 universal form.

13 So hopefully that responds to the
14 questions. Okay.

15 MS. CARUSO: Okay. Unless there are
16 any other comments or questions about Annmarie
17 just reported, is it okay to open up Issue Number
18 5?

19 (No audible response.)

20 MS. CARUSO: Okay. Annmarie?

21 MS. WEISMAN: Okay. Issue Number 5 is
22 on closed school discharge. The current

1 regulations generally require a borrower to
2 submit a written request for a closed school
3 discharge, and that's generally in the form of a
4 sworn statement that states that the borrower or
5 the student who's behalf a parent borrowed is
6 either meeting one of these conditions, received
7 the proceeds of a loan, in whole or in part, to
8 attend an eligible institution, that they did not
9 complete the program of study at that institution
10 because it closed while the student was enrolled,
11 or that the student withdrew from that
12 institution no more than 120 days before the
13 schools closure, and that the student did not
14 complete their program of study, either through a
15 teach out or by transferring to another
16 institution the hours from the closed school to
17 another school.

18 Regulations also give the secretary
19 the authority to discharge the loan without an
20 application from the borrower. And there is
21 regulatory language that governs the three loan
22 types, Direct loan, FELL, and Perkins for a

1 closed school discharge.

2 So we have three questions related to
3 the closed school discharge that we'd like to
4 discuss. And again, if possible, I'd like to
5 take these one at a time for this section, the
6 first one being should the Department extend the
7 eligibility period for seeking a closed school
8 discharge to a period other than the 120 days
9 that's currently in regulation before a school
10 closed?

11 MR. BANTLE: And just to facilitate or
12 comment here, I think I'm trying not to put words
13 in anybody's mouth, but this is probably not
14 meant to be a yes or no question. It would be a
15 yes, no, and suggestion of what that term would
16 be. Thanks.

17 MS. CARUSO: So Aaron and then Walter.

18 MR. LACEY: Just to frame that, I do
19 have an answer, but also just a couple important
20 framing points. The first is that this applies
21 to all school types, not just a certain sector.

22 This is every type of institution, at

1 least as the regulations are currently written.
2 It also applies to the closure of any additional
3 location. Right? So large private non-profit
4 has 50 locations internationally around the
5 country.

6 Every time they close, for whatever
7 reason, responsibly, we're not just talking about
8 precipitous closures, this kicks in. That's a
9 closure, right? And if there are students who
10 cannot finish their program due to the closure,
11 then they're eligible for a closed school loan
12 discharge.

13 So I just wanted to be very clear that
14 the impact is broad here. My concern is, and
15 it's been 120 days, I don't know how long. A
16 pretty long time. As long as I've been around.
17 My concern is, if you extend it beyond 120 days,
18 or at least you extend the period a long ways,
19 and I work with a lot of schools, unfortunately,
20 that have had to close and also lots of schools
21 that just closed locations for various reasons,
22 you start to create ambiguity and potentially

1 disincentive for institutions to announce
2 closures early.

3 And what I mean is this, right? I
4 always tell my clients if you think you're going
5 to close a location, I want you to tell your
6 faculty, staff, and students as soon as possible.
7 Give them as much lead time as you possibly can.

8 But under the current regulation, if
9 someone withdraws within that 120 day window of
10 the last day education is offered, right?

11 Cessation of instruction is the date of closure
12 for the Department. Correct me if I'm wrong, but
13 I believe that's the current interpretation.
14 Right?

15 So someone withdraws within the 120
16 day period, they are eligible for a closed loan
17 discharge. If I encourage my students, or my
18 institutions to tell everyone, employee and
19 students a year in advance and we extend this
20 back to a year, then ostensibly that means anyone
21 who withdraws within a year prior to the last day
22 of instruction would be eligible for a closed

1 school loan discharge.

2 So you're creating an incentive for
3 schools potentially to delay when then announce.
4 And you're also potentially creating an incentive
5 for students to withdraw so they can be eligible
6 for a closed school loan discharge. And it
7 creates some ambiguity there as to whether or not
8 if they had not withdrawn, would they have been
9 around long enough to actually complete their
10 program.

11 The other thing that's really
12 important to understand is, functionally the way
13 this typically works, and again the Department
14 can correct me if I'm wrong, but the way I see it
15 working right now is when you have a location
16 that closes, there's no statute of limitations on
17 when a student can file a closed school loan
18 discharge.

19 So when they file, right, typically
20 that happens if they do shortly after the
21 closure, around that closure time, and it's a
22 pretty easy thing. And I'm not contesting that

1 in the least.

2 It's sort of an application process.
3 But what happens is the Department subsequently
4 will gather those together and it does a program
5 review of the institution to determine how many
6 of those it has and what the liability would be
7 for the institution.

8 And it can become problematic on the
9 back end, I think, for the institution if it's
10 still around. Or like you say, if you're talking
11 about just an additional location, to try to
12 prove whether or not a student who may have
13 withdrawn eight months before the last day of
14 instruction, would have had the opportunity to
15 complete that program.

16 And it's a very fact and sensitive
17 process. If you've got 100 or 200 students at a
18 large location that may have closed, the burden
19 then is on the institution to go through and try
20 to track and establish whether or not every one
21 of those students over that period of time would
22 have been able to graduate, in which case it

1 wouldn't be able for a closed school loan
2 discharge.

3 So all of this is just to say, I think
4 120 days strikes a pretty good balance. I mean,
5 you don't want to push it right up to the closure
6 date. I totally get that. But if you start
7 backing it way up, I think it starts to also
8 create incentives for both schools and students
9 to act in ways that would not be good public
10 policy.

11 MS. CARUSO: Thank you. Walter and
12 then Michael.

13 MR. OCHINKO: Right, I just want to
14 provide an example, I think, illustrates why 120
15 days is probably not adequate. Last December, at
16 the end of December, the Department announced
17 that it was cutting off federal school aid to
18 Charlotte's School of Law in Charlotte, North
19 Carolina. And for one reason or another the
20 school was able to delay closing for seven or
21 eight months.

22 Sometime during that process, I think

1 the North Carolina AG raised concerns that, in
2 fact, by not shutting down, you were creating a
3 potential for students not to, for students who -
4 - you were creating a situation where students
5 were being disadvantaged because the school
6 hadn't shut down. And, you know, as a matter of
7 fact, I'm a little garbled on that.

8 But, I mean, the result is that 120
9 days is probably not adequate in some instances.
10 And I think Charlotte School of Law is a very
11 good example of that. I think there were 17
12 Veterans that were still enrolled when the school
13 shut down.

14 So, I mean, I really think that the
15 Department should have the flexibility to extend
16 it beyond 120 days as I think it's appropriate.

17 MS. CARUSO: Michael and then Ashley
18 Reich.

19 PARTICIPANT: Well again, I think we
20 come back to the distinctions between what I
21 think Aaron is talking about, and a precipitous
22 closure. And I'm not even sure that what you're

1 talking about isn't a precipitous closure.

2 The distinction that I draw is an
3 institution that chooses to close a location and
4 whether it's going to responsibly teach out all
5 the students in that location and then close.

6 An institution that well in advance of
7 a closure, announces that closure to give
8 students every opportunity to find alternative
9 pathways and transfer opportunities, and actively
10 works to find those opportunities. And then a
11 school that chains its doors and leaves the
12 students without any recourse.

13 And if all of those three are in the
14 same bucket with regard to school discharge, then
15 that may be part of a problem. And so if we're
16 just talking about precipitous closures, then I
17 would advocate for backing that 120 days up
18 considerably. Or at least to six months or
19 something, you know, along those lines.

20 Many of the institutions that close
21 precipitously, again from my experience, know
22 there are issues and know that there is a

1 significant likelihood that they may close if
2 certain targets are not met.

3 And so, you know, continuing to enroll
4 students without disclosing that or being more up
5 front about it. And again, we could take the
6 example of a liberal arts college in Virginia
7 that closed knowing that it had significant
8 financial distress, continued to enroll students,
9 and at the end of the year just decided, we're
10 closing.

11 Now it didn't tell the students that
12 if we don't meet certain enrollment figures,
13 we're going to have to close. They just
14 continued to enroll students as well. So, it
15 does cross every single sector.

16 And so I would advocate for looking
17 for multiple pathways, and looking for
18 opportunities to say in those cases of
19 precipitous closures, 180 days. And other cases,
20 it may be a completely different set of metrics.
21 If it's a responsible closure and everybody gets
22 taught out, then what would be the need for a

1 closed school discharge at all?

2 MS. CARUSO: Okay.

3 PARTICIPANT: Can we go off the
4 record for a minute.

5 MS. CARUSO: Sure.

6 (Whereupon, the above-entitled matter
7 went off the record and resumed following a brief
8 recess.)

9 MS. CARUSO: Okay. Ashley Reich, and
10 then back to the Department.

11 MS. REICH: I just have a question and
12 then a comment. Where did the 120 days come from
13 originally? Was there some sort of calculation
14 that was done to determine using that figure? Or
15 could the Department speak to that?

16 MS. WEISMAN: We can try to get that
17 information for you. I personally do not know.

18 MS. REICH: Does Dan know? Dan knows.

19 MR. MADZELAN: No, it used to be 90.
20 And a lot of the discharges had that sort of 90
21 day or similar circumstance, largely because FELL
22 guarantors had to pay claims.

1 MS. REICH: Okay. And then I would
2 agree 120 days could be a good baseline, but if
3 you have a large location that closes out, and
4 they have hundreds and hundreds of students, that
5 could take longer than 120 days. They'd have to
6 be working probably pretty quickly if they were
7 trying to do some sort of teach out plan or move
8 them to a different location.

9 So I think 120 could be a baseline,
10 but I do think we have to be open to the
11 Department to have the flexibility to extend that
12 timeframe beyond that.

13 MS. WEISMAN: So that information is
14 already part of the current regulation as it
15 stands. It allows the secretary to extend it if
16 circumstances warrant. So I did want to
17 highlight that, first of all.

18 The other thing is I did have a
19 question about some of Aaron's comments and
20 questions. I just need to clarify, it sounded as
21 if, and Aaron, I don't want to misstate what you
22 said, but I sounded as if you believe that if a

1 school gave a year's notice that, and again, this
2 was my impression, that 120 days was no longer
3 relevant. That it was based on when the school
4 gave notice that it was closing?

5 MR. LACEY: I'm sorry. I didn't make
6 that clear. My point was, say we backed it up
7 from 120 days to 12 months. So we said, you
8 know, anyone who withdrew 12 months of the
9 closure date would be eligible for a loan
10 discharge, you're potentially incentivizing
11 institutions to hold off on making that
12 announcement so that people won't withdraw and
13 the numbers will dwindle before the announcement
14 is made, because you don't want those -- because
15 you could have people actually graduate in that
16 period.

17 And you say well if they were able to
18 graduate, ostensibly they shouldn't be eligible
19 for a closed loan. But then what that means is
20 the school's in the position on the back end of
21 having, after a program review comes up, of
22 saying well actually that person could have

1 graduated if they had stuck around, so they
2 really shouldn't be eligible. But, you know, it
3 creates a disincentive is my point, for the
4 institution to make a responsible announcement.

5 MS. WEISMAN: Okay. I appreciate that
6 clarification. I understand. Thank you.

7 MS. CARUSO: Barmak.

8 MR. NASSIRIAN: I'm struggling to wrap
9 my head around the conception of human nature
10 here. Why would somebody, I mean, isn't there an
11 assumption here that students somehow have a
12 fundamentally perverse motivation to enroll in a
13 program that they don't intent to pay for, one.

14 And whose benefits, whatever they are,
15 they wouldn't receive if they received the
16 discharge. Right? You would dump the credits.
17 The credential wouldn't be there.

18 So what is the assumption? I mean,
19 why isn't is a self-correcting thing whether it's
20 announced, whether it's precipitous, or not. The
21 only circumstance in which a closure should
22 trigger mass demand for discharges is the one

1 that actually comports with our experience and
2 was reality which is this is not Harvard.

3 This is an institution that is already
4 in some distress or a location that has issues
5 which is the reason they ended up closing. I
6 don't see any reason to assume that people would
7 consciously choose to waste their time, incur
8 non-tuition expenses that go way beyond whatever
9 the aid that might be available, only to take
10 advantage of a discharge that gets them nothing.
11 I just don't understand why you would assume that
12 that's how it would work out.

13 MR. LACEY: Can I respond to that? Is
14 it okay?

15 MS. CARUSO: Yes.

16 MR. LACEY: It's not so much whether
17 students would actually would assume that. It's
18 whether or not schools would believe that
19 students might do that. Right? Because the
20 concern is that schools would not make the
21 announcement at a time that would be best for the
22 students. And look, I work with distressed

1 institutions.

2 MR. NASSIRIAN: We're not talking
3 about announcements. We're talking about the
4 closure date.

5 MR. LACEY: I know, but --

6 MR. NASSIRIAN: Announced or not
7 doesn't matter. Right?

8 MR. LACEY: No. No. It is critical
9 because, I hope, that there's a point very early
10 on, well out from the last day of classes where
11 an institution will tell its faculty, staff, and
12 students that we're planning to close our doors.
13 Right? And I want that to be as far out as
14 possible. That's my point.

15 And what happens, just so folks know
16 because I deal with all the time, I mean, you're
17 sitting in a room with a bunch of board members,
18 right, who've got a bunch of financial
19 information that they may or may not understand.
20 They care about these schools. They care about
21 the students. They could be often, they could be
22 small.

1 And I'm not just talking about for
2 profit schools. It could be small liberal arts
3 institutions in geographically isolated places
4 with board members who, frankly, are not well
5 equipped to understand all the complexities of a
6 closure process.

7 And these folks are trying to decide
8 do we try to keep going, do we try to wait until
9 the last minute to make it, or are we going ahead
10 and make an announcement. And there's no perfect
11 decision there. Right?

12 In Virginia, they made the
13 announcement very early, maybe they shouldn't
14 have. In some cases I've seen schools wait until
15 the absolute last minute.

16 And my concern is, when they're
17 balancing all of that, and they call a guy like
18 me, one of the things I'm going to educate them
19 on is closed school loan discharge and the
20 liability that can come from that. And may go
21 back to the institutions and directors and
22 officers or whatever.

1 And if they ask me or whoever their
2 advisor might be or if they just try to figure
3 out on themselves, do we increase the likelihood
4 of a closed school loan discharge if we announce
5 12 months out, this is assuming we changed it so
6 that the people who withdrew 12 months out would
7 have the opportunity to seek one. And then say,
8 well, hopefully, that wouldn't happen.

9 But understand that if you announce
10 today, a year out, anyone who withdraws between
11 now and the end of the year is technically
12 eligible for a closed school loan discharge. And
13 you're going to be put in the position on the
14 back end of having to establish that they
15 potentially could have graduated.

16 So the students might not do it. But
17 my concern is the folks in the board room is
18 going to ask that question. And by backing it
19 up, we're giving them an incentive to say, we're
20 going to wait. We're going to wait until two
21 weeks out or three weeks out. And I think that's
22 bad for students and faculty and staff.

1 MS. CARUSO: Thank you. Abby and then
2 Keli and then Walter.

3 MS. SHAFROTH: So, I appreciate the
4 point that you're raising Aaron. I wonder if
5 there are other ways to counter that sort of
6 perverse incentive that you're suggesting schools
7 would under, if there could be other penalties or
8 cost that schools would have to pay if they sort
9 of hid the ball from students that way in order
10 to limit their liability for closed school
11 discharges.

