

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
AFFORDABILITY AND STUDENT LOANS COMMITTEE
NEGOTIATED RULEMAKING SESSION 1, DAY 2, AFTERNOON
OCTOBER 5, 2021

On the 5th day of October, 2021, the following meeting was held virtually from 1:00 p.m. to 4:00 p.m., before Andrea González, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. TONCHI: Good afternoon, everyone. Welcome back. Hope you've had a good lunch break and are ready to dive deep into discussion this afternoon. My name is Emil Totonchi. You can call me Emil. I'll be facilitating this afternoon, right? First, a couple of comments. Number one, some initial good news. We have a robust public comment list developing, as well as a waitlist. So, we expect, again, a robust 30 minutes' worth of comments at the end of this meeting.

Just for clarity's sake, we want to make sure that everyone understands when signing up for those public comments, that it is for those final 30 minutes of the session, not at various points throughout the day. We understood there was some confusion there. Just wanted to clarify that. Other than that, I think we can proceed. So, Jen, I see your hand is raised. I was going to ask you to speak anyways, but go ahead.

MS. HONG: Hey, thank you, Emil. While you are on the topic of public comments, I just wanted to put (audio) for that process. I realized that we're filled up today, but for the remainder of the week, I just want to be sure that folks feel like they can avail themselves on that (audio). Particularly, I want to invite students with experiences on borrower defense, as well as closed

school discharge, to address the committee. And we're going to do our best to accommodate these public commenters. We are very interested in hearing about (audio) those claimants, and we realize they have important experiences to share with this committee, and we'd like to learn more about their experiences. So, just wanted to put that on.

MR. TONCHI: Yes, thanks, Jen. We do still have a developing waitlist today, as well. So, we appreciated that suggestion from yesterday and we're glad that we're able to put that into place to make sure we make the best use of our 30-minute comment period.

Okay. With that, thank you all for the robust discussion of the morning. We're going to go ahead and proceed with the next issue. So, Jennifer, if you could please introduce the issue.

MS. HONG: Sure. We are moving on to issue paper three on interest capitalization. I believe, Vanessa, if you could cue that issue paper that does also have associated regulatory text at the end.

Basically, we are putting forth our proposal to eliminate interest capitalization for non-statutory capitalizing events. And, just by way of background, section 428 H(e) (2) of the HEA provides that interest capitalization occurs when any accrued unpaid

interest becomes part of the principal balance of a borrower's loan.

In student loan programs, capitalization occurs by designated capitalizing events. Once the interest is capitalized, it begins to accrue interest, which ultimately increases the overall balance of the loan. Borrowers see balances rise faster as interest accrues on interest.

Interest capitalization is not a common practice across other consumer financial products. We find that borrowers are many times unaware when the interest on their loan has been capitalized. So, we are proposing to eliminate interest capitalization wherever we have the discretion to do so. And that includes areas where the statute is silent on.

So, we've identified the following capitalizing events where we would eliminate interest capitalization. Briefly, these are the bulleted points on the paper, and they include when you -- failure to recertify enrollment on an IDR plan, when you leave an ICR plan, negative amortization under the ICR plan, exiting forbearance, entering repayment, and default. So, those are all areas which the Department has discretion to remove interest capitalization, and we've done that in the attendant texts that we've provided.

Unfortunately, there are some areas where we cannot change, because the capitalization occurs -- is authorized under the statute, and that is during -- for IBR and for deferments. So, those are statutory. We cannot change those. So, that's it, it's pretty straightforward. So, I will open it up for your feedback.

MR. TOTONCHI: Thank you, Jen -- Jennifer. If -- Vanessa, if you wouldn't mind zooming in just a bit, just for our folks using the side-by-side mode. Thank you so much. I'll first ask -- I see some hands up. Bethany.

MS. LILLY: Strong, strong support of this. We're really grateful the Department is taking these steps. And I did have one clarifying question that I was hoping you could explicate a little bit on. How will this impact borrowers who have had interest capitalization before? Are you thinking about retroactivity? Because I certainly have stories from my network of individuals who would have already paid off their loans, were it not for this, and I'm just -- I'm curious how you're thinking about retroactivity.

MS. HONG: So, typically, when we propose regulations, when the regulations go into effect, they're prospective. That would be the case here.

MR. TOTONCHI: Okay. Thank you for the

question. Jaye.

MS. O'CONNELL: So, just for education purposes, I've looked at this statute, the 428H(e)(2), which had applied to the FFEL program, in my understanding, and it has the word "shall", which is "must", and there's a cross-reference from 455 for DL back to 428H(e)(2). So, several of -- not all of these capitalizing events, as I was reading it, looked like they fell under the "shall" provision. So, I just -- I didn't know if there was a history there or interpretation the Department could provide a little more context on.

MR. TOTONCHI: Jen, do you have an immediate reaction to that?

MS. HONG: So, I don't. I'd have to go back and look at it. Our interpretation was that we did have the discretion to remove these capitalizing events for the -- for only these circumstances, but we can go back and look at the language that you are pointing at.

MR. TOTONCHI: I see Brian has popped on onto the screen, (interposing) comments?

MS. HONG: There are -- Yeah. Go further, Brian.

MR. SIEGEL: No, we took a careful look at all the instances in which the Department capitalizes

interest. In some cases, there are differences between Direct Loan and FFEL. In other cases, yeah, we -- the authority is under 428. We think we've made the appropriate choices. If you have specifics on where you think we may have overstepped, we'll take another -- we can take a look at it. And we can reconsider or revisit the specific situations.

MR. TONCHI: Thank you. I see David is next in the queue, but, Jaye, do you have a quick follow-up question?

MS. O'CONNELL: Yeah. And so, perhaps I know the citations are all for direct loans and it said there would be conforming changes in FFEL. So, is it fair to say that not all of these are the same for FFEL?

MR. SIEGEL: In FFEL, some of them are clearly voluntary on the part of the lender. I mean, they say the lender may capitalize. And we know we don't regulate except to say -- in some cases -- we can say the regs reflect that "may". So, yeah, we can't impose enough. We're totally -- we can't prohibit a lender from doing that where the statute says the lender may.

MS. O'CONNELL: Okay.

MR. TONCHI: Thank you. David.

MR. TANDBERG: I'm really thrilled to see the Department take these steps. I support each of them.

I'm also interested if there are things where the capitalization is statutorily mandated, if we also have some flexibility there, where maybe we can't eliminate it, but we could cap the amount of interest that could occur in a month, pause it under certain circumstances, or during deferment or forbearance.

Are there other steps we could take to limit it? I'm not sure. I know these have been recommended by different groups. And so, I'd like to consider them here as to what additional steps we might pick, what flexibility is statutorily allowed to kind of limit this. It's just such an awful thing to think that a student could be paying on their loans, but the balance is growing larger as they go. Just seems insulting, which I know we're all in agreement on. Anything -- any additional steps. So, I'd like to hear about that or at least explore it. Also, my alternate would like to speak to this too. So, I'd like to get her in the queue. That's Suzanne Martindale.

MR. TOTONCHI: Thank you. Real quick. I see Persis has her hand up. Suzanne, if you could go ahead and raise your hand, you'll be next in the queue. Persis, go ahead.

MS. YU: Thank you. So, I would also like to echo the sentiments that I was -- we were very pleased to

see this on the table. Interest capitalization is a huge problem for our clients. I have seen borrowers who took out \$5,000 of loans in the late 80s, who now, because of interest capitalization, have a principal balance of over \$100,000. It's a huge problem to see your balance grow. And the number of events, especially recertification from income driven payment, is a time when a lot of folks do see their balances grow. And it's a pretty traumatizing event for folks and I think it makes the programs less effective. So, I do appreciate that.

I have a couple of questions. One, I would like to know how the Department thinks about consolidation in this process as well. This is another time in which outstanding interest gets rolled into the principal. It's not addressed here. It's not clear to me whether or not that is a capitalizing event and whether or not that is an opportunity that the Department could also look at breaking out, keeping the interest out of the principal going forward.

I echo the sentiments on flexibility and hope that we can be creative in thinking about how we can protect borrowers and students while they are going through -- especially the deferments, which are largely based upon economic harm.

And then, the last thing is about the

retroactivity. I think that this is such an important point. We have borrowers who have been in this program for decades, and their balances have been growing. And as we are acknowledging that this is a problem, it is worth acknowledging that these borrowers are in need of relief. So, I'm -- I understand that it is the practice of the Department to make these rules prospective, but I'm wondering if there is any prohibition on making it retroactive. And to that point, I'd also like to request some data with regards to the student loan portfolio to see if this is something that we can really explore in greater detail, the percentage of the balance of the entire portfolio that is outstanding that has -- or that has been capitalized. If we can break that down by race and gender, as we know that loan balances -- personal loan borrowers -- do disproportionately impact borrowers of color and women. And then, I'm also just curious about how many people experience the capitalizing events that the Department is going to -- (interposing)

MS. MACK: 30 seconds.

MS. YU: -- Thank you -- that the Department maintains is statutorily required. Thank you.

MR. TONCHI: Okay, thank you so much for that comment and the data request. If you wouldn't mind typing the data request specifics in the chat, that would

be helpful. And I do know you have two outstanding questions for the Department. If we could -- I know Suzanne was following up on David's question -- so, if we could actually have Suzanne speak, and then I'm going to turn it over briefly to the Department to address Persis's questions as well as Suzanne and David's questions. Okay?