12 I also wanted to raise that, you know,
13 my next point that I don't think students are
14 going to try to scam the system somehow by
15 enrolling in a program and then having time to
16 graduate but not graduating so that they can get
17 their loans discharged as some sort of, I don't
18 know.

19 I don't know what the end game is
20 there. But certainly, I can imagine and
21 appreciate that borrowers, if they know that
22 their school is going to close soon may, for very

1 good and rational reasons, want to withdraw
2 because the program that they signed up for and
3 they took out loans to attend is no longer going
4 to have the same value as they believed that it
5 did at the time they signed on the dotted line.

6 Depending the reason for closure, the
7 institution may be somewhat disgraced. Even if
8 it's not disgraced, they're going to lose out on
9 the career placement services, the Alumni
10 network, all of these other parts of an education
11 that contribute to its value.

12 MS. CARUSO: Keli.

13 MS. PERRY: So the FASB issued in ASU
14 in, I think it was 2014, which for most non-
15 profits at least that have fiscal year end of
16 June 30, had to adopt for FY-17, and that ASU
17 requires management and the auditors to address
18 going concern as it relates to school closure.

19 And so there will be notification, I
20 would suspect, to the Department through the
21 uniform guidance process where the Department
22 would be aware that, and we've talked a lot about

1 schools knowing that they're going to close.

2 If they know they're going to close,
3 they would be evaluating themselves as having a
4 going concern. So there is some, you know, new
5 guidance out there that should identify some of
6 these issues.

7 MS. CARUSO: Walter. Walter.

8 MR. OCHINKO: Yes. I had a question
9 for the Department. It's my recollection that in
10 the case of Corinthian that the Department
11 allowed students as far back as a year prior to
12 closure, to apply for closed school discharge.
13 So it just raises the question in my mind of, so
14 there is 120 days and I guess that's in
15 regulation. So is there flexibility already
16 around that 120 days?

17 MS. WEISMAN: There is.

18 MS. CARUSO: Okay. Joseline and then
19 Abby.

20 MS. GARCIA: So I have a question for
21 the group. And just to go back to Abby's
22 comments about, you know, the fear of students

1 breaking the system to take advantage of the
2 closed school discharge. Are there actual
3 examples that people can read of students trying
4 to do this? Or are these assumptions that we're
5 making?

6 MS. CARUSO: Aaron to Joseline's
7 question.

8 MR. LACEY: Yes. I don't think it's
9 students trying to rig the system. Abby gave
10 perfect examples actually of why, if I'm a
11 student and I'm in that position and I learn, you
12 know, eight months from now my school is going to
13 close, the career services may not be there. I
14 mean the reputation may be damaged.

15 You know, for a lot of reasons I may
16 say, even though I've spent two semesters here
17 and maybe I like it or maybe I didn't like it,
18 whatever, I'm going to go ahead and withdraw.
19 And by the way, I can get my loans discharged.

20 So there's no incentive for me to
21 continue my program at this point. Or at least
22 on balance, it seems like a good situation. I

1 mean I can give you a concrete example.

2 I was out announcing the closure of a
3 school about two years ago, which is not a fun
4 thing to do in the least. And so I had all the
5 students there, right? And I went through, I had
6 a bunch talking points. And I talked about
7 closed school loan discharge, because when I do
8 that I always make clear to them that that's an
9 opportunity.

10 I give them the Department's website.
11 I don't think there isn't any advantage for a
12 school not doing that. I think you're just
13 creating exposure for yourself.

14 And before I had finished the
15 announcement, before I had finished announcement,
16 a student stood up and he said hold on, let me
17 make sure I understand. So, because we had teach
18 out opportunities available, right?

19 And he said but I just want to make
20 sure I understand. He said if I don't take the
21 teach out opportunity, I can take the credits
22 that the school has given me, and I can wait, and

1 I can seek a closed school loan discharge, and
2 then I can take those credits afterwards and
3 transfer to another school and finish my program,
4 and I still get the closed school loan discharge?

5 I mean, this is what the student asked
6 me. And I told him that's between you and the
7 department. I mean, that wasn't a question I was
8 going to answer. But the point I want to make
9 is, I mean this guy had figured this out within
10 15 minutes. I was still in the midst of the
11 closure announcement.

12 So I'm not suggesting that students
13 are good or bad, but I think they're rational.
14 And I think if they can put the math together --
15 and also, you know, Barmak, you said something
16 about losing the credits. But it doesn't always
17 work that way. So this student assumed --

18 MR. NASSIRIAN: What did I say?

19 MR. LACEY: The school in this case
20 wasn't trying to take away the credits or
21 anything. So in this case --

22 MS. CARUSO: Hang on. Hang on.

1 MR. LACEY: But my point is, so in
2 this case the student, rightly or wrongly, but
3 was very quickly able to ascertain that there
4 could be an advantage to not participating in the
5 teach out.

6 And I don't think this kid is a bad
7 person. I think he just, he's a smart guy and
8 figured out, I can keep the credits. I won't do
9 the teach out. I'll discharge the loan. Then
10 I'll take the credits and go somewhere else and
11 finish my education.

12 Again, I'm not assuming anything about
13 this student's motives. I think he just making
14 some logical connections. But I think we have to
15 acknowledge that that can happen.

16 MR. NASSIRIAN: No. We can't.

17 MR. LACEY: It did.

18 MR. NASSIRIAN: It can't.

19 MS. CARUSO: Hang on folks. So we
20 still have an order that we have people speaking
21 and I know that this is a topic where we view
22 things very differently. But keep in mind that

1 we're here to give considerations to the
2 Department. Okay? Rather than going back and
3 forth on our positions.

4 So we want to make sure that
5 everyone's heard, but we don't want to speak out
6 of turn. So Joseline, did you have other
7 questions?

8 MS. GARCIA: No, but I do think that
9 the points that people have are important for the
10 Department to hear. So I don't want to ignore
11 the reactions either.

12 MS. CARUSO: Okay. Okay. So Abby is
13 next and then -- You'd like Juliana. Okay.

14 MS. SHAFROTH: I just think, can we
15 just clarify that the law is that if you transfer
16 your credits to the same or similar program, you
17 are not eligible for a closed loan discharge.
18 So, I mean, I just think we need to be clear on
19 what the law is here.

20 MR. LACEY: If you transfer your
21 credits and complete the program, right. But if
22 you seek a closed loan discharge and the

1 Department processes it, and then you
2 subsequently decide to take your transcript a
3 year or two later and go to another institution
4 and enroll in a similar program, transfer those
5 credits, no one's policing that.

6 MS. SHAFROTH: Maybe no one's policing
7 that. But you would be subject to having your
8 loans reinstated. Go ahead.

9 MS. CARUSO: Okay.

10 MR. NASSIRIAN: You cannot take an
11 unofficial transcript out of your pocket and have
12 any school that I am familiar with take those
13 credits. For credits to transfer, an official
14 transcript needs to be forwarded, said official
15 transcript would have to come from the closed
16 school or parent company or some official entity
17 associated.

18 So this hypothetical that you just set
19 up where somebody gets a benefit, illegally by
20 the way, gets a benefit and then manages to game
21 the system post-facto by somehow recycling those
22 credits, it can't happen because you do not have

1 an official transcript from anybody in the
2 position to vouch for those credits being
3 current.

4 MR. LACEY: Just two quick points.
5 One is, most schools when they close if they are
6 not required by the state, I mean, that I work
7 with, always issue official transcripts to
8 everyone at the time of closure. Or make
9 provisions that folks can still request and get
10 an official transcript.

11 But also I just want to, whether or
12 not it's possible is beside the point. The
13 question is about student, no, no. The question
14 was about student motivations and do we think
15 that students would potentially act in a certain
16 way or might think that there was an advantage to
17 withdrawing.

18 I mean, that was really the question.
19 And my point, and for concrete examples. And my
20 point was I was in a closure scenario where a
21 student very rapidly was developing a hypothesis
22 as to why it would be beneficial to consider, I

1 mean in that case it was a pretty quick closure.
2 But to consider trying to make himself eligible
3 for a closed school loan discharge.

4 That was really all I, not whether or
5 not that was possible or not possible. I was
6 just trying to speak to the idea of how students
7 can see that there could be a motivation there,
8 or develop a motivation based on the way the
9 system works, whether they are right or wrong
10 about it.

11 MS. CARUSO: Thank you, Aaron. Abby
12 did you still want to speak? Your name tent is
13 still up. And then Valerie.

14 MS. SHAFROTH: Yes. Just briefly
15 because I realized I didn't totally address the
16 bullet point one question last time. I just
17 wanted to say that I would be supportive of the
18 Department extending the eligibility period for
19 relief from closed school discharge, in part for
20 the reasons I voiced.

21 That if a school is going to close,
22 the value of that education is often degraded.

1 And so given the student an opportunity to make
2 that choice of whether the education is still of
3 value to them makes sense to me.

4 And because, frankly, students who are
5 in a situation where their school is closing on
6 them are already in a really difficult position.
7 I think that we should do all we can to give them
8 the best opportunity to restart, or move their
9 education elsewhere, if that's what makes sense
10 to them.

11 But to recognize that they are in a
12 situation not of their own making. And that's a
13 hard place to be. And that we should just come
14 at this from the approach of like, how do we
15 support that student? How do we help them to
16 succeed within our educational system?

17 And so I would be supportive of a
18 longer time period, generally. I know we do
19 currently have the 120 days or extenuating
20 circumstances.

21 I'm supportive also of the Department
22 of continuing to have discretion for lengthening

1 the time period. But there is some value to
2 having either a concrete longer time period or to
3 putting some more clarifications around
4 situations that would be, sort of, presumptively
5 extenuating circumstances so that we're not
6 having to, like, figure this out each time and go
7 through a process each time of were there
8 extenuating circumstances or not.

9 MS. CARUSO: Valerie. Valerie.

10 MS. SHARP: As it appears that in
11 currently the Department is considering the 120
12 days just a baseline, I think that my
13 recommendation would be that we have a current
14 baseline that allows the Department to continue
15 to have its discretion as it does today.

16 If there is something that would make
17 the Department more comfortable about, in certain
18 situations with the precipitous closures, that
19 they need to automatically extend that time
20 period out. I think that probably would be
21 acceptable.

22 But I think, from my understanding the

1 way this is, is this is what is really just kind
2 of the baseline in the regulation. You already
3 have quite a bit of ability to extend that out.
4 So you already have the authority to extend those
5 days in your current regulation, and I think that
6 definitely should continue.

7 MS. CARUSO: Any other comments or
8 suggestions regarding bullet number one?

9 (No audible response.)

10 MS. CARUSO: I'll turn it back over to
11 the Department. Are we ready? Do you want to
12 hear any more about bullet one?

13 MS. WEISMAN: No. I'm comfortable
14 with that. If we could have just one moment to
15 confer, and then we'll move along to bullet point
16 two.

17 MS. CARUSO: Okay.

18 MR. BANTLE: While we have a minute,
19 how's everybody doing temperature wise? It's
20 getting warm in here? Okay?

21 MS. CARUSO: Are you ready?

22 MS. WEISMAN: Yes?

1 MS. CARUSO: Is the Department ready?
2 Okay. Thank you.

3 MS. WEISMAN: So the second item we'd
4 like your feedback on, what documentation when
5 necessary to support a sworn statement must the
6 borrower provide to demonstrate to the
7 secretary's satisfaction that the borrower's
8 eligible for a closed school discharge. So,
9 again, it's looking for supporting documentation
10 that might be needed if any.

11 MS. CARUSO: Okay. Item Number 2 is
12 now open. Any recommendations for the
13 Department? Dawn.

14 MS. ROBINSON: My suggestion and
15 recommendation would be that if a school has
16 closed, and we would clearly know that a school
17 has closed, and a student has not re-enrolled in
18 another program, that their loan should
19 automatically be forgiven. They should not have
20 to go through a process if the institution is
21 closed.

22 MS. CARUSO: Suzanne.

1 MS. MARTINDALE: I would very much
2 second that. I have a hard time getting my head
3 around, especially if the closure is precipitous,
4 access to documentation could be very
5 challenging, and I think that the Department's
6 going to be in a better position to know the
7 status of both the school and the student's
8 enrollment status. So I would echo those
9 comments.

10 MS. CARUSO: Alyssa and then Aaron.

11 MS. REICH: I guess a question and a
12 comment. I know we're talking about loans, but I
13 also know that PELL is reinstated for students
14 who are in a closed school situation.

15 So how does the Department currently
16 determine that? Is there a precursing
17 requirement to have the loan discharge attached
18 to figuring out that a student is eligible for
19 PELL reinstatement? Or how currently are you
20 figuring that part out?

21 MS. WEISMAN: They are separate
22 processes. PELL is a little bit different

1 because there is no requirement to confirm
2 whether they plan to use the credits elsewhere,
3 take a teach out or transfer. So we really can't
4 seem to link those two processes. We need to
5 look at the loan part separately.

6 MS. CARUSO: Aaron. Aaron. Okay.
7 Any other comments or suggestions for the
8 Department about what documents are necessary?
9 Abby.

10 MS. SHAFROTH: I would third the
11 support for automatic closed school discharges
12 for eligible students as proposed. And I was
13 hoping the Department might be able to provide us
14 with some data just to help give us a sense of
15 understanding of what has been happening in
16 recent years.

17 So if possible, if the Department
18 could provide us with information from the past
19 five years on the number of students who attended
20 schools that closed and who, you know, either
21 didn't graduate or withdrew within the period
22 that would make them eligible for a closed school

1 discharge. And then the number students who
2 applied for closed school discharges so we could
3 see the percentage of those eligible who sought
4 that relief.

5 And because I think Corinthian
6 represented a special situation because the
7 Department engaged in some outreach and there was
8 a lot of publicity in the news around
9 Corinthian's closure, it would be helpful if you
10 could also provide that data. If you could
11 provide the full set of data, but also the data
12 with, sort of, the Corinthian numbers excluded.

13 MS. WEISMAN: If I can just read that
14 back to you to confirm that I got all that you
15 said?

16 MS. SHAFROTH: Sure. Yes. Thanks.

17 MS. WEISMAN: Especially if we're
18 having people run the numbers, I want to make
19 sure we get what it is that you're interested in
20 having.

21 So you were asking for the past five
22 years the number of students who attended schools

1 who closed, and I'm paraphrasing here, would
2 essentially be eligible for a closed school
3 discharge based on the statements that are
4 outlined in our issue paper versus the number who
5 actually applied for a closed school discharge
6 with some separation out of Corinthian borrowers
7 specifically.

8 MS. SHAFROTH: Yes. And maybe the
9 easiest thing would be, I don't know if it'd be
10 easiest, but it would be helpful if you could
11 provide the total overall numbers and then have
12 them broken down by school.

13 MS. CARUSO: Okay. Chris and then
14 Aaron.

15 MR. DELUCA: So, I'm very sensitive to
16 the thoughts about an automatic discharge for
17 students who may be eligible for that. The only
18 thing I would caution or ask for clarification or
19 consideration because I've been involved with
20 this with a number of schools in our community
21 where there has been precipitous closures.

22 I mean, literal schools, just students

1 showing up and chains on the door and they can't
2 get in, where there's been outreach within the
3 community to try to access those students to
4 allow them to finish their career program so that
5 they can finish their programs and get licensure
6 and get jobs and be employed.

7 So just from a standpoint of from a
8 documentation standpoint, these students may be
9 at a school that does close and so would show up
10 on a list of students who didn't complete their
11 programs at a closed school, but nevertheless
12 were able to somehow use those credits and use
13 that information to go to another school to
14 complete their program.

15 So, again, I'm not sure from a
16 paperwork, from a documentation standpoint how
17 that all works and what the thought process would
18 be for an automatic discharge to say oh,
19 everybody at that school gets discharged when
20 there could be circumstances where,
21 notwithstanding a precipitous closure, those
22 students are still eligible to transfer whatever

1 credits or clock hours that they had earned at
2 those schools and complete their programs.

3 MS. CARUSO: Ann and then Keli and
4 Michael.

5 MR. LACEY: Yes. I have a similar
6 concern, and I sort of go back to what Michael
7 said. I mean, there really is a distinction here
8 between precipitous closures. And I'm not, if
9 you chain the doors, you know, that's a different
10 scenario.

11 My concern is institutions, and like I
12 said, this applies anyone who's closing any
13 location anywhere. So, you know, Harvard has a
14 location in Guam that it decides to close, this
15 applies. Right?

16 And my concern is if you have a school
17 that is engaged in an orderly wind down of the
18 campus, then I just want to make sure that we
19 think through how the Department, you know,
20 they're going to have the date that there's a
21 cessation of instruction because they'll go
22 through that process with the school and they'll

1 know if there were students who were still
2 enrolled or didn't have an opportunity to
3 complete their program up to say, just for this
4 point 120 day before who might have withdrawn,
5 and the school arranged for a teach out or
6 transfer opportunity or something like that. I
7 just want to make sure that kind of situation the
8 school doesn't get hurt.

9 So we got to have a process in place
10 that would, unjustly hurt I should say. So I
11 just want to make sure that we've got a process
12 in place that, you know, you know who might be
13 eligible for a closed school loan discharge.

14 But to echo Chris's point, you know,
15 there needs to be some way of having
16 documentation sufficient to understand which
17 students have enrolled and are elsewhere and
18 tracking them to determine whether they complete
19 their program elsewhere prior to issuing any kind
20 of discharge to them, because if they are
21 enrolled somewhere else and complete their
22 program, to the point earlier made, my

1 understanding is there would not be a closed
2 school loan discharge.

3 So whatever the documentation
4 requirement is, it needs to be sufficient. If
5 you're talking about automatic discharge for the
6 Department, its systems got to be sufficient to
7 know when those folks who might otherwise have
8 been eligible have actually are taking part
9 somewhere else and are not yet eligible due to
10 the fact that they are participating in another
11 program.

12 MS. CARUSO: Keli.

13 MS. PERRY: I think we're all thinking
14 the same thing on this side of the table, because
15 my thoughts were going on the same lines. I'm
16 all for the concept of, you know, the student
17 being granted that without having to do much leg
18 work for it for a precipitous closure.

19 But if I'm playing devil's advocate,
20 if that school closed, then the taxpayers are in
21 essence responsible for that liability. Right?

22 So it may be a situation where you

1 could grant the discharge immediately,
2 potentially, for a closure without any
3 documentation. But then there has to be a
4 procedural thing on the back end that the
5 Department does, you know, one year out, two year
6 out, three years out to see whether or not that
7 student has re-enrolled in an institution and
8 then potentially put their loans back in play
9 where they may have been discharged at first, but
10 we're going to reinstate them because you then
11 took those credits and went someplace else.

12 MS. CARUSO: Michael.

13 MR. BOTTRILL: Yes. I think that's
14 what makes somewhat providing recommendations or
15 suggestions on bullets two and three,
16 particularly two, but to some degree the third
17 bullet as well. Without knowing the capability
18 that the Department has to say, in the example
19 bullet two, to ascertain the veracity of the
20 sworn statement on its own.

21 So if you were to say to us well we
22 can do the following things, we can make clear

1 that we understand that the student hasn't
2 applied for federal financial aid in another
3 institution. And we know that the school closed.
4 And we can see all those underlying factors and
5 we can verify it on own, then I would say I don't
6 really feel the need for a lot more
7 documentation.

8 If the response is well we can't do
9 any of those things, then the calculus changes
10 and more responsibility would shift to the
11 student, I think. So having a better idea of
12 what your, kind of, back of the store
13 capabilities are with regard to that I think
14 helps to influence the suggestions and the
15 questions that come out of bullet number two or
16 three.

17 As a general matter in these
18 instances, less onerous responsibilities on the
19 student's part I think would be the preferable
20 route, to the extent that the Department can do
21 its own verification checking, I think would be
22 the preferred route.

1 MS. CARUSO: Abby.

2 MS. SHAFROTH: Thanks. So I think it
3 was interesting to hear these various ideas about
4 how the automatic closed school discharge could
5 work. Just in case it's helpful, one possibility
6 was that the way that the Department approached
7 it in 2016 in saying that the automatic closed
8 school discharges would happen after three years
9 for students who had not re-enrolled in another
10 Title 4-eligible institution within that time
11 period, because that's information that the
12 Department already has in its control.

13 So that was a way of dealing with this
14 issue of the transferring credits. You know, I
15 don't necessarily think that we need to wait that
16 long. The Legal Aid experience has been that in
17 working with borrowers, most either do a teach
18 out right away or transfer their credits right
19 away because they don't want to take a three-year
20 break in their education and then try to transfer
21 credits and get back into the swing of things.

22 So I would propose that it be a one-

1 year period. Or alternatively, that it be
2 automatic right when the school closes and there
3 be some sort of look back on the Department's
4 part. Those are a couple options. And I don't
5 know if it would make sense.

6 Maybe someone else has a better idea
7 this late in the day. I need more coffee, but it
8 might be helpful again to have more data on this
9 question from the Department in terms of how many
10 students transfer credits or re-enroll in the
11 same program after one year of a school closure
12 versus after two years, three years. So we could
13 help to identify what time frame makes most
14 sense.

15 MS. CARUSO: Okay. Ashley Reich, then
16 Alyssa, and then Keli.

17 MS. REICH: So how is the Department
18 currently tracking whether or not the student
19 transfers those credits to another institution
20 within that three-year window?

21 MS. WEISMAN: My understanding is it's
22 a review of NSLDS data. But to get more specific

1 than that, I'd need to get more information from
2 the FSA part of the Department.

3 MS. REICH: Yes, that was my
4 suggestion is if you weren't using the current
5 NSLDS system or COD or something out there, if
6 you could enter another trigger on NSLDS that
7 would show that, whether we go with three years
8 or one year or whatever, that is a mechanism
9 where the student would not have to do anything.

10 You all have the capabilities and the
11 ability to run reports off NSLDS or COD to do
12 that. So that was my suggestion. I just didn't
13 know how you were currently tracking them now.

14 MS. WEISMAN: It is through NSLDS. My
15 understanding, however, is that that would not
16 give the program, the specific program. That it
17 would give enrollment information, but it doesn't
18 help us to know if it's the same or a similar
19 program. So that is a limitation as far as we
20 believe.

21 MS. CARUSO: Alyssa, then Keli, and
22 then Aaron.

1 MS. DOBSON: This is just sort of a
2 call to attention, and I think we need to pay
3 some attention to the interest factor. A lot of
4 these loans would potentially end up in
5 forbearance for a very long time.

6 We're talking about periods of one
7 year, three years. And the outcome, if it ends
8 up being that they are going to be held
9 accountable for those loans, that's a lot of
10 interest that could be accruing.

11 I think we should consider limiting
12 the amount of time that interest accrues, or a
13 dollar amount that interest accrues. Students
14 don't choose knowingly to attend a school that is
15 closing.

16 And they're already facing
17 implications of substantially losing subsidized
18 eligibility moving forward, based on program
19 changes or time frames that they used it. And so
20 I just think it's important to pay attention to
21 that fact.

22 MS. CARUSO: Did the Department want

1 to respond?

2 MS. WEISMAN: I just had a quick
3 follow-up to Alyssa's comment. I'm not sure I'm
4 following what you were saying regarding
5 forbearance and interest that would accrue.

6 If they want to apply for a closed
7 school discharge, I mean, we didn't implement the
8 three-year automatic but, you know, we're getting
9 to that point.

10 If that's where you're talking about
11 going, the student could always choose to do an
12 application in advance. And so there would be no
13 need for forbearance because they could just say
14 I want the closed school discharge. Correct?

15 MS. DOBSON: Right. Right. Not
16 everybody will achieve that end. And so maybe
17 while they're either waiting for a decision or
18 they do, let's say they do end up going back to
19 school for a related program and then their loans
20 don't end up being forgiven from a closed school
21 discharge, yet they're still going to be on the
22 hook for that interest as an unintended

1 consequence of attending a school that closed.

2 I just think it's something to
3 consider as a consequence to students that they
4 shouldn't have to assume.

5 MS. CARUSO: Aaron.

6 MR. LACEY: I'm still thinking through
7 this because the comment was just made about the
8 three-year automatic. So, you know, I'm not sure
9 exactly then what the proposal is. If it's like
10 we have a three-year waiting period or are we
11 talking about automatic discharge as soon as the
12 school closes. So that may impact the relevance
13 of my comment.

14 But, you know, I just want to
15 highlight as we're thinking about this. There
16 are certainly bad actors or schools that do bad
17 things and end up precipitously closing as a
18 consequence of those. Schools can close for a
19 lot of other reasons though that have nothing to
20 do with their intentions or bad acting, markets
21 change, et cetera.

22 And a lot of times I work with schools

1 that close and they are devastated to be closing.
2 And, again, I don't mean for-profits. I mean,
3 you know, 80 year old, private liberal arts,
4 regionally isolated schools. Sometimes they're
5 150 years old.

6 And most of them, I think, do the best
7 that they can often to come up with teach-outs
8 and transfer opportunities because they believe
9 it is absolutely the right thing to do.

10 But it also important to note that to
11 the extent that they can mitigate exposure to
12 closed school loan discharge by trying to put
13 together really good, meaningful teach-out and
14 transfer opportunities, they currently have an
15 incentive to do that.

16 If we make discharge automatic, it
17 removes that incentive largely. Or it could,
18 depending on how the automatic discharge is. So
19 if I'm in a position where I'm told all of my
20 students as of my last day of instruction, all
21 their loans are going to be discharged, what
22 incentive do I have, other than good faith in

1 wanting to do the right thing and you would hope
2 that would be enough. But you know, you're
3 taking away a pretty strong incentive for these
4 institutions to work hard to find really good
5 teach-out and transfer opportunities.

6 Maybe there are different mechanisms
7 to try to work around that, but I just, you know,
8 we want to incentivize schools to do that. So,
9 and I think you have to be careful about how you
10 implement an automatic closed school loan
11 discharge disclosure concept because you could
12 take away that incentive.

13 MR. NASSIRIAN: What is that incentive
14 again? Did you already say?

15 MR. LACEY: Why you would, yes, sure.

16 MR. NASSIRIAN: What is the current
17 incentive?

18 MR. LACEY: So the current incentive
19 is, you know, if the student does participate in
20 a transfer or teach-out opportunity that the
21 school helps to arrange, and this point's been
22 made, and they're able to transfer their credits

1 and then complete the program, then the school,
2 there's no eligibility for a closed school loan
3 discharge.

4 So if I've got a hundred students and
5 I can find a school, you know, geographically
6 proximate that can take on all of my students and
7 teach them and give them the opportunity to
8 complete their program after close, I have an
9 incentive to do that because it reduces my own
10 potential exposure to closed school loan
11 discharge, because if they all go and complete
12 their program, they get their program and I'm not
13 exposed.

14 MR. NASSIRIAN: May I follow up?

15 MS. CARUSO: Okay. So, yes but please
16 speak into the mic because we are, in the
17 interest of the audio recording --

18 MR. NASSIRIAN: Again, you're acting
19 as if this is an entity with a multi-billion
20 dollar endowment that continues to be a going
21 concern. In general, that is not the case. In
22 general, the 150 year old liberal arts college,

1 geographically remote that is closing, is closing
2 because of financial pressures.

3 So I'm not sure that this sort of
4 phantasmagoric liability that they would then be
5 able to insulate themselves from is really a
6 meaningful incentive one way or another.

7 And I candidly make, I still can't
8 wrap my head around the categorical distinction
9 that is constantly made at the table between
10 precipitous and non-precipitous sort of
11 intentional well-planned closure, because at the
12 end of the day, the focus ought to be on whether
13 the students got the deal that they signed up
14 for.

15 You know, intentions are great, but
16 outcomes and actual impact is what we should
17 trigger this benefit, or this particular
18 provision to.

19 And even if it is that the school does
20 give advanced notice and does provide an
21 opportunity to graduate from a future defunct
22 venue that will not have a career placement

1 office, that will not have an existing network,
2 that will no longer be able to provide official
3 transcripts, et cetera, et cetera.

4 Even if you could theoretically argue
5 that they should have, could have stayed and
6 graduated, if they choose not to take that deal,
7 that is a deal that should be available to them
8 because we're dumping the credit.

9 The student has already lost the time.
10 They have already incurred opportunity cost that
11 nobody's going to compensate them for.

12 MS. CARUSO: Barmak.

13 MR. NASSIRIAN: At the very least --

14 MS. CARUSO: Barmak. Thank you. I
15 don't mean to cut you off, but we have people
16 who've been patiently waiting to speak.

17 MR. LACEY: Can I just respond real
18 quick?

19 MS. CARUSO: Quickly, please.

20 MR. LACEY: Yes. So just speaking in
21 terms of, sort of, practically how this works. I
22 mean, you've got a board or some controlling

1 group that's having to make a decision about how
2 to manage the closure, and whether or not to
3 reach out to other institutions, et cetera.

4 Right?

5 And if those board members who are
6 making that decision think that they have an
7 exposure --

8 MR. NASSIRIAN: How can they have an
9 exposure?

10 MR. LACEY: Well, they may believe
11 that if there are students who are eligible for
12 closed loan discharge, and they discharge their
13 loans, that the Department of Education may have
14 the ability to try then to recover on those
15 loans.

16 And it can either try to recover
17 against the institution, or theoretically, try to
18 recover against the directors and officers of the
19 institution.

20 (Simultaneous speaking.)

21 MS. CARUSO: Okay. Okay. I'm sorry.
22 I'm going to have to redirect to those who have

1 been waiting. And then also I'd like to remind
2 everyone that since we have an audio recording,
3 please do not speak on the sidelines because it
4 won't be picked up on the recording. Okay?

5 So next we have Michael. Could you
6 speak too about what sort of documentation.
7 We're still on bullet number one. Or number two,
8 I'm sorry.

9 MR. BOTTRILL: No.

10 (Laughter.)

11 MR. BOTTRILL: I already spoke to
12 that. But I'll be brief. On Alyssa's point
13 about, Alyssa Dobson's point about the interest,
14 you know, if it was up to me, very few things
15 are, but if it was up to me I would just say on
16 those loans, interest doesn't apply. Period.

17 I mean, they are the subject of a
18 closed school. And just forget the interest.
19 And then figure out the discharges later on. But
20 I just don't think that should be part of the
21 calculus, and should be in the favor of the
22 students in those instances.

1 My other is just a question for what
2 Juliana said earlier which is, I just want to
3 confirm, if a student takes that discharge, they
4 do so knowing that if they re-enroll in another
5 program, the same program, I should say --

6 MS. FREDMAN: And graduate.

7 MR. BOTTRILL: And graduate, that
8 those loans come back into play. Is that
9 accurate? Is that right?

10 MS. WEISMAN: They're essentially
11 agreeing that that could happen.

12 MR. BOTTRILL: Okay. Thank you. I
13 just wanted clarification.

14 MS. CARUSO: Okay. Chris, and then
15 Valerie, and then Walter.

16 MR. DELUCA: So this is getting to the
17 documentation question again because it's a
18 situation that I've seen with some schools that
19 have closed and some teach-out schools that have
20 taken students on to complete their programs.