MS. MARTINDALE: Am I up next?

MR. TONCHI: Yes, please.

MS. MARTINDALE: Okay. Thank you so much.

So, yeah, I want to echo the strong, strong, strong support for eliminating interest capitalization wherever possible. This is out of step with most consumer financial products to even allow this to happen, to allow negative amortization on a loan like this. And I can say this is one of the most confusing things that people -- for borrowers. When people talk to me, and they say, "How is this possible that my loan balance could be growing?" I also have concerns that it has a chilling effect on enrollment in IDR plans for people who actually could really benefit from them. And in addition, I think that the failure to recertify on time -- I want to put a final point on that, because in many cases I've heard these stories over the years. It also happened to me personally, that in some cases, the failure to recertify

on time is actually a paperwork processing delay on the part of the loan servicer, and also loan servicers had in the past -- sort of pushed people into administrative forbearance to buy themselves more time to do the paperwork, and I have concerns about the ways in which some of the challenges in loan servicing have also contributed to negative amortization due to interest capitalization. So, I would be strong in supporting this wherever we could do it. We'd love to see the retroactivity piece be researched.

And in addition, I would love to see updated numbers from the Department about recert -- IDR recertification and how many people are falling behind and the interest capitalization that is happening as a result. And I'm happy to put that in the chat. Thank you.

MR. TONCHI: Thank you, Suzanne, and just a housekeeping point. Okay, it looks like Suzanne went off screen. Just again, reminders of practice. When the alternate comes to speak, the primary could turn off their camera, okay? So, before we turn over to Marjorie, I'd like to give a moment to Jennifer and the Department to respond, because there are a few outstanding questions.

MS. HONG: Yes. I just wanted to answer to Persis' question about consolidations. And yes, the

effect is a capitalizing event for consolidation. And I just pose a question back to this group in terms of whether this is something that we should eliminate for consolidate -- for consolidation as well in terms of keeping the interest and the principal separate? And I see thumbs up from Bethany.

MR. TOTONCHI: So, I mean, for what it's worth, I know we're not taking a temperature check on the specific part here. But, yeah, I mean, Jennifer has asked for folks to indicate their initial support here. So, if you can give me a thumbs-up, sideways, or down pursuant to what Kayla mentioned this morning.

MS. HONG: I'm sorry, Emil, that was to solicit feedback on the question that Persis asked about something that's not explicitly included in the issue paper about consolidation. So, she asked the question, and we're happy to hear feedback from the committee on that on that particular issue.

MR. TOTONCHI: Okay.

MS. HONG: And yeah, on consolidation.

MR. TOTONCHI: Okay. Marjorie.

MS. DORIME-WILLIAMS: So, again, like everyone has shared before, I appreciate efforts to improve this process and alleviate some of the challenges that students -- and even some of us -- have faced in

sort of dealing with this issue of loans.

I think it's also important to think about the students who often trouble in these areas, and the fact that these loans were supposed to provide opportunity for advancement, and instead serve as almost roadblocks to those very reasons that students enrolled in college in the first place.

And again, I think it's really important to point out -- and I shared an article in the chat if folks are interested, it's a little bit dated, but the content is important -- that the students who often face these issues with paying off their loans are students who are already marginalized. So, low-income students who go to college to get a degree, who then can't pay off those loans, end up sort of repeating these cycles. And I think that this issue of capitalizing the interest -- and I appreciate David's recommendation on putting a cap on it -- is really important, because otherwise, what's the point of having students take out these loans in the first place? Unless we're saying it's to make money. And I would hope that that's not what we're doing. And so, I think that -- I encourage us to think a little bit radically about how we can make sure that we're not already taking advantage of students who are disadvantaged in the first place.

MR. TONONCHI: Thank you for your comment, Marjorie. Brian, do you have -- I see your hand is up. Do you have an immediate reaction to what was just raised?

MR. SIEGEL: Yeah, particularly in the consolidation issue. I just want to explain why interest is consolidate -- is capitalized. It's because if you take the FFEL loan program -- a lender makes a loan and - which is then consolidated, so the new lender pays off the old lender. The amount they pay is interest -- is principal and interest. So, the amount of the new loan is principal and interest, is the combined principal and interest. That's how much the new lender put out.

So, a consolidation loan is a new loan. It's -- the way we've thought about it regularly is know that the amount that's been put out is the total amount of principal and interest that was paid by the consolidating lender.

That applies as well when the Department makes a consolidation loan. This is not a refinancing, it's a new debt. Whether there's something we can do in this area, I don't know, but that's where the background of it is, so --

MR. TONONCHI: Thank you, Brian. Daniel. And I think we'll take a few more comments, and then we may go into a temperature check on this item.

MR. BARKOWITZ: Thank you. I would also add support for the proposal as written. As we're talking about retroactivity, the other question we may want to put on the table is early adoption. If retroactivity is not possible, is there a way to rather than wait until July 23, look into early adoption for this as a potential -- The students who were probably most impacted, at least in recent times, are students who were facing challenges prior to the payment pause. I'm nervous about payment resumption coming into place as well at the end of January. So, doing some early adoption here may actually allow for addressing concerns as we head into payment resumption for students.

MR. TONCHI: Thanks, Daniel. Joe.

MR. SANDERS: Thanks, Emil. I would just point out State Attorneys General support for the removal of the capitalization events. We identified -- and I'm speaking specifically about Illinois here -- our office identified interest capitalization as a significant form of student harm in our Navient lawsuit. We sued Navient for a host of misrepresentations, including misrepresentations around the consequences of delaying recertification on income-driven repayment plans.

We have an allegation in our complaint that Navient made misrepresentations about the fact that

capitalization occurs. So, this is something that we've seen in investigations. We think it's a very good change and support the removal of capitalization events wherever possible.

MR. TONONCHI: Thank you for your comment, Joe. Misty.

MS. SABOUNEH: First, commend the Department for bringing this up. I think this is a crucial piece. I'm glad we're talking about it in full support of removing this interest capitalization.

I did want to comment. So, for deferments, any deferment that is in PLUS loan, unsubsidized or direct -- federal direct consolidation does still accrue interest and it'll capitalize. So, I wonder, if that is one area where we're not able to make a change, if that would lead us to counsel students more towards forbearance, if that's a better option without interest capitalization. And maybe we have a little ability to extend forbearance time or make that more advantageous for students who fall into those subgroups to make sure that they can take advantage if they fall into those parameters. Additionally, I support what Daniel was saying earlier about the early adoption, I think, going into January 31. We've had a 23-month moratorium on student loan payments, and we have a huge bottleneck of

students who aren't prepared for those payments. So, anything we can do to adopt this quickly and ensure that they're protected is fully in support of.

MR. TOTONCHI: Thanks for your comment, Misty. We're now going to Jessica and Justin, and then we will take a temperature check, okay?

MS. BARRY: Just wanted to second Daniel's proposal of early implementation. And then I also just wanted to make a point. All students have a consolidation event upon entering repayment after their grace period. So, this will help all student borrowers. I just wanted to make sure that was clear.

MR. TOTONCHI: Thanks, Jessica. Justin.

MR. HAUSCHILD: Thanks so much, Emil. Just want to say that we're fully supportive of these proposed changes and also supportive of additional consideration of this issue of retroactivity. So, thank you.

MR. TOTONCHI: Okay. So, let's take a temperature check on this item as proposed by the Department. Just a recollection of what the consensus standard is. This is an agreement. This is that you, at minimum, agree and can live with it and support it, and this is that you disagree, okay? So, thumbs on this item.

I see, at minimum, we have consensus initially on this, just in terms of the temperature

check. So, thank you for that. Alright. With that, we can move on to the next issue. Jennifer.

MS. HONG: Great, thanks, Emil. I also want to acknowledge that my esteemed legal colleagues are doing some musical chairs here so we can let them get situated and have Todd introduce himself when he's available?

MR. TOTONCHI: Please do so, Todd.

MR. DAVIS: Hi, everyone. I've been watching a lot in the last couple of days. I'm looking forward to joining you for borrower defense. I'll be stepping in for Brian on this one issue. So, thank you all.

MR. TOTONCHI: Alright. Thank you. Alright, Jennifer.

MS. HONG: Thank you.

MR. TOTONCHI: I understand that Josh is coming to the table for Persis for this topic. Is that right? Okay, thank you. Go ahead, Jen.

MS. HONG: Great. Vanessa, if you could cue issue paper number six, "borrower defense to repayment." We do not have -- We don't have proposed regulatory texts ready for you guys on this one. There are a lot of subtopics for this issue.

So, you have the paper in front of you. Let me just get myself situated. Okay. So, this paper, issue

paper number six, is the first of three borrower defense repayment papers, and it contains proposals pertinent to the adjudication process.

Just by way of background. Section 455(h) of the HEA requires the Secretary to specify a regulation which acts or omissions by an institution of higher education a borrower may assert as a defense to repayment of a direct loan.

As you may know, current regulations governing BD have changed multiple times in recent years. We first promulgated regulations in 1995, which were amended in 2016 and 2019. The 2016 regulations laid out standards and processes for adjudicating borrower defense claims. The 2019 regulations, however, changed these standards and effectively barred relief for borrowers who would have likely received relief under the '95 or 2016 BD regulations, or both.