21 And, you know, I work with a lot of
22 clock hour trade and career schools. And so they

1 got rolling admissions, they may have programs
2 where they have ten enrollment dates a year.

3 So if there is a program that closes,
4 they've got students in various state of
5 completion. You know, some may have just
6 started, some may be a hundred hours away from
7 completing their program.

8 And so this is a situation where
9 there's a student who may not even be looking for
10 a closed school discharge. There may be a
11 student who there's a teach-out provision
12 granted. They're a hundred hours away from
13 completing a cosmetology program. They say, okay
14 great, I'm going to go to another school here in
15 my community, get my last hundred hours, and
16 complete the program.

17 But in that case, oftentimes that
18 student has already received all their Title 4
19 benefits. They already received and gotten all
20 their loans disbursed, their PELL grants.
21 They've paid the school, their old school, the
22 closed school in full, so they're not going to be

1 reapplying for federal financial aid.

2 So my question is, you know, in that
3 case where that student is getting the full
4 benefit of the loans, completing the program, not
5 even seeking a closed school discharge because
6 they get all the information and they say hey,
7 I'm a hundred hours away. I want to complete my
8 program, that's what I'm here for.

9 How would, you know, the Department
10 track that, or if there was an automatic
11 discharge that was available, how would we, how
12 would the Department know that that student,
13 because they're not taking any more or applying
14 for any more federal aid, how would they know
15 that that student completed the program?

16 MS. WEISMAN: We would not.

17 MS. CARUSO: Valerie.

18 MS. SHARP: I just wanted to make a
19 clarification point on Ashley's comments earlier
20 that now all schools are required to report ZIP
21 codes and all program information to COD NSLDS.
22 So that is actually in the official record on

1 every student now of what program they are
2 enrolled in.

3 MS. WEISMAN: That is going forward.
4 It is not for information that we have for people
5 that we would be currently looking at.

6 MS. SHARP: Okay. It'll be for
7 current students very soon because we've been
8 doing it for a while now.

9 MS. CARUSO: Okay. Walter.

10 MR. OCHINKO: Yes. I just wanted to
11 briefly remind people of the comment that Ashley
12 Harrington made yesterday that when a school
13 closes, it's really traumatic for the student.

14 I mean, you know, when you talk about
15 forgiving the student loan, that's in many ways I
16 think not the most important thing, the pressing
17 thing on people's minds.

18 I mean they devoted time out of their
19 life. They made sacrifices for their family to
20 pursue this education. So it really is
21 traumatic, and I think we need to keep that in
22 mind when making decisions about this.

1 MS. CARUSO: Okay. Joseline and then
2 Jay.

3 MS. GARCIA: Thank you, Walter, for
4 that comment. I was going to point on that as
5 well. The considering use of that, I'll get into
6 my next point.

7 So I think it's important to keep in
8 mind that applications do create barriers for
9 students. And again, like, going back to the
10 amount of resources that students have and the
11 ability to process and break down all of this
12 language.

13 And I do have an example that I can
14 refer to. So FastTrain, which is a for-profit
15 that was closed down, they systematically
16 enrolled homeless students. And they would go to
17 the poorest areas of the neighborhoods promising
18 that their lives are going to get better and that
19 they had amazing trainings.

20 However, a lot of these homeless
21 students, they could not read. So how can we
22 expect them to even know what a closed school

1 discharge is if, again, there is that barrier
2 right there. These students didn't have any
3 homes. They didn't have anyone to fill out these
4 forms.

5 And so again, like, let's think about
6 the student. There is no one type of student.
7 We're talking about first-generation students,
8 we're talking about black and brown students that
9 may have to face police brutality, might have
10 undocumented parents, are facing sexual assault,
11 Islamophobia. We have to be very intentional
12 about thinking of the intersectionalities with
13 the students' experience.

14 MS. CARUSO: Jay.

15 MS. O'CONNELL: So I just wanted to
16 offer a model that's already on the books for the
17 FELL program related to total and permanent
18 disability, as we were discussing the Department
19 monitoring for eligibility for closed school
20 maybe shrinking from a three-year period to a
21 one-year period and the question of the interest
22 accrual.

1 So for total and permanent disability,
2 I'll fast-track it. If that's approved, we would
3 submit the loan from the guarantor to the
4 Department where they would be monitoring for
5 certain occurrences that would lead to the
6 reinstatement of the debt.

7 So, you know, there's a list in 402 of
8 what those monitoring conditions are, and they're
9 kind of outside in some cases of the Department's
10 purview. But presumably you have a way to do
11 that.

12 And then, if the borrower found
13 themselves in a situation where they had, were no
14 longer disabled, et cetera, then the loan would
15 be reinstated. And there is a provision that
16 interest during that period is not reinstated and
17 they're not required to pay.

18 MS. CARUSO: Okay. Ashley Harrington,
19 and then back to the Department.

20 MS. HARRINGTON: This is a little bit
21 in response to Aaron's comments. It feels like
22 the schools you were talking about --

1 MS. CARUSO: Ashley Harrington, can
2 you speak into the mic more? Thank you.

3 MS. HARRINGTON: Sorry. It feels like
4 the schools you're talking about, Aaron, would
5 actually be incentivized to create really great
6 teach-out plans, because they would want the
7 students to partake in them so they could limit
8 their liability that way if they're worried about
9 it.

10 So it seems like the incentive would
11 actually be the reverse in my mind, because I
12 know, I think students, if they could, they would
13 want to finish their programs, and get a good
14 degree from it, and just move on with their
15 lives, and not have to go through these whole
16 processes. So it seems like that would be the
17 incentive.

18 And it also, do schools not keep
19 records of who completes their teach-out
20 programs? Is there not a way that we can, that
21 schools can help keep track of who, what degrees
22 people and where they came?

1 If they're accepting transfer credits,
2 they know they're accepting transfer credits from
3 programs that have closed. Right? So there
4 should be ways to monitor this outside of people
5 having to have gone and request new loans.

6 MS. CARUSO: Okay.

7 MS. WEISMAN: I can just respond to
8 that quickly. I would agree with you if they are
9 taking part in a teach-out, that those
10 institutions have formal agreements to teach out
11 specific programs. Less so with transfer,
12 because a student can transfer anywhere and we
13 wouldn't necessarily know that.

14 MS. HARRINGTON: Just thinking if
15 there's ways that you can do that.

16 MS. CARUSO: Okay. Joseline, I see
17 that your name tent is up, but keep in mind that
18 we do want to move on to Item Number 3. So,
19 briefly.

20 MS. GARCIA: Just to go back to
21 Chris's concern earlier about automatic school
22 discharge and a student perhaps not wanting that.

1 I do believe some of my colleagues mentioned that
2 students can transfer their credits elsewhere and
3 decide to complete that. So wouldn't that be a
4 solution to that?

5 MS. CARUSO: Okay. Back to the
6 Department. Are we ready to move onto Item 3?

7 MS. WEISMAN: Yes. Should the
8 Department expand upon the Secretary's existing
9 authority to issue a closed school discharge
10 without an application? And then if so, what
11 information must the Secretary possess before
12 making a determination to permit such a discharge
13 without an application?

14 MR. BANTLE: And just to frame this as
15 the facilitator, if you are answering yes, we're
16 going to hold you to providing an answer to the
17 part two.

18 MS. SHAFROTH: I don't want to short-
19 change discussion, but I feel like this is the
20 topic that we were in large part just addressing.
21 So I wonder if it makes sense to move onto a
22 temperature check or if there's more information

1 that the Department wants from us?

2 MR. BANTLE: Is there any additional
3 information that the --

4 MS. WEISMAN: I'm fine with the quick
5 temperature check if people feel they've had
6 their say.

7 MR. BANTLE: Okay. So let's see a
8 show of thumbs. Just a thumbs up is we are good
9 on Issue Paper 5 in general. A thumb sideways is
10 I'm fine either way. And a thumbs down is I have
11 something that I need to add to Issue 5. Show of
12 thumbs.

13 (No audible response.)

14 MR. BANTLE: Looks like we're on to
15 Issue 6. Okay. Can you frame that for us?

16 MS. WEISMAN: Issue 6 is false
17 certification. The Higher Education Act provides
18 that if a student's eligibility to borrow was
19 falsely certified by the eligible institution or
20 was falsely certified as a result of a crime of
21 identity theft, the Secretary shall discharge the
22 borrower's liability on the loan. And here that

1 would include any interest accrued as well as any
2 collection fees that might be applicable.

3 Generally speaking, when we're talking
4 about false certification, we are talking about a
5 student eligibility-related issue. So we have
6 several bullet points here talking about that and
7 framing that around the idea of the student's
8 eligibility to borrow.

9 So talking about if the student
10 eligibility was certified for the loan based on
11 ability to benefit from the institution's
12 training and then the student really didn't meet
13 that ability to benefit.

14 If it was signed, the borrower's name
15 on the loan application or promissory note
16 without the borrower's authorization. Certify
17 the eligibility of a student who because of
18 physical, mental condition, age, criminal record,
19 or other reason accepted by the Secretary, would
20 not meet requirements for employment in the
21 student's state of residence where the loan was
22 originated and the occupation that the training

1 applied to.

2 Certified the borrower's eligibility
3 for direct loan as the result of crime of
4 identify theft against the borrower. Or without
5 the borrower's authorization endorsed the
6 borrower's loan check. Or signed the borrowers
7 electronic transfer authorization. Those don't
8 apply as much anymore, but they were in the
9 original regulation.

10 We talk about the Secretary having
11 discretion to discharge a loan certification
12 under the false certification. We say without an
13 application from the borrower. If the Secretary
14 determines that the Secretary has possession of
15 information that would show qualification.

16 So that is already listed in the
17 current regulations for false certification. So
18 the question that we'd like to ask here is,
19 should we change or amend the false certification
20 regulations to include any other certifications
21 that might fit with these other conditions that
22 we've already outlined? And again, if so, what

1 would they be?

2 MS. CARUSO: Okay. Abby, was your
3 name tent up to go or was it still up from last
4 time?

5 MS. SHAFROTH: It wasn't but I'm happy
6 to talk. But if someone else has something
7 first, then I'm also, I can wait.

8 MS. CARUSO: Okay. Ashley Reich.

9 MS. REICH: I have a question as it
10 relates to fraud reporting. So if I'm an
11 institution and I have a fraud ring that I've
12 identified, and we send data off to the OIG for
13 review, where would that fall under false
14 certification?

15 Does it have to be confirmed fraud,
16 because what's happened is some of the students
17 that might be caught up in a fraud ring don't
18 know they're in a fraud ring. Some of them claim
19 identity theft; some do not. So would any of
20 those students, or could they fall under false
21 certification in any way?

22 MS. WEISMAN: Can you explain a little

1 bit more about, I'm sorry. Can you explain a
2 little bit more about the conditions that you
3 were describing there in terms of the alleged
4 fraud?

5 (No audible response.)

6 I think if it relates to the items
7 that are already listed here, for example, if
8 somebody falsely completed a promissory note,
9 it's a little different now that we don't have
10 signatures and typical paper applications.

11 MS. REICH: Right.

12 MS. WEISMAN: But that comes to mind
13 quickly. So I think the answer could be yes.
14 But I think it would depend on the conditions and
15 whether they fall into these categories.

16 MS. REICH: Are they being pursued to
17 fall into this category? Or would that type of
18 student have to pursue that on their own?

19 MS. WEISMAN: We'd need to go back to
20 get more information regarding how that's been
21 handled. Our understanding is that it has
22 happened within program reviews and audit

1 resolution process. But we'd need to get a
2 little more information for you.

3 MS. REICH: Okay. That would be
4 really helpful, because, I mean, for some
5 institutions, they wouldn't see that necessarily
6 through a program review if they haven't had one
7 in a while.

8 But some institutions are submitting
9 files to the OIG on a monthly basis with large
10 fraud rings. So I'm just curious how that would
11 play in here and, you know, if they could be
12 pursued proactively for false certification or
13 not without them having to do something.

14 MS. CARUSO: I see you, Bryan. I just
15 want to make sure that the Department didn't want
16 to respond. Is it okay?

17 MS. WEISMAN: No. He can go ahead.
18 Thank you.

19 MS. CARUSO: Bryan.

20 MR. BLACK: Just looking really for
21 some clarification under bullet number three.
22 The certification or false certification of

1 someone that has a criminal record in Michigan
2 for example, where our schools are located, it is
3 discretionary with the Board of Cosmetology
4 whether a criminal record disqualifies a person
5 from becoming licensed.

6 We won't know that until they go
7 through the program. And it's discretionary,
8 that act or regulation, with the Department of
9 Cosmetology. It lists several criminal offenses
10 or conviction, I should say, that would
11 disqualify. But quite honestly, they've been
12 pretty liberal in allowing our students to,
13 despite having a criminal record, to still become
14 licensed as hair stylists.

15 Do you know, clarification, how that
16 would work? What would the school's obligation
17 be, in terms of notifying the Department? What
18 happens when we get a result that we think, our
19 student, that we think will pass through the
20 program successfully, doesn't become successful
21 licensure candidate?

22 MS. WEISMAN: As the non-attorney,

1 I'll have to say, consult with your legal
2 counsel. Or in that case, I would recommend
3 going back to the state authorizing agency that
4 governs that requirement.

5 We're really not authorized to speak
6 about their requirements. I can tell you that in
7 other states that I am more familiar with, the
8 requirements are much more cut and dried.

9 I'm familiar with one state, for
10 example, where in order to be in a certain
11 profession, you cannot have certain items on your
12 criminal background check. And that is required
13 for not only licensure but for other work while
14 the student is enrolled.

15 So there is a list. The state issues
16 a list and says if you are on this, if you have a
17 criminal background that includes anything on
18 this list, you cannot do X profession in this
19 state. You will never be licensed.

20 Where it is that clear, I think the
21 answer is much clearer. Where it is
22 discretionary, I think it's a little harder to

1 say that the student wouldn't meet the
2 requirements because you're not sure what those
3 requirements are, but we are going to go back and
4 see what the state says and use that information.

5 So it's a matter of would the person
6 be eligible for licensure or would they be able
7 to perform whatever job they should be able to do
8 as a result of the training that you've given
9 them as an institution.

10 MS. CARUSO: I see you, Aaron, but
11 they, I know they want to give another answer.
12 Okay, Aaron and then Abby.

13 MR. LACEY: Can I ask, do we have the
14 ability to propose other topics for conversation,
15 or is that done within this sort of general
16 realm? I don't know. I forget how that works.

17 MR. BANTLE: Within this issue paper
18 itself?

19 MR. LACEY: Yes. Related to this.
20 But in addition to this bullet.

21 MR. BANTLE: I would open it up to the
22 working group.

1 MR. LACEY: I can propose a topic and
2 then we can decide what we want.

3 MS. CARUSO: Yes. Propose what it is
4 and then we we'll --

5 MR. LACEY: Okay. Let me propose what
6 it is. So my concern is with bullet three. And
7 I'm not taking an issue here. Or I'm not taking
8 a view. The concern I have is how this plays
9 against the Americans with Disabilities Act. And
10 I've had this conversation. There was something
11 in the Federal Register about it last year, but I
12 don't remember exactly.