Needless to say, these three different sets of rules depending on loan disbursement date, complicates adjudications because a single borrower with multiple loans may fall under multiple rules depending on a loan's disbursement date. So, we believe that borrowers must have a path to relief when their institution takes advantage of them. And our proposal builds upon lessons learned from implementing prior regulations.

You'll notice that we have several subtopics in this area for discussion, the first one being a single standard that applies to all BD claims, regardless of when the loan was first disbursed. And before -- we're going to get into the content of what that federal standard is, and the other subtopic areas, but this first idea -- Vanessa, if could scroll to, I guess, page two -- on the applicable -- we're looking at applicable regulations for the borrower retroactivity. I realize -- I think, also the (audio) issue with closed school discharge.

And I just want to be clear that we're going to face the same kind of complications with BD. And that is something that we've -- over the years, the regulations have changed, different rules apply to different loans depending on when they were disbursed. And that was a challenge and that's one of the things that we're trying to remedy both in BD and in closed school discharge. That's why we have made that table to let you know that this is what we're looking at in terms of very simply auto-discharge for all those populations. That wasn't the case in the previous regs or the iteration before. Now for borrower defense, we have three sets of rules, and it's complicated.

MS. HONG: And so, we're trying to

streamline it, we're trying to simplify it, and if you could just look at this discrete piece as applying to, conceptually, one federal standard. Again, we'll talk more about what that federal standard contains.

But the concept is to -- that the standard would be more generous. We would remove limitations periods and cover a broader range of conduct.

Borrowers would also be able to request that their claims be adjudicated under otherwise applicable state law through a reconsideration period if they are not satisfied with the outcome under the federal standard.

But what we're looking at here is whether people are -- how people feel on one single standard that applies to all BD claims, regardless of when the loan was first dispersed.

So, if we could just focus on that issue and then we'll get into the subtopic areas where we discuss what constitutes the federal standard.

MR. TOTONCHI: Thank you for that introduction, Jennifer. First, I just want to acknowledge and thank Aaron Washington, from the Department, who is now our screen share guide. Okay. So, thank you, Aaron.

I see the first comment is from Josh.
Please proceed.

MR. ROVENGER: Thanks. So, we generally support the Department's move to one standard overall, it makes a lot of sense. And we also appreciate -- I know we're not diving into substance right now, but the standard is more fair. I did have a question, though, as to how the Department landed on the process for the reconsideration under the state law claim.

For a lot of our borrowers, it's just -- that just adds an additional step and burden for them to have to request reconsideration, most likely pro se, before they can assert that state law claim. And so, I'm just curious how the Department landed on that as the decision rather than try to incorporate that concept into the federal standard itself.

MR. TONCHI: Any additional feedback from the Department?

MS. HONG: The idea here was just to acknowledge that other states might have more generous standards, and there's a lot of variability among the states. So, we wanted to be sure after the student had gone through the process and in the off chance that the -- that they wouldn't be able to get a positive determination on-- based on the federal standard that they would have a chance to have their claim reconsidered under applicable state law.

MR. TONONCHI: Okay, thank you, Jennifer.
Joe.

MR. SANDERS: So, State Attorneys General firmly believe that we need to have a state law standard in the first instance.

We appreciate that state law has been included here, but having it as a second to reconsideration or an appeal standard feels a lot like what was going on with Public Service Loan Forgiveness and temporary expanded Public Service Loan Forgiveness where people would have to apply, it would get denied, and then they would come back -- have to come back and do another process. So, we would like to see the state law standard instituted at the outset.

In addition, removal of -- and to make sure, Jennifer, correct me if I've got this wrong, but my understanding -- my concern with single standard is that it would remove consideration of state law as the standard prior to 2016, which is the current standard. So, that certainly would be an issue for State Attorneys General.

We think that a state law standard affords borrowers a broader array of claims. For example, states have certain rules around authorization of schools. That wouldn't be captured here. States have certain

regulations around lending or financing a product that could apply for -- to -- even though these loans are federal, they could technically be applied to federal student loans.

For example, our office had a lawsuit against Westwood College. We alleged that they had violated our consumer fraud act by making private student loans that they knew would default -- default rates in -- upwards of 90 percent. They did that, we alleged, in order to capture the federal student loans. And so, that type of claim, where a school has a loss leader that violates state law, could be used to discharge federal student loans. So --

MS. MACK: (interposing) more seconds, Joe.

MR. SANDERS: -- we think that there are large swaths of claims that have been made by State Attorneys General and others that would not be captured if state law standard is not used at the outset.

MR. TONCHI: Thanks, Joe. Justin.

MR. HAUSCHILD: Thanks, Emil. I actually appreciate the opportunity to follow Joe here because I'm going to talk a little bit and express support for what Joe just mentioned a second ago, but just want to say broadly that we're supportive of the Department establishing a single standard where "free" had otherwise

been the case, that we think this is going to simplify the process and also help ensure that borrowers -- generally speaking -- have access to a more appropriate level of relief in many instances.

So, I want to make that point first, but then wanted to follow up on what Joe said. We appreciate that the Department is bringing back a state standard at all since it had been previously eliminated, but not necessarily supportive of the fact that it seems to be relegated simply to the reconsideration process.

As Joe pointed out, we think it should serve as the basis -- broadly speaking -- for claims under borrower defense and we think ED can and should review law to accept it on that basis. I think to the extent that the Department is willing to consider it at all, in the reconsideration process, it's not clear to us why it's not being considered at the very outset.

It seems to establish an artificial, unnecessary administrative burden for a student to prevail under a standard that the Department is otherwise willingly -- willing to contemplate as the basis for relief just at a later stage in the process. That doesn't seem appropriate to us. And it seems like an unnecessary burden to the borrower. So, thank you.

MR. TOTONCHI: Thank you, Justin. David, I

see your hand is up.

MR. TANDBERG: I really appreciate the Department's efforts on this. I'm supportive of the recommendations as far as they've been articulated. And I look forward to engaging in the process of actually establishing the standard, getting the regulatory language worked out.

I too, from the perspective of the states, I think it is important that the state standard be recognized at the outset. I think that properly recognizes the role of the states in higher education, the role as the kind of the first step regulators of higher ed, and the role they play within the triad.

Also, I think it could reduce the burden on the student, which I think is probably the most important consideration. So, I would suggest making that change. Otherwise, like I said, really supportive of this, and look forward to kind of getting the language worked out into the regulatory text.

MR. TONCHI: Great. Thank you. Justin, is that a new hand or a lingering hand? Okay, I thought so. Josh, go ahead.

MR. ROVINGER: Thanks. I just want to say that in response to the Department's explanation, I do appreciate that as the explanation for why the Department

to -- decided to include that state standard backup, but I will echo the sentiment that's just been expressed that it makes sense to have that as a part of the standard. But if it's going to be the standard, let's make it the standard from the get-go.

MR. TOTONCHI: Seeing as there are no other hands right now, I'd like to take an initial temperature check. So, (audio) the specific change proposed by the Department regarding the applicable regulation for the borrower and retroactivity, can I see thumbs?

Okay. So, I see two thumbs down or three. Well, I would just -- as succinctly as possible, Josh and Joe, could you quickly state why you're here and not here at least? So, yeah, Josh, (interposing)

MR. ROVENGER: Sure. I just don't think it makes any sense to include the state law standard as a backup, that someone has to go through an additional burden -- hurdle to be able to assert a claim under.

MR. TOTONCHI: Okay. Joe.

MR. SANDERS: Same. If I find fraud at a school, if I find a violation of state law at a school, I want to be able to just submit that to the Department as a basis for discharge in the first instance.

MR. TOTONCHI: And Justin, you also had a thumb down as well. Would you like to add something?

MR. HAUSCHILD: Yeah, that -- well, frankly, it's just the same points that have already been made. If the Department's going to consider this, as you consider at the outset, in order to reduce administrative burdens on the student. Or borrower.

MR. TONCHI: I appreciate your point. And by the way, if I think you have an extra comment to make, but if you're just going to be duplicitous, feel free to say "No, I'm good", alright? Alright, so, thank you for that. Department, do you need any further guidance before we move on to the next issue? Or I should say, the next subtopic.

MS. HONG: No, thank you. That's helpful feedback.

MR. TONCHI: Great. As I understand, the next subtopic is evidentiary standard. Is that correct, Jennifer?

MS. HONG: Yes, that's correct. Thank you, Aaron. So, the new single federal standard, we would continue to maintain that a decision on the claim will be based on a preponderance of evidence. The same standard of evidence. However, borrowers would not be required to prove they relied upon the institutional wrongdoing if a reasonable person could have been expected to rely upon that wrongdoing.

So, we just believe that allowing inferences on a reasonableness standard is appropriate, because borrowers may not always understand the nuances of this process, right? So, we want to remove that they would have to show that they relied upon the institutional wrongdoing. We're going to make it if a reasonable person infers that they did.

MR. TOTONCHI: Okay. Thanks, Jennifer. Comments? Michaela.

MS. MARTIN: Just to clarify this standard, this whole new section is new, right? Or was there a previous section or a previous standard upon (audio)?

MS. HONG: Sure, Michaela. Just to clarify. So, there was an extra step in 2019 added that the borrower had to prove that he or she relied upon the institutional wrongdoing. We are removing that burden from the borrower in saying that, if a reasonable person would have been expected to rely on that information, that wrongdoing, then that's enough, in other words, removing that burden from the borrower, to have to prove that.

MR. TOTONCHI: Thanks, Michaela and Jen. David, please, come in.

MR. TANDBERG: Yeah, I'd like to recognize my alternate who has a comment on this topic.

MR. TONCHI: Okay, sounds good. There are no other hands up, so you can go straight ahead, Suzanne.

MS. MARTINDALE: Thank you. Yeah, so very much appreciate the Department returning to the preponderance of the evidence standard. The borrower still has the burden of persuasion. It's not like they -- this is in line with a typical consumer protection claim, with most kinds of claims. And I was on the previous borrower defense committee and was concerned about the consideration of clear and convincing evidence as the standard. So, I appreciate to be here.

I also think it's very appropriate that the borrower not have to prove they somehow relied on the wrongdoing. How would one even prove that? That would be very challenging.

And also, typical consumer protection claim, they're -- you look at the conduct of the company and see if the behavior is, for example, such that it would have a tendency to mislead someone. So, I think this is going in the right direction and I appreciate this approach.

MR. TONCHI: Thank you, Suzanne. Joe, go ahead.

MR. SANDERS: Hi, yeah, so, glad to see a return to preponderance of the evidence.

I'm glad to see that there can be a presumption of reliance, but I want to make a point here again about the state law, because if Illinois state law were applied to a borrower who was defrauded here, under a consumer fraud act, the (consumer) would not have to prove reliance at all. They wouldn't have to worry about a presumption, they wouldn't -- it's not an element.

There's Illinois Supreme Court law directly on point here. So, again, another area where a state law standard would be preferable for borrowers in my state and others.

MR. TONCHI: Thank you. Justin.

MR. HAUSCHILD: Thanks, Emil. I'm supportive of returning to the preponderance of the evidence.

I'm not sure this is necessarily the appropriate place to raise this, though, I don't think it's entirely off base. I'm curious what others think about and I would propose the inclusion of a requirement that we're -- of a provision that would require the Department of Education to liberally construe applications here, similar to how courts are to interpret pleadings by pro se litigants, for example. Just curious to see what folks might think about that.

MR. TONCHI: Thanks, Justin. Josh.

MR. ROVINGER: Yes, I appreciate that Justin

raised that suggestion, and I would strongly urge the Department to consider that type of change. Most of the people that come to legal services in our constituency don't actually get one on one representation, particularly in this context, and so most borrower defense applicants are going to be pro se. And the Department should make clear that there is a liberal pleading standard with all inferences taken in the applicant's favor.

But also I don't -- this is -- this crossed over to a later point. But I'll just underscore the important (audio) why the group discharges also end up being so important.

MR. TONCHI: Thanks, Josh. Jennifer.

MS. HONG: I quickly thank you for raising that point. And yes, you're right, we will get into that piece in just a few more subtopics. I think it's encompassed in evidence solely from applications in terms of what we receive from the borrower, we're relying on that information.

MR. TONCHI: Thanks. Jessica.

MS. BARRY: I understand what everybody's saying here, but I still think that a heightened standard of proof is appropriate, especially in light of the proposed definition of misrepresentation that we're going

to consider, and for the ability for the borrower to submit an application without evidence. So, I support a clear and convincing evidentiary standard.

MR. TONCHI: Josh.

MR. ROVNER: I'd just be curious to know why Jessica thinks there should be a heightened standard as compared to what a borrower would need to assert in court, for instance.

MR. TONCHI: Jessica, do you have a reaction?

MS. BARRY: Sure, just for the reasons that I just stated. Just because of what we're beginning to be, considering, with misrepresentation and for eliminating that need for evidence.

MR. TONCHI: Josh?

MR. ROVNER: But how's that -- I get how is that different than it would be in a court setting. I mean, as Joe mentioned, in some states, reliance, for instance, is not required in some states. There are broad -- a borrower could bring a broad claim for unfair and deceptive practices, and they only have to (do so) under a preponderance standard.

So, I understand the point you're making, I just -- I don't -- why should there be that distinction between what's happening here and as compared to the

court system?

MS. BARRY: Yeah, no, I think those are good points that you're making and that we can keep considering.

MR. TONONCHI: Okay. Michaela, I do see your hand up, but, Todd, if you could speak.

MR. DAVIS: Yeah, I just wanted to remind everyone -- I think in the 2019 rule, there was discussion of this, but even that rule ended on preponderance.

So, we've been with preponderance all along, 2016, 2019, and now what we're discussing now. Just want to clarify that in case there's any confusion on that.

MR. TONONCHI: Thank you. Michaela.

MS. MARTIN: For my benefit, and just so that we're all on the same kind of level. Could somebody or folks maybe who feel strongly about not agreeing with what's currently proposed, kind of identify what the difference really is in the standards in regards to this? What is it that folks would need to put up that's different between those two fundamentally in practice?

MR. TONONCHI: Jessica, do you have a reaction to that?

MS. BARRY: Yeah, sure. With the evidentiary

standard that I talked about, which is clear and convincing, the student would need to provide evidence that they relied upon what they were given by the college to make their decision.

MR. TOTONCHI: Okay. Jennifer. (interposing)

MS. MARTIN: So, you're comparing that to the detrimental reliance? Those are synonymous? The clear and convincing and the detrimental are the same. As I was understanding --

MS. BARRY: Not to my knowledge they are the same. Maybe someone else can answer that question better than I can.

MR. TOTONCHI: Thank you. Jennifer.

MS. HONG: Just to Todd's point. I think we're getting confused because at the 2019 table they had talked about clear and convincing, but that never made it into the final regulations. It's always been preponderance of the evidence. So that remains unchanged and we would not entertain clear and convincing as a standard. So --

MR. TOTONCHI: So, I see Josh has a hand up, and then I'd like to take a temperature check on the subtopic. Oh, after him, I see Bethany, too. So, after Josh, then Bethany.

MR. ROVENGER: In light of Jennifer's

comment, I'm good. Thank you.

MR. TONCHI: Thank you. Bethany.

MS. LILLY: I just want to try and provide an answer to Michaela's question about clear and convincing versus preponderance of the evidence because I think it's a lawyer term that many people don't try and explain.

Basically, when you go to a court, there are different levels of evidence you have to provide. A preponderance of evidence is lower than a clear and convincing evidence standard. So, basically, the standard that the court's applying is going to be higher with clear and convincing evidence rather than lower with a preponderance of evidence. So, it depends on kind of where you want to set the defaults for the students versus the -- whoever else is involved.

So, preponderance of an evidence would be a better standard for students. Because the barrier -- the evidentiary barriers would be lower. If that helps understand the dynamics there.

MR. TONCHI: Does that help, Michaela?

MS. MARTIN: Yeah, I am in law school right now. So, I kind of know the fundamental differences, but for the sake of this conversation, I just felt that we were having an operational definition difference of what

that would actually look like in the context of this regulation. So, I do understand like that legal sense of it. I just wanted to put that into perspective in this context.

MS. LILLY: Sorry, I wasn't sure you were in law school. I actually -- it slipped my mind you were in law school, and I figured they might be not lawyers --

MS. MARTIN: No, no, you're good.

MS. LILLY: -- you're like, what the heck is this?

MR. TONCHI: Thank you so much. Let's take a temperature check on the evidentiary standard topic. Remember, agreement, live with and support. When I say disagree, the protocol is actually specifically referenced serious objection or serious disagreement, okay? Thumbs on this topic?

Okay. Succinctly, Joe and Jessica, if you could voice your objection.

MR. SANDERS: So, under Illinois State Law, the consumer wouldn't have to prove reliance. I, again -- state law standard was in -- I think that would be the controlling level of evidence, and so, I have a hard time giving up a better standard for my borrowers.

MR. TONCHI: Okay, thank you. Jessica.

MR. SANDERS: (interposing) That's the basis of my objection.

MR. TONONCHI: Jessica.

MS. BARRY: Yeah, I just wanted to think about this further. I think it needed more discussion.

MR. TONONCHI: Okay, thank you. Well, real quick, in terms of the use of thumbs, what you see on your screen is how it appears to everyone else. So, put your thumb right in the middle of your screen.

Sometimes people are kind of over here or over there. Put it right next to your face, so we can see it clearly, okay? Josh.

MR. ROVENGER: Thanks, I just want to clarify. I don't know how other -- what are other people's assumptions, but for me, it's kind of a middle on the premise that a state law standard will exist ideally in the front end, in some form, just to clarify that about the (audio).

MR. TONONCHI: Thank you. Jennifer, any further questions you have for the group before we move on?

MS. HONG: No.

MR. TONONCHI: Alright. Thank you. Let's proceed with the next subtopic, "Categories of acts that could lead to a borrower defense claim."

MS. HONG: Okay, this proposal sets up everything that is going to be fleshed out again, I think you're noticing that we're getting -- inching, inching into more details around the adjudication process.