13 The concern is this. So you
14 obviously, I think we all know you can't ask an
15 individual prospective student about whether or
16 not they had disabilities prior to admission.
17 Right? You can, if they don't seek an
18 accommodation or tell you they have a disability,
19 you can't ask them. Right?

20 But what that means is that if someone
21 is then admitted and then comes to you and says I
22 have a disability, I'm seeking accommodation, now

1 you have two decisions to make. One is whether
2 or not you can accommodate them in a reasonable
3 way so they get through your program. Right?

4 The other is whether you can certify a
5 loan for them, because there can be a distinction
6 between whether or not you can reasonably
7 accommodate them such that they are able to
8 complete your program and whether or not, because
9 of a physical or mental condition, they would not
10 be able to meet the requirements for employment.

11 So my question to the group is, and
12 I've thought about before, you know, because
13 schools really struggle with this, particularly
14 medical schools, institutions that have clinical
15 requirements where they may be able to figure out
16 a way to accommodate someone to get them through
17 their program, but they have a serious concern as
18 to whether or not they can be licensed as a
19 professional in that field in the state.

20 So my question for the group is, you
21 know, with regard to the third bullet, is there a
22 way that we can, or would it be reasonable to

1 come up with a way that schools would not be
2 penalized for reasonably accommodating a student,
3 but at the same time potentially not certifying
4 their loan?

5 I just see a tension here. And I'm
6 curious as to what folks thoughts are, if there's
7 a way to resolve that tension, because it puts
8 institutions in a, and students potentially, in a
9 very difficult spot. Right?

10 You're sort of forced to say well, I
11 can put you through the program and accommodate
12 you, but I can't certify your federal loan, which
13 is probably not where we want to be. And I just
14 feel like this issue is worthy of some
15 discussion.

16 MS. CARUSO: Okay. Can you frame it
17 for us again, Aaron, what your proposed question
18 is?

19 MR. LACEY: Yes. The question is, is
20 there, I mean, and maybe there's not a solution
21 to this. But I'm just recognizing that there is
22 a tension for schools between their obligation to

1 certify the loan or refuse to certify the loan,
2 and the ADA.

3 I feel like this bullet as it's
4 written potentially disincentivizes institutions
5 when they are having a reasonable accommodation
6 consideration, and in how they're dealing with
7 students with disabilities.

8 I'm not sure what the answer is.
9 Maybe it's not worth discussion. Maybe it's for
10 another day. But, you know, you want to be able
11 to give folks reasonable accommodation and
12 hopefully be able to certify their loan as well
13 so they can finance their education without, on
14 the back end, being subject to a false
15 certification claim.

16 MS. CARUSO: Okay. I think the
17 Department has something.

18 MS. WEISMAN: In having this
19 discussion previously, my recollection of the
20 discussion was that we said if you were
21 documenting an accommodation, then the student
22 can't come back to you and say that you falsely

1 certified them. You've made them aware that
2 you're making an accommodation.

3 You're going to have a discussion with
4 them at that time about what the job entails,
5 what they're going to be required to do. And I
6 know some schools will have them as a part of
7 doing their reasonable accommodation document
8 some of the discussion that they've had in terms
9 of what they're going to need to request as a
10 reasonable accommodation in the workforce.

11 But you are then not falsely
12 certifying. And that also gets me to circle back
13 to Ashley Reich's question regarding the false
14 certification as well with the OIG fraud rings.
15 And it should have occurred to me at the time
16 that the discussion was being had and it just, it
17 slipped by me.

18 But when we're talking about the fraud
19 ring, the student and the school typically are
20 not aware of the activity. The idea of a false
21 certification here is that the school is falsely
22 certifying something. And in that case, you're

1 not falsely certifying anything as an institution
2 if there's a fraud ring going on.

3 MS. CARUSO: Did you want to respond
4 really quickly? Otherwise, we'll move onto Abby.

5 MS. REICH: So this does not extend at
6 all to the student's loan being taken out on
7 their behalf. So if the loan is taken out by
8 someone else other than the student and they are
9 not aware of it, maybe they were conned into
10 signing, et cetera, and then the institution
11 finds out, I guess I'm trying to understand
12 because we may not have been aware of it
13 initially. So I just want to make sure --

14 (Simultaneous speaking.)

15 MS. WEISMAN: I think what you're
16 getting at is something that is separate, which
17 would be just a plain forgery. And that's
18 separate from false certification.

19 MS. REICH: Okay. Understood.

20 MS. CARUSO: Abby.

21 MS. SHAFROTH: This is responding to
22 the Department's question about other bases for

1 false certification discharge. I would propose
2 that the discharge criteria are updated. I would
3 call it an important technical update so that the
4 false certification discharge eligibility better
5 match up to the current criteria for eligibility
6 for federal student aid.

7 Current federal student aid
8 eligibility is now limited with very minor
9 exceptions to individuals who have a high school
10 diploma or equivalent. The false certification
11 discharge criteria don't currently take into
12 account providing discharges to those whose
13 eligibility has been falsely certified by their
14 schools, by the schools falsifying that that
15 student had a high school diploma or GED.

16 So I'm sorry if that, that's a lot of
17 false in a row there. But the idea is there have
18 been some schools recently that have been found
19 guilty of either falsely certifying that incoming
20 students had graduated from high school either by
21 sending those students to online diploma mills
22 and getting them these fake certificates this

1 way, or otherwise just checking the box off for
2 the student.

3 Generally these students have no idea
4 that they're supposed to have a high school
5 diploma. Or if they're sent to a an online
6 diploma mill, they don't know that it's not real.
7 You know, we're taking advantage of people who
8 haven't graduated high school there.

9 Their knowledge of the financial aid
10 rules, as you can imagine, is not hyper-
11 sophisticated. So this is a change that was made
12 in 2016. I would support making that same change
13 now.

14 The other way that I would propose
15 expanding the discharge criteria would be when
16 schools falsify the student's satisfactory
17 academic progress so that the school can keep the
18 federal aid spigot open for that student.

19 It doesn't really help the student
20 because they're just loading up on more aid even
21 though they are not, or loading up on more loans
22 that they shouldn't be eligible for while not

1 getting the kind of learning to benefit from
2 their education.

3 So those are two changes that were
4 made in the 2016 rules. I would propose that the
5 Department consider those again.

6 MS. CARUSO: Michael.

7 MR. BOTTRILL: Yes. Along those
8 lines I think that bullet number one under the
9 false certification is limiting. And to Abby's
10 point. And I'm not sure what it means by, on the
11 basis of the, I know what it means by on the
12 basis on the ability to benefit.

13 I don't know what it means by and the
14 student did not meet the eligibility
15 requirements. I'm not sure exactly what
16 eligibility requirements are being referenced
17 there, because the eligibility requirement to be
18 considered an ATB student is that you don't have
19 a high school diploma.

20 So I guess the false certification
21 would be what, that the student doesn't have high
22 school diploma but passed this test? I just

1 think it's confusing not really understanding
2 what that line is referencing to.

3 So my suggestion along those lines is
4 really to look at that first bullet and try to
5 just make it more direct which is to say they
6 falsely certified that the student met the
7 institution's eligibility criteria or admissions
8 criteria. Or if you need to get more specific,
9 as Abby said, falsely certified that the student
10 met ATB requirements or falsely certify that the
11 student had a high school diploma.

12 MS. CARUSO: Dawn?

13 MR. ROBINSON: So, to follow up on
14 what Abby said as it relates to the 2016
15 guidelines, I would add one more. So if it has
16 been noted and it's known that an institution has
17 engaged in widespread falsification, the impacted
18 students' loans should also be forgiven.

19 MS. CARUSO: Okay, Aaron, I want to go
20 back to you because I want to make sure that your
21 question had been answered about the school
22 penalty and accommodating students. Yes.

1 MR. LACEY: It sounds like the
2 Department is saying if someone had a, you know,
3 an accommodation plan, which schools should have,
4 for the schools in the audience, that an
5 institution would be able to provide that as
6 evidence.

7 I mean, I'm still not sure how that
8 works because they could have an accommodation
9 plan, understand the disability and decide that
10 they can reasonably accommodate the student.

11 That still doesn't necessarily mean
12 that the student is going to be able, because of
13 the disability, to become employed. So even if
14 you have that, I'm not sure that remedies the
15 exposure.

16 But we don't have to talk about that
17 right now. I'm satisfied not making that. We
18 can talk about off line or whatever. If you can
19 do that here. I don't know.

20 I just wanted to follow up to the high
21 school graduation, the high school diploma point,
22 which I don't have an issue with at all. And in

1 fact, I think a lot of schools now, I believe
2 ACCSC among other accreditors, require schools to
3 actually have a physical copy of the diploma in
4 the folder or, you know, scan before they enroll.

5 My concern is actually, a lot of
6 private, non-profit, and public institutions do
7 not require that. In other words, they do not
8 require the student to actually give them a
9 physical copy of the diploma. They rely on the
10 certification of the student that they have a
11 high school diploma.

12 So my only request would be, if the
13 Department is going to specify in the false
14 certification about high schools diplomas, that
15 there should be a caveat that if an institution,
16 an expressed caveat, that if an institution can
17 demonstrate that at the time of enrollment the
18 student self-certified that they had a high
19 school diploma, that the institution shouldn't be
20 exposed to a false certification discharge claim.

21 MS. CARUSO: Michael, and then back to
22 the Department.

1 MR. BOTTRILL: Yes. I think that's
2 right, Aaron. Although I lobbied last time, and
3 I'll say again, I think that self-certification
4 along these particular lines is dangerous. And I
5 would encourage the Department to not allow for
6 self-certification along those particular lines.

7 We have provisions in our
8 accreditation standards that if a student cannot
9 get the documentation for a whole host of
10 reasons, schools close down, natural disasters,
11 whatever, there are other avenues that still
12 afford the student an opportunity to demonstrate
13 their ability to benefit.

14 Otherwise, I just have a question for
15 Abby on the recommendation around SAP (phonetic).
16 So, the cheating scandal that happens, you know,
17 from time to time at institution X, Y, or Z, is
18 that something that qualifies as a potential
19 opportunity for a discharge for those students
20 that were engaged in a cheating scandal with an
21 institution for continued eligibility, you know,
22 to play sports or whatever it is?

1 MS. SHAFROTH: I'm not sure I follow.
2 Are you saying when the students themselves are
3 the cheaters, are the ones falsely --

4 MR. BOTTRILL: No, when the
5 institution actively engages in a practice to,
6 and in some cases to maintain student eligibility
7 to play sports, engages in an activity that
8 would, as you said, inflates grades or does
9 something that would otherwise extend their
10 eligibility.

11 So in that instance, do you think
12 that's a violation of SAP and would that fall
13 into this category?

14 MS. SHAFROTH: I'm hesitant to opine
15 too much. I haven't thought about it or looked
16 into it. But to the extent that the school is
17 falsifying eligibility for its, you know, own
18 purposes for the benefit of the school and is
19 sort of cheating the government in that way, yes,
20 that might be appropriate.

21 MS. CARUSO: Okay. Are there any
22 additional comments, concerns, items for Issue

1 Number 6. Joseline.

2 MS. GARCIA: I had a data request for
3 the Department. Could we get the number of
4 discharges that have been given on the following
5 bullet points that you all listed in Issue 6?

6 MS. WEISMAN: Can you tell me what
7 time period you'd be interest in seeing? Again,
8 I know I'm going to be asked, so it would help to
9 have some parameters around the request.

10 PARTICIPANT: Well, it doesn't apply
11 before 1986.

12 MS. WEISMAN: I would hope we wouldn't
13 need to go back to 1986. That's a lot of data.
14 And, not to diminish your question at all in any
15 way, but we're already asking for a lot of data.
16 So we need to structure our request as best we
17 can and have them somewhat limited to a period
18 that we think would be useful.

19 And again, I don't want to discourage
20 you from asking for anything you feel would be
21 helpful in making your decisions.

22 MS. GARCIA: Let's go with 2010.

1 MS. CARUSO: Okay. Oh, Mike.

2 MR. BUSADA: Just a question of order.
3 When we're requesting data, should we not provide
4 the framework as to what we're trying to achieve
5 with the data so that you can provide it in a way
6 that's appropriate?

7 MS. WEISMAN: That's certainly
8 helpful.

9 MS. CARUSO: Okay. I'm going to --

10 MR. BUSADA: Okay. My question would
11 be, what's the need for the data? What are they
12 hoping to achieve with it?

13 MS. GARCIA: I just want as much
14 information as possible to be able to make a
15 decision.

16 MS. CARUSO: Aaron and then Mike.

17 MR. LACEY: I just had a point of
18 clarification for Abby, actually. On the SAP,
19 are you limiting the basis for the false
20 certification discharge would be to instances in
21 which a school, in some way, engaged in
22 malfeasance in managing the SAP as opposed to

1 mistakes?

2 I mean, schools go through regular
3 audits and program reviews. And it is not
4 unusual for, in fact, I'm pretty sure it is
5 perennially a top 10 program review finding where
6 schools have made mistakes.

7 There was a carve-out in the 16
8 borrower defense regs for violations of Title 4
9 requirements that didn't otherwise constitute a
10 borrower defense claim. So there was sort of an
11 understanding that if you had a technical
12 infraction with regard to SAP or return to Title
13 4 or something like that, that would not give
14 rise to a borrower defense.

15 I mean, this is in the context of
16 false certification. And so it's not borrower
17 defense. I just want to be clear that you're not
18 suggesting if a school screws up the student's
19 SAP that the student should have a basis to
20 discharge their loans.

21 What your suggesting is, if a school
22 was engaged in falsely certifying, you know, I

1 guess knowingly, or whatever the standard would
2 be, but in some malfeasance and cooking the SAP
3 so that the student could be continually
4 eligible, that would be the basis.

5 MS. SHAFROTH: I hadn't envisioned any
6 intent requirement. I hadn't thought into it
7 that way. I don't know what sort of, how common
8 it is for schools to innocently falsely certify a
9 student's satisfactory academic performance. I
10 would need more information to assess that
11 proposed caveat.

12 MR. LACEY: I think it would be
13 helpful if the Department or the financial aid
14 professionals could talk about how frequently
15 mistakes involving SAP come up.

16 MS. CARUSO: Okay. Okay.

17 MS. MILLER: It is one of the top ten
18 audit findings. And it's not because we are
19 intentionally doing anything incorrectly. It's
20 because it's extraordinarily complicated.

21 There's also instances where students
22 can commonly petition for grades to be changed,

1 either because of professor errors or because of
2 work that's completed at a later point in time.
3 And so we often have to go back and recalculate.

4 So there's a lot of moving pieces.
5 Changing pieces where at the time of loan
6 certification, after things are reevaluated, the
7 student may not have been technically eligible
8 for the loan certification. It does not indicate
9 any intentional misuse of federal programs.

10 And in addition to that, there's also
11 a lot of pressure on financial administrators
12 sometimes to allow for appeals of SAP. And it
13 frequents daily where students come into our
14 offices and tell us, you know, reasons why they
15 were not able to make SAP, we given them appeals,
16 and they're still not successful.

17 And at that point in time, they are
18 also angry that they have to repay their loans.
19 And so, if there was some sort of a loophole that
20 they could find with regard to false
21 certification and SAP, we would just want to make
22 sure that that was closed.