So, we've organized, conceptualized categories of acts that could lead to a BD claim, and we've identified five categories. These are -- the first one is substantial misrepresentation. Second one's omissions. Third, breach of contract. Four, aggressive recruitment. And five, adjudications, which also include court judgments and findings by the Department of Education.

The first three categories have been included in prior regulations. The category of adjudication is a reinstatement and expansion of a cater -- category that was included in 2016 regulation.

We propose adding aggressive recruitment because it is covered by many existing state standards, and results in a more comprehensive federal standard. I look forward to your thoughts on this.

MR. TONCHI: Thanks, Jennifer. Any clarifying questions or comments? David.

MR. TANDBERG: Yeah, I would be interested particularly to hear from my attorney friends. Sometimes it's a little intimidating discussing these legal issues

-- legal background, but ICBs -- So, number five -- and five, adjudications, which include court judgments and findings by the Department of Education.

Again, I would bring in whether we could add findings by State agencies, state governments -- the state authorizers and others are often in their own way, adjudicating relevant issues that I think could meet the standards of the Department and be therefore considered as either with five or within five or as a sixth category.

MR. TONCHI: I don't see any hands up. Are there any questions or clarity that can be provided out of David's comments and questions? Heather.

MS. PERFETTI: Thank you. So, I had a question about the addition of aggressive recruitment and what the Department's ideas are to define that. I understand that some of that may refer to some state requirements or issues that they are considering for consumer protection, but if you could talk a little bit from the Department's perspective of what you would be looking for more specifically there.

MR. TONCHI: Any initial reaction, Jen?

MS. HONG: We would like to hear from our state representatives on this committee to get more feedback. We recognize that many states have existing

state standards for aggressive recruitment. We'd like to open that up to discussion.

MR. TONONCHI: Well, look who's next. It's Joe.

MS. HONG: Perfect.

MR. TONONCHI: Well, I'll note that.

MR. SANDERS: Yeah, I'll talk a little bit about aggressive recruitment, but I wanted to go back to David's point and the issue of, for example, a finding by a state authorizer.

Certainly, that's something that we deal with all the time. Our authorizer will make determinations about schools in an administrative process and to the extent that that's out there, we think that should be considered.

I defer to Jennifer a little bit because I think that there was somewhere in here where -- maybe it wasn't on BD, but that there was a state findings section. So, I'd be interested to hear on that.

Again, in terms of aggressive recruitment, there is a rich body of state law out there on what constitutes aggressive recruitment that comes in both the form of consent judgment settlements that State Attorneys General have entered into, that comes in the form of judgments, which I think are included under

number five.

So, again, I just think that reference to state law is an essential point here because states deal with this stuff so much. David's point about the triad, I think, is well taken here as well. You've got State agencies -- would be an AG's office, an authorizer, a banking department -- that are touching these things every day. So, I sound like a broken record here, but consideration of state law, I think, is something that would really strengthen everything we've got going forward.

MR. TOTONCHI: Thanks, Joe. Josh.

MR. ROVENGER: Thanks. So, I am pleased to see the addition of, well, a return to the more fair standard in the addition of something like aggressive recruitment. And we've seen schools that have sent recruiters to homeless shelters and methadone clinics, and certainly under any standard of unfair and deceptive, and abusive conduct, that's it and should constitute the basis of a borrower defense claim.

Would add that I think -- I would invite the Department in this panel to think even more broadly about what should be the basis of a borrower defense claim, because there are state laws that would allow just more broadly unfair and abusive conduct, or high-pressure

recruiting to constitute a BD claim.

I think it is important that -- to constitute a claim, I think it's important that borrower defense reflects that. I also think it's worth discussion -- discussing whether a school violation of other eligibility provisions like the 90-10 rule or, when and if it exists again, GE, should be the basis of a borrower defense claim.

The last thing I'll -- here is -- and I can't do this justice because she would have been able to tell you the story if she were on this committee, but I'll tell you the story of Ms. Theresa Sweet (phonetic) and her experience as to why this broad law standard is so important. This is all laid out in the case that she brought against the Department.

And she attended Brooks Institute of Photography, she was promised that 80 to 90 percent of the folks -- of students were placed in the field of their choice, she was promised help through the faculty network of the school. She was promised that there'd be a transfer of credits, and she faced high-pressure tactics to get her to enroll in the school. And she thought she was doing everything right, and she later learned that her credits wouldn't transferred and that the degree was entirely useless, and that the only job services she would actually

get were listings for unpaid jobs or job listings from Craigslist. So, I think it's important for all of us to anchor and ground ourselves in these experiences when we think about what this standard should actually look like.

MR. TONONCHI: Thanks, Josh. Justin, you're next.

MR. HAUSCHILD: Thanks, Emil. I just want to echo some of the things that have already been said, but hopefully add some additional points on -- we're supportive of expanding findings by other federal and state bodies. I frankly think maybe we should be talking about those bodies and others that are sanctioned by the state to conduct oversight and enforcement activities. There are even other federal agencies and bodies: DA, DOD, CFPB perhaps.

And when we're talking about state authorizers in the context of -- of ED, it might be prudent to consider what interactions might take place by the state approving agencies in the Department of Veterans Affairs' side of things when we're talking about VA education benefits. We're also supportive of the addition of aggressive recruitment. I just talked to a student veteran. I think last week or the week before we talked about being wore down by the recruitment process and these are things that are -- as others have mentioned --

precluded, prohibited in other laws, and that's the case with the Department of Veterans Affairs as well. They just recently passed -- legislation was recently passed that prohibits these activities, specifically, deceptive and persistent recruiting practices. So, I just want to flag that for folks. Thank you.

MR. TOTONCHI: Thanks, Justin. We'll take a few more comments and then a temperature check. Misty.

MS. SABOUNEH: (audio) a question for Jennifer. Can you tell me where the omission language is in the current regulations, if that's referring to substantial misrepresentation?

MS. HONG: So, we -- so, we're proposing to add that. We don't have a definition for omissions currently. I'm sorry. Is that your question, Misty? Where to find omissions? We're proposing to add it.

MR. TOTONCHI: Misty, any reaction to that?

MS. SABOUNEH: Thanks for clarifying.

MR. TOTONCHI: Okay. Great. Dixie, you're next.

MS. SAMANIEGO: Yeah. So, as a borrower or if someone was going to submit specific evidence to prove that there was aggressive recruitment, what does the Department of Education actually define that as and what does it actually look like in specific evidence to prove

that it was aggressive recruitment? Because I'm trying to understand and it's confusing. And it seems like the Department of Education doesn't have a really -- a definition that is comfortable with saying to the negotiators, and so, I'm asking for one in terms of clarity for me trying to understand this and trying to -- when I was trying to gather a student's perspective, it was really hard to, and so, trying to gather even more student perspective is hard when there's no current working definition that the Department can provide to us.

MS. HONG: So, this is why we're -- this is precisely why we are raising it, Dixie. I think we have some ideas perhaps of what it might look like in terms of the examples that Joe provided. We are having this listening session with the committee and we are proposing this as a potential category because we would like to hear -- we'd also -- we want to hear from the students, for example, what kind of experiences have students had with regard to aggressive recruitment. I see my colleague Todd has his hand up, so he might be able to give you some more information on this as well.

MR. DAVIS: Well, I just wanted to try to clarify the omission question before Jennifer -- just that that is currently contained within the definition, in Subpart F of 668 of misrepresentation. So,

misrepresentations currently include any statement that omits information in such a way to make the statement false, erroneous, or misleading. It's not been a standalone thing. We're sort of, I think, highlighting here -- I'll leave that for Jennifer to discuss the intent -- but I think we're highlighting it as its own category here where that's been contained within the original misrepresentation definition previously.

MS. HONG: Thank you, Todd, and we're -- okay, so let me -- I'll go back to Misty and then we'll circle back real quick (audio). So, we are going to get into those subtopic areas, but, yes, Todd's absolutely right. So, it's encompassed under the current definition of misrep. We want to pull it out and give it some more body and depth on all of its own.

As to the question about aggressive recruitment -- you know, a -- If I were to characterize it, any act of misrepresentation where an institution is making promises that it hasn't kept to students. That's a very general term, but anything, any feedback that you can offer -- in terms of questions of what students have experienced and what Joe has seen in the states under their state standards -- would be helpful for us to give this more body as a committee.

MR. TONCHI: Thanks, Jennifer. I see

several hands up. We'll go -- we've got Daniel, Jeri, Joe, David, Marjorie, and Justin. At that stage, we will either take a break or a temperature check after Justin's spoken.

MR. BARKOWITZ: So, thank you. First of all, I want to go back to something that Justin said earlier about other standards that already are in place. And as an administrator at a school, we do follow a limitation on aggressive recruitment as defined by the DOD. In our memo of understanding, there's a formal definition -- which I'm happy to paste into the chat -- that I would suggest the Department take a look at as a possible standard for aggressive recruitment, especially because institutions are already abiding if they're in agreement with the DOD for a service provision, they are already abiding by that definition. So, that (audio) address some of the concerns that are already placed about what exactly constitutes aggressive recruitment. So, I'll paste that language in the chat for folks to review.

MR. TONCHI: Thanks, Daniel. Jeri.

MS. O'BRYAN-LOSEE: Hi, just a couple of things. So, if we go back to the omission thing, I think it would be great that, if the school is on some sort of probation with their accrediting organization, that that would be important for people to know, so that's omitted.

The other thing is just a question more

about where the states fall, so it's probably great Joe's right after me. So, how would that work if the student has residency in one state, going to an institution at another state using the term "branch campus", for example, so the main campus is in a third state? How would that kerfuffle what -- who would actually be the state you go to -- yes, "kerfuffle" is one of my favorite words. How would that work, I guess, is my question.

MR. TONCHI: Any initial reaction to that from the Department of Ed? Alright, the question is pending so we can come back to it. Joe, you're next.

MR. SANDERS: Yeah, I'll address Jeri's question real quick and then I have -- I can better form my question to Jennifer from earlier.

So, you've got a choice of law kerfuffle there, Jeri. I think that, again, if we're talking about state law, there's a couple of different lenses you could look at it from. You could look at where the school is located, that's where the defendant is. That's going to be a traditional venue for anyone bringing a claim against that school.

If the act occurred in the state where the student lived, that certainly -- potentially -- another basis. And I think that, to the extent the Department doesn't want to embroil itself in questions of state law

that can get complicated, I think State Attorneys General can be a great resource to help the Department work through any reservations they may have about applying state law. I know my office would certainly be receptive to working through issues with the Department. We are currently dealing with that now with the Borrower Defense Team on some applications that we have been in.

To get back to my question about where the state law standard was included on this issue paper. In the group -- it mentions a preference for the group process, which we think is great. And in that group process, it mentions that groups could be defined based on actions by State Attorneys General, other State agencies -- and we think that's positive.

I want to know how that would interact with a standard that didn't look at state law. So, for example, a higher education authorizer in Illinois, right? They have a bunch of requirements to authorize schools. I'm just going to take that as an example. Certain information has to be included on the enrollment agreements, right? And, in the case of Corinthian, we found that, while they were including the information on the enrollment agreements, it wasn't accurate. And so, if a state authorizer were to make a finding around, "Okay, we will require you to put this information in," and the

information is either missing or false, or whatever else. How would that interact with this federal law standard? So, you have a standard, you have a sort of an organizing principle that's based on state law, but then you have a standard that's not. So, we'd be interested to hear any thoughts on that -- on that.

MR. TOTONCHI: Okay. Thank you, Joe. David, please proceed.

MR. TANDBERG: Yeah, I'd like to add my alternate to the queue.

MR. TOTONCHI: Okay, thank you. So, just so you know what we're going to be doing. We will take a break after Justin, but then Dixie, Misty, and Suzanne will have the first three words after the break. Okay? So, I just want to be clear with everyone. So, Justin, you go ahead and proceed, we'll take a break, and then we'll go from there.

MR. HAUSCHILD: Thanks, Emil. I think this may have been flagged, but in the case it hasn't been, I just wanted to express support for the idea of court judgments, including state judgments. I think that's been kind of brought up. I also want to point out that we also think it should probably include settlements -- it should include settlements within that context. In addition, I wanted to talk about aggressive recruitment real quick.

Daniel pointed out something very important. There are standards out there already. DOD is a great example, VA already has a standard out there as well. And I think there's probably some value in considering keeping any definition elaboration non-exhaustive. Thank you.

MR. TONCHI: Thank you. Okay, so Dixie, Misty, and Suzanne, please keep your hands raised, okay? When we're going through the break, I don't want to break the order. We are going to round up to -- I'm on Central Time so I have to think about this, okay, 2:30 p.m. Eastern Time, so please be returned promptly. We'll continue this discussion, a few more comments, and then we will likely take a temperature check. Thanks, everyone.

(Recess from 2:30 p.m. to 2:43 p.m.)

MR. TONCHI: Hello, everyone. Welcome back from the break. Let's dive right back in. Dixie, you were our next commenter. Please proceed.

MS. SAMANIEGO: Yes, so I wanted to share my experience as one of the students who did get a form of aggressive recruitment, so just kind of plugging or going back -- circling back. So, I got these calls and mail for around six to seven months before I started at Cal State Fullerton. So, it was incredibly aggressive phone calls where I was basically forced to make a decision on the phone, but thankfully I was just like, "I'm not dealing

with this right now." But specifically, for-profit institutions prey on low-income people, on people of color, and also first-generation students, and they prey on the fact that most of us do not know what we're doing in navigating higher ed, but also us being seniors in high school -- for me those calls started as soon as I finished applying to colleges, and it was my spring semester of my senior year, and up until all the way into the summer and quite literally the first week of school. That was in my first year of university at Cal State Fullerton. I would still get these phone calls where these for-profit institutions pose like trusted agencies and organizations to gain the trust of students who don't have any experience in higher ed or who don't have people that they can turn to, like me. First-gen, low-income, and poor students, and students of color do not have people that we can trust in our own family in terms of having experience within higher ed. We can't turn to them. We simply do not have them. So, it is crucial when we are talking about aggressive recruitment and figuring out a definition that the Department of Education wants us to figure out that we have to include these experiences and at the very least include the understanding that low-income, first-generation, and students of color do not know what is going on, but also that they are more likely to be

targeted by aggressive recruiters, like people who are in for-profit institutions preying on these students, right? And I am not just one case. I'm the case of millions of students across this nation who figure out that, "Oh, wow! These people are pressuring me to do something that I don't know what I'm doing." And I feel incredibly pressured, but I don't know who to turn to because we don't have people in our high schools who come -- who advise us, right? I was incredibly lucky to have one teacher at my high school who cared enough to be like, "Hey, Dixie, this is really concerning. Don't answer any more calls anymore." (interposing)

MS. MACK: 30 seconds.

MS. SAMANIEGO: Thank you. And also, we have to recognize that these low-income high schools were preyed upon, right? -- were preyed upon by these people and so we need to include also in our definition of aggressive recruitment that -- we need to include specific evidence that we can turn it in to because we can't turn in phone calls. We can't turn in mailings that we get. So, we need to be specific and we need to be intentional about this when we go about creating this definition for students. Thank you.

MR. TONCHI: Thank you, Dixie, for sharing your story. Misty, I believe you're next.

MS. SABOUNEH: Thanks. So, I just wanted to circle back to my question earlier about omission and now that it was brought up, that we are kind of using that substantial misrepresentation as a guide. So, in the proposed document that ED put out, the sentence addressing omission would then read: "misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading." And the concern is this would permit claims of misrepresentation even if it occurred unintentionally or inadvertently, and having such an expansive definition of misrepresentation could place folks in our career advising, academics or financial aid in a place where they are so nervous to say anything that they withhold counseling to our students. So, I just want to take a look at defining that a little bit further. And also with that broad definition, from a school's perspective, it would be a pretty big push financially and from a resource standpoint to go back and look at all of our content and make sure from marketing, website, any advertisements that it fit that definition.

MR. TONCHI: Thank you, Misty. Suzanne, you're up.

MS. MARTINDALE: Thank you. I'll lower my hand. So, I appreciate the Department moving in the direction of an expanded standard. I appreciate that. At

its core this process, the type of claim that the student is bringing forward, is a consumer protection claim. So, I think that it would be wise to hew to consumer protection principles, and others have already said this, but in state and federal law, there have long been prohibitions on unlawful, unfair, deceptive, more recently, abusive acts and practices, so I would encourage the Department to consider those laws and those standards as a helpful guide.

I also want to put a quick note on "abusive". We've been talking about some additional types of activities including aggressive recruitment. Abusive is a standard that was put into the Dodd-Frank Act in 2010. It's a consumer financial law. We now have a similar standard here in California under our equivalent state consumer financial laws and it gets -- I'm heavily paraphrasing -- but it gets at a business -- so, in this context, we'd be talking about a school -- taking unreasonable advantage of an individual's confusion or a lack of understanding about what they are getting into. So, I also encourage the Department to take a look at that definition and that term of art "abusive".

In this context, I think that -- I would also urge in the regulatory text that the Department retain flexibility here. My concern would be that if the

standard was enumerated to too much of an extent there could be -- you could be hemming in your own discretion to determine whether the standard has been met. And the folks on this call who are consumer protection attorneys can back me up, I mean, there are the concepts that I'm talking about have decades of case law precedent that are very, very helpful, and I think -- to the extent that we can weave in concepts here, where there is precedent -- I think that might also just help guide the Department as it weighs claims.

In addition, just one quick thing about number five, which is -- I would expand beyond adjudications. Some folks have talked about this as well. State regulators and law enforcement may take different kinds of public actions. It may not always be an adjudication. I heard someone mention settlements. We often enter into consent orders with our enforcement activities, so I would encourage maybe looking at something that's a little broader, but then nonetheless incumbent --

MS. MACK: (interposing) 30 seconds, Suzanne.

MS. MARTINDALE: -- evidence of wrongdoing that could be very, very helpful here. But to Dixie's point, to the extent that the Department may want to consider guidance to students for how to file claims with

some examples, I think that might be a great opportunity. I'm outside of the regulatory text, where, again, I think the Department should retain broad and flexible standards. Thank you.

MR. TONCHI: Thanks, Suzanne. Josh.

MR. ROVNER: Thanks. So, first I'll start off by echoing the gratitude in the comments for Dixie -- for her sharing her story. I think it was really important for all of us to hear. And then I'll also echo a lot of what Suzanne just said about the importance of -- not getting too specific in the language here that it becomes more of a barrier than something that actually provides relief.