1 MS. MILLER: Are you going to provide
2 -- Ashley Reich?

3 MS. REICH: Yes, I would agree 100%.
4 SAP is a complicated beast and there's not a
5 whole lot of -- there's some framework around it,
6 but there's a lot of flexibility also left up to
7 the institution as to whether or not they allow
8 an appeal for a student, how many times they
9 allow an appeal for a student could be vastly
10 different from my university to Alyssa's. So I
11 would definitely make sure that that is not part
12 of it, and I have done extensive research on
13 program reviews. That has forever and always
14 been a top ten finding. So I would definitely
15 echo everything that was mentioned.

16 MS. MILLER: Mike?

17 MR. BUSADA: Yes, although I'm here to
18 represent small for-profit schools as a proud LSU
19 alum, I did want to speak up when I heard what
20 Aaron said. And I didn't remember this, it's
21 been so long, been to a lot of public
22 universities, you don't to have the actual hard

1 copies, so that's for self-certification. And to
2 Michael's comment, I understand the concern
3 there, but I also want to say if you're looking
4 at a state like Louisiana where we have numerous
5 public schools, private schools, charter schools,
6 to put that burden, that additional burden on a
7 public institution, they're taking 30,000
8 students without providing some kind of federal
9 database to look that up or to search that, I
10 think would be overly onerous on our public
11 institutions and would just really bog them down
12 and really put a bottleneck. So in saying that,
13 anything that we do that's really going to
14 require additional information like that, I think
15 that we also ought to keep in mind that, you
16 know, if we're going to have additional
17 regulations in the technology era that we're in,
18 I think that we ought to make sure that we also
19 provide easy access to information through
20 digital means, and I know that's something that
21 right now we just haven't done real well at, as
22 far as government agencies talking to each other.

1 And so it really falls to the student to then
2 have to go and get all this information that we
3 should already have.

4 MS. MILLER: Thank you. AnneMarie?

5 MS. WEISMAN So I have a comment and
6 then a question to follow up on. The question
7 was raised of schools and the Department to
8 comment on falsification of SAP, and I think from
9 our experience we had said previously we've not
10 seen widespread evidence of falsification of SAP.
11 And I think that here it's important for me to
12 make the distinction that I see a definite
13 difference between falsification of something
14 versus an error. And I think that I want to
15 acknowledge that that was heard. I'm hearing
16 that comment around the room. We definitely see
17 significant errors in SAP, and I'll highlight
18 that many times when that finding is made, it's
19 about the policy. So of course if you have a
20 policy with errors and we start counting then the
21 number of students where we see that show up,
22 that could be significant as a result of an

1 error. If you have a problem with your policy,
2 you could have a problem with the calculation of
3 a lot of students. So I want to acknowledge that
4 because I think it is important to consider that
5 as we're talking about SAP specifically. So
6 definitely there are times that it is an error in
7 calculating a specific student's SAP or
8 information that should have been considered
9 wasn't. There are many reasons that could occur,
10 but I did want to make that point and acknowledge
11 that that was heard.

12 I also had a follow-up question, and I
13 apologize for getting to it so late, but it was
14 something that Aaron had said earlier and I just
15 wanted to circle back to it because I think it's
16 important that if there's something I'm missing,
17 I want to make sure I've captured everything
18 that's being said. In discussing the idea of
19 high school diploma, the regulation states that
20 it is a school falsely certifying the eligibility
21 of a borrower. So if we're talking about it
22 being the school in the sense willingly,

1 knowingly making an act here, I was not totally
2 following the discussion where we talked about
3 having copies of the document. And I believe
4 Aaron -- and again, please correct me if I'm
5 wrong -- I believe you were suggesting that
6 instead of having self-certification of high
7 school graduation status, that we require
8 collection of the document; that some states,
9 some accrediting agencies already do that. And I
10 thought that what you were saying is that you
11 were suggesting that we require that, and I'm not
12 sure the tie-in if we're saying that the school
13 has to falsely certify something, the relevancy
14 of having the document versus not. Because if
15 you're talking about a student can self-certify,
16 if they self-certify and say yes I have it, and
17 you have no idea, you take their word for it
18 because we allow you to do that. I'm not seeing
19 the issue there. And so please, if I'm missing
20 it, please explain.

21 MR. LACEY: I was not suggesting that
22 all institutions should have to require a copy of

1 the high school diploma before admission. I
2 think Mike makes an excellent point that
3 particularly for, you know, large state
4 institutions with tens of thousands of students,
5 I think that would pose a tremendous challenge.
6 I'm not suggesting in the perfect world it would
7 be bad, but administratively I think it would be
8 really difficult. What I was suggesting is,
9 because I'm not sure I read the regulatory
10 language that way, you know, or at least not what
11 was proposed last time around. My point is if we
12 craft regulatory language that says that if a
13 school certifies that a student had a high school
14 diploma and that turns out to be wrong, that the
15 school could be subject to false certification
16 discharge claim, or the student could process --
17 however you want to think of it -- that it be
18 very clear that if the school relied upon the
19 student's self-certification that the student had
20 a high school diploma, that the school would not
21 be on the hook. I appreciate that structurally
22 the way that the regulation works that would seem

1 implicit, because it would seem like well, if the
2 school is certifying and it had a self-
3 certification from the student at the time, then
4 clearly it wasn't falsely certifying. But for
5 those of us in the regulated community, it would
6 just be nice if that were very clearly spelled
7 out, that there was no doubt that if at the time
8 a student self-certified that they had a high
9 school diploma, and the school is able to produce
10 that self-certification, preferably with date
11 schools, then in that case, they would not be
12 subject to a close school discharge or false
13 certification discharge, on that basis.

14 MS. MILLER: Abby and then Barmak.

15 MS. SHAFROTH: I would certainly agree
16 that to the extent that the student goes to the
17 school and tells them that they have a high
18 school diploma or its equivalent, then the
19 student shouldn't be able to use that to then get
20 their loans discharged. What I would want to be
21 careful about is that we not rely just on what --
22 any box that's checked on FAFSA as that being

1 evidence that the school reasonably sort of
2 relied on the student's -- the student themselves
3 falsely certifying that they had a high school
4 diploma, because when we're seeing these
5 practices, we're seeing them at schools, at your
6 (inaudible) at your fast trains, where these
7 students themselves are not filling out their
8 FAFSA paperwork.

9 They're generally within the span of
10 about an hour, going from maybe responding to a
11 recruiter's phone call, to being signed up for
12 school and signed up for a whole bunch of loans.
13 The borrowers I work with, they report that they
14 go in and there's a stack of paperwork that's
15 already been filled out or electronically filled
16 out, and they are quickly talked through, sign
17 here, sign here, sign here. And they haven't
18 actually filled out that information themselves.
19 So I would just want to be careful that since
20 we're talking about this happening in the context
21 of schools that are engaged in this sort of
22 predatory conduct, that we have to understand

1 that if we had a carve out for where a student
2 couldn't be eligible across the board if their
3 FAFSA was checked off that they had a high school
4 diploma, then that would sort of eliminate any
5 protections of the rule to those students. So I
6 just want to be careful about that, and what we
7 had proposed last time is that that student
8 shouldn't be eligible for the discharge if they
9 reported to his or her school that they had a
10 high school diploma or its equivalent.

11 MS. MILLER: Barmak?

12 MR. NASSIRIAN: Two quick points. One
13 of them somewhat pedantic but nevertheless, at a
14 cocktail party. Diplomas are not viewed as proof
15 of graduation. Diplomas are decorative devices;
16 the proof of graduation is the transcript. And I
17 don't know of any of the schools that I have
18 dealt with, it may be possible in other sectors,
19 but in traditional higher ed, it is inconceivable
20 that you would admit somebody into an
21 undergraduate program without satisfying yourself
22 that they graduated, very often, from an

1 accredited high school, not just any high school,
2 an accredited high school. So the Department
3 should be careful here because I vividly recall,
4 maybe 15 years ago, where I used to deal with
5 diploma mills in a different life. And there was
6 evidence of connections between some Title IV
7 participants and certain diploma mills, which
8 seem to have an affiliation with those entities
9 who were actually getting paid to generate phony
10 high school diplomas. So this notion of relying
11 on peoples' self-certification again, in
12 traditional high ed, it kind of blows my mind
13 that any institute, post-secondary institution
14 could just shrug its shoulders and us show up and
15 say I'm a high school graduate and they would
16 take me at my word. But even if you were to do
17 so, I think the admonition that you want to make
18 sure that it's not a stratagem on the part of the
19 participant to just cheat the government and then
20 shift the liability to the student.

21 MS. MILLER: Ashley Reich.

22 MS. REICH: Abby, just a point of

1 clarification, I might not be understanding and
2 the Department can also correct me if I'm wrong,
3 but I believe schools are able to rely on the
4 FAFSA high school diploma graduation information
5 as a self-certification currently. Is that
6 accurate?

7 MS. SHAFROTH: That is correct.

8 MS. REICH: Okay. So, are you
9 suggesting, Abby, that that should be changed?
10 So, when they fill out their FAFSA, we as
11 financial aid administrators--I'm not saying we
12 do, but we as financial aid administrators,
13 technically in the current language, can rely on
14 that. So are you suggesting that be changed?

15 MS. SHAFROTH: Not necessarily. In
16 many cases that might be appropriate and I would
17 wager at most institutions students are filling
18 out their own FAFSA, and if the student themselves
19 is filling it out and they're certifying this
20 information on their own, that might be
21 appropriate. What I'm saying is, if the student
22 submits an application and they say in their false

1 certification application I told the school
2 before enrolling or signing up for loans, that I
3 had not graduated from high school and they told
4 me no problem, then they should still be eligible
5 for a discharge even if the school later produces
6 their FAFSA and it says that it has the box
7 checked. Because quite often, in that
8 circumstance, what we might find is that the
9 school actually filled out the FAFSA and the
10 student had no idea that that false certification
11 existed there. So you know, I'm not saying that
12 it's going to be easy necessarily to determine
13 each of these circumstances that the student
14 ultimately should have their loans discharged,
15 but just that the box checked on the FAFSA should
16 not mean that they are automatically ineligible.
17 Does that answer your question?

18 MS. REICH: Yes. I think I understand
19 what you're saying, and I would also echo what
20 Aaron had mentioned too, and I think that's what
21 I was trying to get at with the fraud piece is
22 you know, often times we find out that something

1 had happened after the fact. I just want to be
2 sure that the institution is not going to be held
3 liable for that because we didn't know about it
4 ahead of time. We see this, it happens all the
5 time. So I want to echo that point that we are
6 not held liable and that it's made very, very
7 clear that at the time, and I believe there's
8 already language for some of this, that at the
9 time of disbursement, you know, we weren't aware
10 of that, even though it could later change. And
11 I might not be understanding you correctly, but -
12 -

13 MS. MILLER: Really quickly, Aaron.

14 MR. LACEY: You seem really
15 exasperated with me, Rozmyn. I'll be quick.
16 Yes, I just -- but if the student -- presumably
17 in your scenario, if the school says well, I have
18 a transcript right here, to your point, you know,
19 we have the high school transcript, we have it on
20 record, that would be different, right? Even if
21 -- so I think that's just the point is that I
22 just want it to be clear that if a school is able

1 to establish with appropriate documentation that
2 at the time of enrollment, you know, they were
3 able to ascertain or had valid reason to believe
4 that there was a high school diploma, that would
5 be taken into consideration. I guess that's the
6 point.

7 MS. MILLER: Lodriguez then Alyssa.
8 And Danny. Sorry.

9 MR. MURRAY: I just want to echo
10 something that Barmak said over here. After
11 you've gone and done college fund institutions,
12 we do have students doing self-certifications
13 before they graduate from high school, but they
14 are graduating from high school, they put it on
15 the FASB. But maybe we're just old timey at
16 these institutions because we require every one
17 of those students, before they get financial aid,
18 and before they are truly admitted to the
19 college, to bring us a transcript from their high
20 school. And so, we want to make sure that there
21 is absolutely no transgressions, the laws is be
22 committed or any fraudulent acts is going on. We

1 rely on the transcript and if the transcript is
2 wrong, then we got a problem with the high
3 schools.

4 MS. MILLER: Alyssa?

5 MS. DOBSON: I just wanted to very
6 quickly say that it seems like the issue is not
7 with self-certification but with false FAFSA
8 completion. And maybe that's where we want to
9 focus rather than the reliance on the students'
10 self-cert.

11 MS. MILLER: Okay, Mike.

12 MR. BUSADA: Not to -- I just want to
13 point out, I don't want it to be lost on anybody,
14 I think we need to always too, be cognizant that
15 if a school official is filling out a FAFSA on
16 behalf of a student falsely, not only should the
17 loan be discharged, but that individual should be
18 referred to the Department of Justice, because
19 that is a major offense and I don't think we need
20 to overlook that, either.

21 MS. MILLER: AnneMarie?

22 MS. WEISMAN: If I can just clarify.

1 We would expect that you would report that to our
2 Office of Inspector General.

3 MR. BUSADA: My apologies, yes.

4 MS. WEISMAN: And not the Department
5 of Justice. Our Office of Inspector General
6 would certainly want to hear about that.

7 MR. BUSADA: My apologies to the
8 Inspector General. Yes.

9 MS. MILLER: So the time is now 2:49.
10 I think this is a good place to take our
11 afternoon break, and then perhaps move on to the
12 remaining issues. So, the time is now 2:49 so be
13 back at 3:04. Thank you.

14 (Whereupon, the above-entitled matter
15 went off the record at 2:49 p.m. and resumed at
16 3:05 p.m.)

17 MS. MILLER: So depending on your
18 phone, it's either 3:04 or 3:05, so I thank you
19 for being back on time. Before our break, we did
20 extensive discussion on Issue Paper No. 6, and I
21 just wanted to know if we had any more topics or
22 anything else to discuss on Issue No. 6 or if we

1 were ready to move on to Issue No. 7? Hearing
2 nothing, moving to Issue No. 7. Back to the
3 Department.

4 MS. WEISMAN: Thank you. Issue Paper
5 No. 7 is regarding guarantee agency collection
6 fees, and I'd also like to add another related
7 issue to this one or a related bullet point, I
8 guess I'll call it, and that is interest
9 capitalization. The two go together and because
10 they're linked, we'd like to discuss them at the
11 same time, but I would like to give you the
12 regulatory citations for interest capitalization.
13 It would be Section 682.202 (b)(1). So that's
14 682.202 (b)(1), also 682.405 which we do already
15 have listed at the top as a regulatory citation.
16 Again, that's why they're somewhat related; that
17 is the rehabilitation citation, and then 682.410
18 (b)(4).

19 So on this issue, we're talking about
20 failed loans here. A guarantee agency after it
21 pays a default claim and acquires the loan from
22 the lender, is required to send an initial notice

1 to the borrower. In that notice, they give the
2 borrower at least 30 days to take any of several
3 actions, and that would include entering into a
4 repayment agreement with the guarantee agency.
5 The Department, for its loans, does not charge
6 collection costs to a defaulted borrower who
7 enters into a repayment agreement or loan
8 rehabilitation within the 60-day period following
9 an initial notice to the borrower. So in 2015,
10 the Department was asked whether guarantee
11 agencies could charge collection costs in those
12 situations, and the Department published Dear
13 Colleague letter GEN-15-14 in July of 2015
14 addressing the issue and basically explaining
15 that we did not allow the guarantee agencies to
16 charge these costs. The Department withdrew that
17 Dear Colleague letter in March 2017, because we
18 said we did not have appropriate notice and
19 comment and said that we would go through
20 rulemaking on the issue, so we're here to do that
21 today.