And where I wanted to add something was on specific high-pressure and wrongful action that we've seen and that investigators have reported on. And so, for instance, the use of lead generators to find students who are applying for jobs and then all of a sudden are getting harassing phone calls from predatory schools.

Infamously, the use of pain funnels in which school admission officers are trained to drill down to get as many painful facts as possible, and then use those to convince students to attend their school. I'll enter into the comments shortly. The Senate Health Report from about a decade ago which has an image of this pain funnel on

page 67 of the pdf for everyone to take a look at.

When I step back and think about what we -- what we've seen, some words that come to mind to help kind of put a definition to it would include extreme persistence, the creation of pressure or a sense of urgency, and the use and creation of a boiler room sales atmosphere towards -- in the recruitment process.

The final thing I would say just to Misty's point -- I appreciate that there will be -- I appreciate that in any conversation that we may be having there are going to be costs and burdens. For the last 50 years, the Government and the Department respectfully have prioritized those burdens and costs at the expense of students, and I'm excited to hear the Department's commitment to helping low-income borrowers and borrowers of color, and borrowers more generally, in a way that it has not done before. And so, I would urge everyone in the committee and the Department specifically to constantly at every step of the way prioritize what's in the best interest of students and borrowers, even if there is a cost, even if there is a burden on the school, and/or others.

MR. TONONCHI: Thanks, Josh. Marjorie, you're next. Let's take a few more comments and then just take a temperature check to see where we are at. Okay? So, go

ahead, Marjorie.

MS. DORIME-WILLIAMS: Okay. So, I want to thank my alternate for sort of sharing this information. And this is more maybe of a question or point of clarification, but if we have more vulnerable students who are in online programs, how does that jurisdiction issue play out? And I'm not sure if there's language or standards for that right now, but I can imagine an issue where a student lives in one state, and maybe a program is based in a different state, and so, back to just the point about sort of state law and policy versus federal law and policy, how that would be addressed in an issue where the student isn't in person? I think it's an important one because, again, we often see students who already may be in more non-traditional positions or difficult situations who do choose to participate in online programs. So, just being aware of how that would also play out under this -- under sort of these new regulations' and rules.

MR. TONCHI: Thanks, Marjorie. Joe.

MR. SANDERS: Yeah, I have a question and then I will -- I do have a little feedback on Marjorie's last point. One area that I'm concerned -- and I know others in the State Attorneys General community are concerned, maybe missed by not having a state law standard here -- concerns state laws around sexual harassment and

State Civil Rights laws.

So, for example, in Illinois, we have the Preventing Sexual Violence in Higher Education Act, which requires schools to have policies and procedures around reporting sexual harassment on campus.

I could see a world where somebody who doesn't feel comfortable attending class or campus because of sexual violence could be taken as a legitimate defense to the repayment of the loan in that they can't complete the degree. Similarly, the Illinois Human Rights Act has protections around sexual harassment in higher education. I think that these are substantive areas that are missed by not including a state law Standard.

To Marjorie's point about online, it's a great question. To the extent where we're using state law, there is one reading that would -- NC-SARA is a state compact whereby certain authorization laws are limited only to the state where the school is based. So, without passing judgment up or down on whether you like the compact, certainly, the laws of this state where the school is based could be a basis.

I would argue, and others would argue that you'd have to look at the authorizing law in the state where the student lived to see whether NC-SARA would apply or not, but those are some basic principles that you'd

need to look at when you're talking about online students and state law.

MR. TONCHI: Thanks, Joe. Jennifer, go ahead. Did you still want to speak? Okay.

MS. HONG: Yes. I was just lowering my hand. Thanks. First of all, Dixie, thank you so much for sharing your experiences. I really would like to encourage you to continue to do that throughout these proceedings. We want to start -- we carved out this space for students because we want to hear more about your experiences.

Also, one thing that you may have noticed and I just want to take Joe and Suzanne's advice to heart regarding consideration of state law. One thing you may have noticed is that we've tried to encompass that in our proposed federal standard. Not explicitly, we have -- here's the thing -- we have 50 states, right? And all with varying degrees of Consumer Protection Laws. And the point of this is to create a comprehensive federal standard to make it easier for borrowers. Our concern was that -- by including an option for states on the front end -- that would create a lot of back and forth between the Department, borrower, what's my state law -- and we wanted to eliminate that by creating a comprehensive federal standard that would encompass those issues that are already captured by those states. And if by chance we were

to miss something, that could get picked up on the reconsideration process.

But keep in mind this is also -- this is for streamlining the process for borrowers. Not every state is like Illinois, unfortunately. So, we want to make sure that we have a strong federal floor for -- to start with -- for borrowers and that we are encompassing all the issues to include aggressive recruitment situations that Dixie just described because we want that encompassed in a federal standard so that borrowers can get a fair shake at this on the front end.

Also, to Misty's point, I know you're eager to talk about omissions. Remember, we are going to get to that. Right now, we are still just talking about the general categories of which omissions is one, so we are going to get into that shortly. I just wanted to look back on that. So, that's it, thanks.

MR. TONCHI: Thank you. Josh, I see your hand, but I'm going to take a temperature check at this time. So, folks, I'd like to see your thumbs -- here, here, here -- on the proposed -- current proposed text on categories of acts that can lead to a borrower defense claim. May I see your thumbs please? Remember to put it right next to your head, like this. Okay. So, I see a few thumbs down. Succinctly, Josh, Jessica, Justin, and

Bethany, very quickly, if you could give us some guidance as to why your thumbs down.

MR. ROVENGER: Sure, I don't think the standard as written encompasses everything that it needs to. And what I was going to ask before it's along the same lines as to just whether the Department -- when trying to incorporate state law into the federal standard -- considered evaluating a state like Illinois, or could it be (inaudible) -- a particularly borrower-friendly state and using that as a starting place.

MR. TONCHI: Okay. Jessica.

MS. BARRY: I'm just not comfortable supporting it yet until we figure out what aggressive recruitment is really going to mean, how we are going to define that. So, if we have a chance to really define that, then I could in the future support it.

MR. TONCHI: Thank you. Justin.

MR. HAUSCHILD: Yeah, I just think there are enough points of uncertainty here and maybe downright omission of things that should be included that we've talked about quite a bit, to warrant further discussion here. It's a little bit -- I guess, I might be in my own boat here, but I'm also wondering a little bit procedurally how this is working because -- differently than some of the other stuff we're looking at, we don't

have proposed language, I understand that. It's a pretty big topic, but we are seemingly taking a temperature check on something to establish draft -- draft regulations, excuse me. Then we'd perhaps be taking another temperature check in some -- I'm just wondering how exactly this is all coming together.

MR. TONCHI: Now, that's fair. I'll be mindful of that going forward, okay? It's generally going to be on the proposed redline. To the extent we can provide clarity on that going forward we will do so, Justin. Thank you for raising that. Bethany.

MS. LILLY: I put this in the chat. I have nothing to add.

MR. TONCHI: Oh, I just saw it. Thank you so much.

MS. JEFFRIES: Emil, Emil? I think, Jeri, correct me if you're -- if I'm wrong, you were a thumbs down as well?

MS. O'BRYAN-LOSEE: Yes, it's been covered by both Josh and Justin (interposing). (audio).

MS. JEFFRIES: Okay. Alright.

MR. TONCHI: Thanks, Cindy, thanks, Jeri. I just didn't catch it. Yeah, please be proactive just like that going forward, folks. I appreciate it. Okay. With that, let's move on to the next issue, "Revise the

definition of misrepresentation." Jennifer, if you could take us through it.

MS. HONG: Sure. So, we are proposing to revise the definition of misrepresentation by adopting the current definition which we can pull up for you as well under 34 CFR 668, Subpart F, except that we would expand the current non-exhaustive list of potential examples of potential topics where misrepresentation may occur to include: job placement rates, program costs, and the tax status of the institution.

MR. TOTONCHI: Okay. Any initial clarifying questions or comments? Marjorie.

MS. DORIME-WILLIAMS: So, I'm aware that the list is not meant to be exhaustive, but would accreditation status be helpful? Because it seems that some of the issues that we've discussed coming up are -- right, students finding out that their degrees are worthless or that they can't do anything with them, they can't go to other programs. So, I think that that might be a significant one. I would -- I guess defer to Heather on this, if that would be helpful so that institutions couldn't say, "Yeah, you can do anything you want." And then you find out, "Well, I wanted to go to graduate school and I can't."

MR. TOTONCHI: Thank you. Jessica.

MS. BARRY: Yeah. I have a couple of -- I've got a concern about program cost. I know there are times throughout the students' education when the program costs will change due to a variety of different factors, so I think we would have to know that that happens to a certain degree. And then, when it comes to tax status, I'm just wondering who will determine that. Will that be the Department, the IRS, the creditor state? We know that that can vary. So, that's a question actually for Jennifer, if she could clarify that.

MR. TONCHI: Do you have initial feedback, Jennifer?

MS. HONG: I'm sorry. So, who would determine the tax status? Right, so, I mean, we have our own definition and we would determine that.

MR. TONCHI: Okay. Thank you. Justin.