22 This issue has come up in the past, we

1 understand that from the information we have, we
2 believe that no guarantee agencies are charging
3 these costs any longer. Certainly, if anybody is
4 aware of information to the contrary, they can
5 correct me if I'm wrong, but we are looking at
6 this going forward and saying, you know, these
7 regulations will be prospective, and I believe
8 that in the past that was really the bone of
9 contention is that we wanted to make it
10 retroactive. There was objection to that and
11 people said no, we should make that -- if we're
12 going to state this and say this is how it should
13 be, it should be looking forward only. And so
14 that issue was not added previously in
15 rulemaking. We'd like to put it on the agenda
16 here and solve the issue once and for all.

17 Related to that is the interest
18 capitalization discussion, and so that is whether
19 a guarantee agency can capitalize unpaid interest
20 after a defaulted failed loan has been
21 rehabilitated. So we welcome discussion on that,
22 whether the Department should revise these

1 regulations regarding the charging of collection
2 costs and again, we can also take interest
3 capitalization at the same time because they are
4 related.

5 MS. MILLER: Okay. Comments?

6 Suggestions? Yes, Jay, and then Dawn.

7 MS. O'CONNELL: Thank you. So with
8 regards to the withdrawal of the Dear Colleague
9 letter, there was an indication in GEN1712 that
10 rescinded the Dear Colleague referenced in the
11 issue paper that it was rescinding both the
12 guidance and the Department's interpretation of
13 the HEA and the implementing regs. So I was just
14 curious as to what is the Department's
15 interpretation of the Higher Education Act at
16 this point?

17 MS. WEISMAN: Thank you for the time.
18 So our interpretation legally is that this
19 interpretation is consistent with the law, with
20 the Higher Education Act, and that we can make
21 this determination within regulation if we so
22 choose. So we're looking for feedback as to

1 whether people believe it's a good idea to put
2 into regulation or not. And again, if so, why or
3 why not.

4 MS. MILLER: Jaye, did that answer
5 your question or did you have --

6 MS. O'CONNELL: It answers my question
7 and I have a follow-up. So there are two
8 citations of the HEA that we -- so the guarantors
9 have voluntarily, they are not charging to my
10 knowledge as well. So I wanted to answer that
11 question. And there are two sections of the HEA
12 that I believe establish permission for
13 guarantors to charge these costs, and whether we
14 voluntarily choose not to would be at the
15 guarantor's discretion. So, HEA 428F(a)(1)(d) is
16 specific to rehab and it states that the
17 guarantee agency may, in order to defray
18 collection costs, charge to the borrower -- in
19 statute it has an amount not to exceed 18.5%, but
20 that's been capped at 16% by the regs -- and
21 retain that amount from the proceeds of the loan
22 sale. And then further, there is Section 484A(b)

1 that states guarantor shall charge collection
2 costs to a borrower who has defaulted. So I
3 think to answer the question in the issue paper,
4 we are thinking that any regulation that would be
5 inconsistent with those permissions, you know, we
6 think that they shouldn't be regulated.

7 MS. MILLER: Thank you. Dawn and then
8 Suzanne and then Barmak.

9 MS. ROBINSON: So I'd like to discuss
10 a couple of things. Understanding that charging
11 collection costs would reduce the taxpayers'
12 burden, and I so note that, but when we started
13 on Monday, we talked about fairness. And we
14 talked about fairness to both the institutions as
15 well as the students. And I want to talk about
16 the burden that it puts on an institution as well
17 as the student in collecting those costs. The
18 longer that a student is in default, it
19 negatively impacts -- that's the long end it
20 negatively impacts the institution. It's harder
21 for the student to come out of that debt and have
22 it released or come out of default status, as

1 well as the longer it lingers on, it continues to
2 negatively affect the institution. So I'd like
3 for the Department to recognize that and to
4 understand that there's a burden for everyone.
5 And I would say no, that we should not be
6 instituting collection costs.

7 MS. MILLER: Suzanne?

8 MS. MARTINDALE: I find myself again
9 agreeing with Dawn. And I would say that, you
10 know, I'll take the collection and interest
11 capitalization pieces together for a defaulted
12 borrower, they are in extreme distress. One of
13 the ways you can get out of default is this
14 process called rehabilitation. That is an
15 onerous process in and of itself. You have to
16 make nine on-time payments within a ten month
17 period, and then you can be brought back into
18 repayment status. There can be servicing
19 complications getting back into on-time status
20 and you only get on shot at it. So there's
21 already, you know, I've heard from many of my
22 legal aid partners who help with rehab, that the

1 risk of re-default is in fact very high. So to
2 add insult to injury by adding the possibility of
3 additional collection costs and capitalizing
4 interest, which increases the balance on the loan
5 when someone is just trying to come out, and then
6 get back on track, I think is very, very
7 dangerous. As a general policy matter I think
8 the fact that interest can capitalize on our
9 education loans at all, is really problematic.
10 It's not the norm in other kinds of consumer debt
11 and it really does increase the overall cost of
12 education for students.

13 MS. MILLER: Barmak.

14 MR. NASSIRIAN: I just want to echo
15 the previous two speakers' perspective on this.
16 I defer to the Department; If the Department
17 thinks the 2015 interpretation was the correct
18 and legally defensible position, I can't think of
19 any policy reasons why we wouldn't want to
20 accommodate that view if, you know, and frankly,
21 even if the objection or at least the admonition
22 we heard had to do with statutory language, I

1 think it's important to understand that, that
2 16.5% of the balance is not the actual collection
3 cost. That even if guarantors believe they're
4 entitled to something, that something should be
5 the cost of sending a letter to somebody in most
6 instances, before they step forward and without
7 any further actual expenses being incurred,
8 respond to that notice. So I just wanted to make
9 sure that we don't end up -- there are residual
10 policy issues; back when this language was
11 written, guarantors actually engaged in
12 significant collections. You know I don't think
13 sending a letter should qualify for that level of
14 compensation for them and it certainly digs the
15 students into a permanent hole from which they
16 have no hope of extricating themselves.

17 MS. MILLER: Shelly?

18 MR. MCCOMIS: Yes, thank you. First
19 of all, I'm not entirely sure why you put
20 interest capital -- added interest capitalization
21 to your agenda here. I'm not -- frankly, I don't
22 think there is an issue there. I mean can you --

1 AnneMarie, can you explain why you added it in?
2 I mean there is no interest capitalization at the
3 end of -- I mean I think people have accepted
4 that. So I'm -- well, I just want to answer that
5 question.

6 MS. WEISMAN: All right, I think that
7 there was an understanding that it was no longer
8 being done but that there was a desire to get
9 that solidified in regulation.

10 MR. MCCOMIS: I thought, and as I say,
11 I'm surprised here, so I haven't gone back to
12 look, but it's not being done. At the time -- at
13 the end of the capitalization. So that is not,
14 you know, whatever that -- the impact of that is,
15 it's not happening and we're not contesting that.
16 To get back to the point down here at the table
17 here, Dawn I guess it was, that mentioned that
18 there are costs involved. Servicing, there's
19 servicing complexity involved in going through
20 the basically 12-month period to have somebody --
21 to help a borrower rehabilitate his or her loan.
22 So there is -- that's the policy just to get back

1 to Barmak's case, point. I mean, that's the
2 policy justification outside of the statutory
3 requirement, which I think, or the statutory
4 authorization and maybe a requirement. The
5 policy justification would be that the guarantors
6 are incurring costs and frankly, at this point in
7 time, costs that they're not getting -- that
8 they're not really able to, or in many cases not
9 able to pay for, or it's difficult given other
10 financial constraints and the fact that the FFEL
11 program is, you know, winding down.

12 MS. MILLER: Anyone else from this
13 subcommittee? Jaye?

14 MS. O'CONNELL: So just some
15 operational context around the rehab piece. So
16 we do have a full-time person dedicated to rehab.
17 It is very time consuming, so whether someone
18 calls at day five, where we cannot charge
19 collection fees according to this interpretation,
20 or whether they call at day 80, where we could,
21 we would give them the same treatment. So
22 there's potential disparate treatment, but the

1 processes, I mean we're counseling them, we have
2 online tools to facilitate them getting into
3 rehab. We are making sure they turn their
4 paperwork in. We are supporting them in making
5 those payments on a monthly basis to help our
6 borrowers, students succeed so that they can get
7 out of default, then we can repair their credit.
8 So loan rehab in particular, while it's onerous
9 to the borrower to complete the program, I would
10 say we're -- we spend a lot of time on that
11 program purposefully to support our borrowers and
12 helping them, you know, achieve their goal of
13 getting out of default. So I just wanted to add
14 that.

15 PARTICIPANT: Abby.

16 MS. SHAFROTH: I also wanted to voice
17 my support in favor of, to the extent necessary,
18 clarifying the regulation to make clear that
19 collection costs shouldn't be charged in these
20 instances when a borrower enters into a
21 rehabilitation agreement or other satisfactory
22 repayment agreement within 60 days. I think, as

1 Jaye's mentioned, some costs that the agency
2 would incur with the rehabilitation, but
3 certainly those costs are lesser than if the
4 borrower remained in default for a longer time
5 and the agency had to engage in more contacts
6 with that borrower. So charging up to 16% when a
7 person has only been in default very briefly
8 doesn't seem like an appropriate outcome for the
9 borrower who is already in a financially
10 distressed situation. To the extent that, you
11 know, Jaye raises points about the complexity and
12 costs of providing rehabilitation services, I
13 would say that's, you know, a charge to the
14 Department and to all of us going forward to find
15 ways to make rehabilitation simpler and more cost
16 effective for our borrowers and guarantee
17 agencies and the Department alike.

18 MS. MILLER: Any responses, other
19 perspectives on this issue? Jaye, I saw you
20 reaching for the mic. Okay.

21 MS. O'CONNELL: So, I just wondered if
22 there is an opportunity given the difference in

1 statutory interpretation for us to discuss this
2 with the Department before the January meeting.

3 MS. WEISMAN: If we could just have a
4 minute to confer. So in response to that, we'd
5 like to propose that if one or more individuals
6 from the committee would like to submit a
7 proposal to us in writing that could go to
8 everyone on the committee, so that everyone would
9 be able to have the opportunity to review it,
10 then we would like to suggest that. And after
11 that time, then we can always kind of look for
12 next steps, but I think it would be important to
13 bring it back to the second session. And at the
14 second session, if somebody requires or suggests
15 a caucus, we could always do that at that time.

16 MS. MILLER: Thank you. Is there
17 anyone else on the committee that would like to
18 give considerations to the Department on this
19 issue? Kay?

20 MS. LEWIS: Just a question. I'm not
21 sure, so this is just for folks who within the
22 first -- right around that 60-day period contact

1 the guarantee associations; is that right? So
2 it's just the collection costs that are incurred
3 in that very brief period of time, or I'm not
4 understanding the situation.

5 PARTICIPANT: No, it follows, so, if
6 they enter a repayment agreement within 60 days,
7 then we're prohibited from charging collection
8 costs. So, the way we've interpreted that is any
9 of the rehab payments or the rehab payoff, we
10 never collect any money through the whole
11 process, which is part of the issue.

12 MS. LEWIS: But once they've
13 rehabilitated, there are not necessarily
14 additional costs that you're incurring?

15 PARTICIPANT: No, then they would be
16 sold to a rehabilitating lender.

17 MS. LEWIS: Right.

18 PARTICIPANT: So, it's during that
19 period of time where we're supporting them in
20 fulfilling that rehab agreement, which is --
21 these aren't your best payers and so they need a
22 little extra time and attention, so.

1 MS. LEWIS: Okay, I just thought that
2 was the purpose of the guarantee associations
3 during -- for that period of time.

4 MS. MILLER: Barmak?

5 MR. NASSIRIAN: For the sake of
6 clarity --

7 MS. MILLER: Barmak, into the mic
8 please.

9 MR. NASSIRIAN: I was wondering if by
10 collection costs you mean 16%? Is that the
11 number or is it actual collect, what are we
12 talking about? I know that it's voluntarily
13 waived at the moment but just so that everybody's
14 clear, are we talking about a -- would you like
15 to see a regulation that authorizes you to
16 collect the previous 16% automatic across the
17 board fee or are you talking about some actual --
18 you know, what I'm trying to understand is
19 whether you're attempting to solve a different
20 problem with regard to guarantee agency finances
21 or is this an assessment of a particular borrower
22 circumstance and recovery of costs associated

1 with that particular borrower's account?

2 PARTICIPANT: So, the math, the
3 financing of how the, what apportion of each
4 payment that we collect, my understanding is
5 there's no fee, so we do get to retain 16% of the
6 principal and interest on the loan during the
7 rehab, but then the final rehab payment, we're
8 not retaining anything and there's no fee amount
9 that's been added to the loan so we're collecting
10 on a lesser balance than what we would later.
11 So, I could have someone from my shop produce the
12 detail to support that in case I've got a little
13 bit of it wrong.

14 MS. MILLER: I want to turn it back
15 over to the Department. Have you heard enough
16 information on this issue from the committee?

17 MS. WEISMAN: Yes, we feel that we have
18 enough.

19 MS. MILLER: Okay. I'm going to ask
20 the committee now at this time, is it appropriate
21 to move on to Issue No. 8? Show of thumbs? All
22 right. Issue No. 8.

1 PARTICIPANT: Could we take a five
2 minute break?

3 MS. MILLER: Sure.

4 PARTICIPANT: Thank you.

5 (Whereupon, the above-entitled matter
6 went off the record and resumed following a brief
7 recess.)

8 MS. MILLER: Okay. Can the Department
9 open up Issue No. 7 for us please, or Issue No.
10 8, sorry. Eight. Eight, eight, eight.

11 MS. WEISMAN: I am ready for Issue No.
12 8, thank you. And thank you all for all the
13 progress we've made so far. I think that several
14 people noted yesterday they were concerned about
15 the pace that we were moving through the issue
16 papers and I said hang with us, I think we have a
17 plan, we're allotting time as we need to. So I
18 think, that will hold true. Issue Paper 8 is
19 whether to recalculate a borrower's subsidized
20 usage period and interest accrual, if applicable,
21 when the borrower receives a discharge of a loan
22 for which he or she has not received all or part

1 of the educational benefit of the loan. So the
2 loan discharge types that we were referring to
3 here are closed school, false certification,
4 unpaid refund and borrower defense discharges.
5 The current regulations and statutes do not
6 address the effect of a discharge on the
7 subsidized usage limit or the interest accrual.
8 So the questions we would like for you to comment
9 on now is should the department recalculate,
10 which addresses the accrual issue, and/or I'll
11 say, eliminate the applicable subsidized usage
12 limit from the calculation of a borrower's
13 subsidized usage period and restate the interest
14 subsidy, if applicable, when a borrower receives
15 a loan discharge? Second bullet point here I
16 think again is very related. If so, to which
17 discharges should recalculation or elimination of
18 those usage periods apply? I named four; you can
19 say yes to all four, yes to some, not to others.
20 Maybe you can think of something else that we
21 didn't include that we should. We're kind of
22 open to your suggestions.

1 MS. MILLER: Valerie and then Michael.

2 MS. SHARP: I do think that if the
3 Department makes a determination that a loan
4 should be forgiven under borrower defense, their
5 interest subsidy, all the usage time periods,
6 etc., should be reinstated in any loan regardless
7 of the reason. If the loan is being forgiven,
8 why not give them the usage period back?

9 MS. MILLER: Ashley Reich.

10 MS. REICH: I would agree with
11 Valerie, but I think we have to go back to the
12 first day to remember that this may not be a full
13 borrower defense for their entirety of the loan.
14 I know we talked about some full or partial, just
15 depending on the program that they're enrolled
16 in. So I think it's important just to make sure
17 that we remember that it -- or at least consider
18 that it might be just for the program that they
19 receive that they get that subsidized limit back.

20 MS. MILLER: Did you want to respond?
21 Anyone else on the committee? I'll turn it back
22 to the Department then.

1 MS. WEISMAN: If I may then, if I can
2 just clarify. I heard you say eliminate the
3 subsidized usage period. Did you also say
4 interest accrual, or no?

5 MS. REICH: Yes.

6 MS. WEISMAN: Okay. Thank you.

7 MS. MILLER: Okay. So, general
8 consensus on Issue No. 8. Have we exhausted it?
9 Show of thumbs. Barmak. I'm sorry.

10 MR. NASSIRIAN: That was just bullet
11 one, right? I want to ruin the party. On bullet
12 two, am I correct that we're talking about death
13 and disability as the only other potential item
14 here? Am I right? I forget the ones you rattled
15 off were--

16 MS. WEISMAN: I can repeat the ones I
17 listed. Closed school discharge, false
18 certification, unpaid refund and borrower
19 defense.

20 MR. NASSIRIAN: So, what is left,
21 just so we know, other than death and disability?
22 I just don't have it all.

1 MS. WEISMAN: TPD is the one that
2 comes to my mind quickly.

3 MS. MILLER: Dawn?

4 MS. ROBINSON: Just for clarity, if
5 the interest and everything else is discharged,
6 does that mean that the default status goes away
7 or is also reduced against the institution? And
8 let me further clarify. So even if a student is
9 deceased in default status, that status remains
10 against the institution. In this case where
11 you're discharging, would the default status
12 against the institution also be relieved?

13 MS. WEISMAN: I need to confirm that
14 with my colleagues. I thought so but I wanted to
15 confirm. The answer is yes, it would be removed.
16 I also, there is one other thing, I'm sorry. I
17 had vowed before that I would keep the legalese
18 off the table and I realize that one of the
19 things we do in this industry a lot is we use
20 acronyms. And I apologize, I should have said
21 more than just TPD. There are people who may not
22 be familiar with that discharge, it's not super

1 common and so I apologize. That is Total and
2 Permanent Disability discharge. So TPD stands
3 for total and permanent disability. And please,
4 in the future, if I or other members of the
5 committee use an acronym or another term that
6 you're not familiar with, please do call us on it
7 because we do want everything to be
8 understandable.

9 MS. MILLER: Has the Department heard
10 enough information from the committee?

11 MS. WEISMAN: I believe so. I will
12 say, I was not expecting significant discussion
13 in that when this topic came up before, and there
14 was an opportunity for public comment, there were
15 no public comments about this topic at all. No
16 one was against what we were proposing. So I
17 expected that it would be a popular provision and
18 I guess in a sense it's good that we saved that
19 one for the last issue paper.

20 MS. MILLER: Yes?

21 MR. NASSIRIAN: Back to TPD. Is it
22 not conceivable that somebody could benefit

1 despite the finding of total and permanent
2 disability from additional post-secondary
3 education? In the old days when the repayment
4 obligation was absolute, it would make sense to
5 say no, we won't loan you money because you
6 couldn't possibly, because of your total
7 permanent disability, repay us. But now that we
8 have income-based repayment options, is it not
9 possible for somebody to have total and permanent
10 disability discharge and yet still be able to
11 benefit from re-enrollment and possibly receive a
12 subsidized loan?

13 MS. WEISMAN: I think that's outside
14 of the scope of this issue paper and I think
15 that's more appropriately addressed offline.

16 MS. MILLER: Okay. I think at this
17 time we are going to open it up for public
18 comment.

19 MR. BANTLE: Before we do that, are
20 there any housekeeping matters that we need to
21 address?

22 MS. WEISMAN: Yes, thank you. Won't

1 belabor the point, but we do have the invitation
2 out there for the members of this committee to
3 participate in the subcommittee, the financial
4 responsibility subcommittee, tomorrow and Friday.
5 Because that is being held at the Department of
6 Education offices, we are expected to register
7 guests that we are expecting in advance. So if
8 it is at all possible, that will streamline your
9 walk through security and having a name tag
10 prepared for you in advance, that kind of thing.
11 We would like them to know who's coming, if at
12 all possible. So, if you could please provide
13 your name to Barbara, who's at the back table
14 here, to let her know if you'll be attending.
15 That way we can get you on the list and, again,
16 expedite that process.

17 MS. CARUSO: Also, we've been asked to
18 let you know, to leave your name tents and your
19 name badges on the table. They will be reused
20 for the next couple of weeks that we are
21 together. In the interim, if you all have any
22 questions, feel free to send those our way.

1 We'll make sure to get them to the right place.
2 They can come to Ted, to me to Rozmyn. We will
3 be--well, we can go ahead and open it up to the
4 members for any additional comments that they'd
5 like to make for before we break. Then we will
6 be opening it up to public comment, not quite at
7 this moment.

8 MR. BANTLE: Okay. And I think we,
9 just trying to get order here, Michael, Greg,
10 Suzanne, Lodriguez, and then Abby.

11 MR. BUSADA: Not house cleaning, but
12 not walking through with muddy shoes either.
13 You, AnneMarie, provided us with a lot of great
14 information on some of the information requests
15 that we had made. Different members, instances
16 of misrepresentation and findings. Are you going
17 to provide those in a written form, in a memo or
18 just what you gave us was if we jotted it down,
19 that's what we got or where you intending to
20 provide it in any other format?

21 MS. WEISMAN: We can certainly put
22 that in a better format for you in a written

1 format for your, for example, if that's helpful.

2 MR. BUSADA: It would be great.

3 MS. WEISMAN: Okay.

4 MR. BUSADA: I mean, I think I got it
5 all right, but maybe not.

6 MS. CARUSO: Gregory?

7 MR. JONES: Thank you. Are members of
8 this committee, are we permitted to submit
9 commentary to the subcommittee? Written
10 commentary?

11 MR. BANTLE: I think that would be up
12 for this committee to decide.

13 MR. JONES: I wasn't planning on
14 participating tomorrow or Friday however, I have
15 prepared comments. And one, I'd like to know if
16 I'm allowed to submit those comments to all of
17 you, or to someone here that does that?

18 MS. MILLER: Are there any objections
19 to the submission of comments either to this
20 committee or to the subcommittee?

21 MS. CARUSO: I don't object, but I
22 would say that anything that you're sending to

1 the subcommittee, I would want you to also submit
2 to this committee because this committee is going
3 to be the committee that actually votes on any
4 recommendations that they provide. So, I just
5 want to make sure that any communication is
6 something that everybody here would be able to
7 benefit from.

8 MR. JONES: I was under the impression
9 that all communication had to either move through
10 your or move through the facilitators before
11 being disbursed to the greater good.

12 MS. CARUSO: Yes. Correct.

13 MR. JONES: So, so, who should I send
14 those to?

15 MS. MILLER: You can send it to any of
16 the three of us.

17 MR. JONES: Yes. Okay. Thank you.

18 MR. BANTLE: Suzanne?

19 MS. MARTINDALE: Yes I just wanted to
20 clarify, and some of us who have done this before
21 are familiar with a process after each session,
22 whereby you have, I think it's like a week, to

1 submit any formal written submissions, things you
2 want to go into the record for consideration
3 prior to session two. So could we just clarify
4 that that is still the case, and then what the
5 deadline would be? Thank you.

6 MS. CARUSO: Yes. So you'll be
7 getting summaries from the facilitators in the
8 same time frame that you'll be getting the audio
9 transcript submissions within a couple of weeks.
10 Sooner than that? It will be sooner than that
11 but within the next two weeks, and then you will
12 be invited to provide any comments, suggested
13 changes to that.

14 MR. BANTLE: And any items for the
15 record we can obviously submit to the Department.
16 I had Lodriguez next.

17 MR. MURRAY: There we go. Just wanted
18 to state for the record, we've covered a lot of
19 ground in the last three days, thankfully. But,
20 and a couple times we made reference to minority
21 serving institutions, historically black colleges
22 and universities, and sometimes we throw out the

1 names of those types of institutions and take it
2 for granted that everybody may be very aware of
3 the type of institutions that they are. And as
4 the Department is getting ready to prepare after
5 our deliberations on this week, I want to make
6 sure that they understand that these are very
7 specific types of institutions.

8 There's some 101 HBCUs, historically
9 black colleges and universities, 85 other
10 predominantly black institutions, other MSIs.
11 They're collectively enrolling nearly a million
12 students. They're primarily first generation
13 students, low income and/or minority students.
14 And these are specific type of institutions to
15 try to keep their tuitions low to make sure that
16 they are giving the folks that they serve the
17 opportunity to improve their lives. And the
18 students that they enroll and eventually
19 graduate, it's just not their lives they're
20 improving, they're often times improving their
21 entire family and generation. And so, when we
22 speak up about these issues yesterday and today

1 and all throughout the week, this is the group of
2 institutions and students that we're speaking up
3 on behalf of, and we're just hopeful that you'll
4 keep that in mind as you begin the drafting
5 process and we get ready to come back for the
6 second go around, because I can tell from
7 everyone's face we're really excited for next
8 time.

9 MR. BANTLE: Abby, Kelly, then Mike.

10 MS. SHAFROTH: I appreciated the
11 request for written responses to the information
12 you all shared today, that was very helpful. I
13 also wondered if, as we're going back home and
14 digesting the conversations we've had around the
15 table these past three days, if in thinking
16 through these issues there's additional
17 information that we think would be helpful for us
18 and for other members of the committee to have in
19 evaluating potential proposed regulations and
20 putting together proposals. Can we submit
21 additional requests for information to the
22 department in writing and how should we go about

1 that?

2 MS. WEISMAN: So, I think that that's
3 another example of communication that you can
4 send on to the facilitators who will make sure
5 that they get that information to us. So I would
6 say that any comments that you have, that you
7 think of as you get back home, the sooner that
8 you can get it to us the better, because we are
9 working on drafting and we have a pretty short
10 window of time to do that, with Thanksgiving
11 coming up and circulating that language around
12 the Department for people to review and try to
13 help us to craft language, getting input from
14 other offices where we need it, all of that
15 activity has to occur in a pretty short window of
16 time. So if you have things, if you have things
17 that you'd like to request, remember that our
18 next meeting is in January, so we have holidays
19 coming up and it would be helpful that anything
20 that you have that certainly, pass it along; the
21 sooner, the better. So rather than wait until
22 you come to the next session and say oh can we

1 have this, if you know of something, it would be
2 better to send it to us in advance.

3 MS. CARUSO: Kelli.

4 MS. PERRY: Just a point of
5 clarification. For those committee members that
6 do plan to attend the subcommittee, are we a
7 voice at the table or are we just sitting and
8 listening?

9 MS. WEISMAN: Our expectation would be
10 that you would be sitting and observing. But
11 certainly, you know, you may have conversations
12 with people on the subcommittee. You know, it's
13 not as formal of a process as this one. It was
14 really meant to be a small working group. So
15 kind of like with this committee, if, you know,
16 there are experts that people want to bring up to
17 the table, I think you could talk with a
18 subcommittee member and say, you know, I'd like
19 to make some input.

20 MS. CARUSO: Mike.

21 MR. BUSADA: Just wanted to thank Mr.
22 Murray for his comments and I think that, really

1 just wanted to end by thanking everybody here
2 because I know it's been helpful to me to learn
3 more about the different issues. And just really
4 want to thank all the partners in education. As
5 an LSU graduate, a public university graduate,
6 went to law school at a private, not for profit,
7 and then I'm working for a for profit university,
8 I can tell you that all of these institutions are
9 critical and critical to working together and
10 it's because of all these people across the
11 country and every sector that have made higher
12 education as phenomenal as it is. We can always
13 continue to increase it, but that's what's made
14 this country the greatest country in the world is
15 our education, our focus on education. So, I
16 just wanted to thank all the partners here from
17 all the different universities and all of the
18 groups, consumer groups that are making sure that
19 students are treated fairly, as well. So, thank
20 you.

21 MS. CARUSO: Joseline.

22 MS. GARCIA: Thank you for that. I

1 said this over--earlier today, and while the
2 language is being drafted and also for future
3 meetings, you know, I just want to ensure that
4 folks are thinking very intentionally about the
5 students that we're talking about. Again, I said
6 this earlier, we're not just talking about just
7 one student who has all these resources, whose
8 parents have gone to college, you know, we also
9 have to acknowledge the other institutional
10 barriers that get in the way of a student's life.
11 And often education is used as the means to
12 alleviate some of those barriers. But again,
13 like, racism, sexism, homophobia, all of these
14 other isms do get in the way and so I want to
15 encourage us to, again, be very intentional about
16 those other things when we are drafting the
17 language but also having future conversations.

18 MS. CARUSO: Thank you. Can we get an
19 idea how many folks from the public would like to
20 comment? Okay. We have one individual. Please
21 just, in the interest of it being the last day of
22 a very long three days, if we could just--

1 MR. SHRADE: So, you'd like me to give
2 a speech, is that what you're saying?

3 MS. MILLER: Yes. Thank you.

4 MR. SHRADE: Very quick comment. Jeff
5 Shrade, I'm with Paul Mitchell Schools. We had
6 talked about having the audio recording and
7 transcript available. Is that going to be on the
8 website or is that just going to be provided to
9 the members?

10 MS. WEISMAN: It will be available on
11 the website for the public.

12 MS. CARUSO: Okay, we have one more.

13 MS. HANCOCK: Sorry, I know you guys
14 are all happy to see me. My name is--sorry, my
15 name is Charlotte Hancock. I work with the
16 Higher Ed Not Debt campaign, and I just wanted to
17 note that since Monday we have received, we have
18 worked with students to get 250 emails to members
19 of congress and Betsy DeVos asking for full
20 refunds for all students who are eligible for
21 refunds right now. So students are paying
22 attention to this process. This is impacting

1 their lives and I would like you to consider that
2 in weighing your decisions over the course of the
3 next couple of months. Thank you so much.

4 MS. MILLER: Thank you. Folks, this
5 is no small or easy task, what you are doing
6 these three days and the next two weeks that
7 we're together. We, on behalf of your
8 facilitators, we want to thank you for all of the
9 hard work that you have done, that you are doing
10 now and you will continue to be doing. Our next
11 session is January 8-11 at the Union Center
12 Plaza, The FSA Learning Center, specifically.
13 That's at 830 First Street, N.E. I'm sorry to
14 say, I will not be with you that week; I will be
15 rejoining you in February. You will have these
16 two very capable facilitators, and barring any
17 other comments or questions, we bid you farewell.
18 Safe travels and again, thank you very much.

19 MS. WEISMAN: I'd also just like to
20 say thank you on behalf of the Department for
21 being here, for giving your time, for taking time
22 away from your other duties, from your

1 institutions, from your studies. We recognize
2 the significant effort that it is to be here for
3 this time period and the other two sessions that
4 we have. So again, my warmest welcome for being
5 here for this session and for the two future
6 sessions we have. Thank you, again, for your
7 commitment to education.

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

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C E R T I F I C A T E

MATTER: Borrowers Defenses and Financial
Responsibility Negotiated Rulemaking
Committee 2017-2018

DATE: 11-15-17

I hereby certify that the attached transcription of page 1 to 321 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.

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