MR. HAUSCHILD: Thanks, Emil. Similar to Marjorie's points, I think I would support this idea of including accreditation, misrepresentations, credit transfer policies, or another one. Sometimes -- often there are misrepresentations involved in a closed school discharge process or at the junction point where the school is closing. So, I think those are all worthy of consideration. I understand again too that these are illustrative examples, but I think the Department is

putting out illustrative examples, it's important to include some of the top -- some of the really flagrant issues. I think the Department is trying to do that, but there might be value in considering some additional categories as well. Thank you.

MR. TOTONCHI: Thank you. Dixie.

MS. SAMANIEGO: I'm wondering if it would be helpful to change the language to "where misrepresentation may occur to include", to include--add in "but is not limited to." I'm wondering if that may be helpful for folks and may address some of the stuff that previous negotiators have mentioned.

MR. TOTONCHI: Thank you, Dixie. Noelia.

MS. GONZALEZ: Yes, a quick question about the program cost. Sometimes our -- campuses will -- do have a slight increase in tuition fees from year to year based on cost of living or the CPI, a Consumer Price Index, is that -- as long as a student is told ahead of time before they become an actual student -- is that -- would that still be allowable or would that not be allowable under this rule?

And when I'm talking about cost increases, tuition fees, it could be five percent, three percent -- small percentages. I'm thinking about the public universities who have campus fees, who have a CPI increase

on a yearly basis just based on the -- on inflation rates.

MR. TOTONCHI: Okay. Okay, Jennifer, if you have an initial reaction to that.

MS. HONG: Yeah. My initial reaction to that is, I mean, certainly we're aware of these fluctuations and tuition costs. This is not what we're talking about, we're talking about as it relates to the definition of misrepresentation under 668, Subpart F. So, that's more what we're focused on.

MR. TOTONCHI: Okay. David.

MR. TANDBERG: Yeah. I'm trying to pull up what examples are currently in the regulation. I'm having a little bit of trouble, but I -- it does look like accreditation is included, whether a student may transfer course credit. There's a good number of things. The list goes on and on. There's quite a list. I -- perhaps we should put this up so that we know what's already included before we start suggesting other things that may already be in there.

MS. HONG: Can we pull that up, Aaron? If we could just give him a minute to pull that up on the eCFR. That would -- that way everybody can look at it.

MR. TOTONCHI: Yeah. And Aaron, if you're having difficulty doing so, just let us know.

I just want to confirm that (interposing).

MR. Washington: You're looking for 668.71? The definition of misrepresentation?

MS. MACK: Can we specify again what we are looking for (interposing)?

MR. Washington: Are you looking for 668.71, the definition of misrepresentation, or somewhere else (interposing)?

MR. TANDBERG: Yeah. It's that, and then you got to scroll down -- that has 668.72, "Misrepresentation regarding the nature of the educational program," 668.73, "Misrepresentation concerning the nature of financial charges," and then 668.74, "Misrepresentation regarding employability of graduates."

MR. Washington: Alright. Let me try and find the link (interposing).

MS. HONG: I'll just drop it in the chat for you.

MR. TONONCHI: Okay.

MS. HONG: (audio).

MR. TONONCHI: Folks can actually reference that link. I don't -- is there still a need to screen-share that or can folks just reference that link?

I'm not hearing either way, so I assume the link is sufficient. Okay. Go ahead, David. Does anyone want to take us through this? (interposing). Yeah, go

ahead, David.

MR. TANDBERG: Yeah. So, this is misrepresentation, the definition. And then below it is the actual examples of misrepresentation, so you have things related. If you just scroll down just a bit, the nature of the educational program, and then there's a bunch of other -- another category related to financial charges, and then another category of employability of graduates. So, there's a lot. It may just be best to open it up on your computers, so you look at what's there. I will say, while I have the mic, I support the inclusion, adding those categories that the Department has proposed, I think those are all important.

MR. TONCHI: Alright. Thank you, David. So, in light of that, I think you can stop the screen share, please, Aaron. Okay. If you could please bring up the text. It's not the redline text, but the concept that the Department has introduced. Thank you. Heather.

MS. PERFETTI: Thank you. So, I did want to address just briefly the comment about accreditation status. I think what David just directed us to give some more nuances about the academic programs at the institution, even institutions in non-compliance remain accredited in terms of the information that they provide to the public. Now certainly, if they are in a non-

compliant status, some agencies also require that to be disclosed in specific ways at their website, and then accrediting agencies certainly make that public disclosure with our own agencies. I did want to ask Michale McComis, the alternate, to speak to job placement rates when you're ready for that.

MR. TOTONCHI: Thank you. He can come on camera and raise his hand and speak after Michaela.

MS. MARTIN: I had just a couple kind of clarifying, and also kind of a comment -- was that in the program costs? I don't think that we are talking about tuition increases. All colleges do that basically yearly. We are talking about hidden costs, right? And I would imagine that that's going to probably be specified within -- I would hope -- the text that comes accompanying this, that would say how -- where that kind of line is. Because what happens -- and I've had friends that have had this -- they sign on for online school, and I go, "Yeah, here's how much it's going to be," and then you register for classes and you buy your books, and then you're slapped with some weird 300-dollar class distance learning fees except for it's an online school, so why was that not just a part of the discussion or conversation prior to enrollment?

And then, I'm a little bit confused about

the tax status of the institution and the question that Jessica had. Maybe I'm just not understanding what would accompany that because we don't have the language yet. I'm just kind of -- is that just saying "Folks who misrepresent themselves as being a nonprofit and they're for-profit"? Or is that -- or someone that's a non-profit looking too much a public university or what that will look like? Maybe that's too soon, maybe that'll come with the language, but that's where my question is, what that means.

MR. TONCHI: Thank you, Michaela. And just before Michale starts, I just want to recognize that Eric has come on to the table for State Attorneys General. Michale.

MR. MCCOMIS: Good afternoon. So, I'm in support of adding to the exhaustive lists or illustrative list with regard to misrepresentation and definitions and that are being laid out here. And David mentioned the section that has to do with employability of graduates.

I just want to speak to the job placement rate issue because it can be a little thorny and a little problematic. It kind of goes to, I think, what Misty was pointing out before -- is that it's difficult to get this information oftentimes, and not all the creditors or other regulatory entities require programs or

institutions to report on it. Those that do, do have parameters typically, but the calculation methods for them can be quite different and certainly not consistent across all the creditors or other regulatory entities.

And just in our own experience, we sometimes find that a school, maybe reports, one rate, and when we go through and scrutinize the data, we say, "Well, we're not going to count this one student," and instead of 85 percent, it's 84 percent.

So, so long as we're mindful of nuances that perfection is not the standard, then I think that finding some way to ensure that that information is correct and accurate and reliable is really important.

But just wouldn't want institutions to be penalized if it was a non-intentional error or a differentiation in a calculation method.

We third-party test almost all of the job placement information that we get and we find it to be about 95 percent accurate. But that's not 100 percent, and typically, the differences are we just can't track certain people down. So, it's problematic data. Students have to have it accurately, absolutely. But let's just be mindful that it's difficult to make it be perfect.

MR. TONCHI: Thanks, Michale. Jessica.

MS. BARRY: Yeah, I agree with what

Michale's saying. I wonder if replacing job placement rates and focusing on the data would be better to, say, employment outcomes. So, if someone is grossly misrepresenting employment outcomes for the program, then that could be considered misrepresentation, but these small calculation issues that happen between schools and the accreditors might not be where we want to focus.

MR. TOTONCHI: Thanks, Jessica, for that comment. If you would be able to just drop that suggestion in the chat. It seems like it was a short straightforward suggestion. Thank you. David.

MR. TANDBERG: Yeah, I'd like to bring my alternate up to the front in the queue, Suzanne.

MR. TOTONCHI: Okay. After Josh, Suzanne can go. Josh, go ahead.

MR. ROVENGER: Thanks. I just want to respond to Jessica and Michale's concern, which I actually think is addressed in the definition of misrepresentation itself. It's not going to capture a small data error between one job -- what the job placement rate was reported as and what it should be.

So, I don't think removing job placement rate actually solves the problem. I think it's one that's already addressed in the broader definition of what constitutes misrepresentation.

On the flip side, intentionally falsifying job placement rates has been something that is very common in the for-profit industry, particularly notorious with Corinthian Colleges. And so, I think it's particularly important to include that as one of the non-exhaustive examples.

MR. TOTONCHI: Thanks, Josh. Suzanne.

MS. MARTINDALE: Thank you. I just wanted to make an observation, because I'm remembering what it was like a few years ago when I negotiated borrower defense and it was challenging for the committee at times to talk about these discrete parts because they're kind of interconnected. In borrower defense, I think it's just inherent to the issue, unfortunately, but in response to some of what I've been hearing from institutional representatives, I just want to take a step back and reflect back that we're talking about what a borrower needs to do to get their loans discharged.

I'm previewing a little bit. There will be a separate process to determine whether or not a school needs to repay the Department in any way. So, I think those are two separate things. They are two separate processes.

And so, I think we need to think about what is a reasonable standard to ask. If it's between the

Department of Education and the borrower, what does the borrower need to do to demonstrate that they have a viable borrower defense claim? So, I suspect that there may be -- it may feel like there's some gray areas here, but it's not automatically the case that the school ends up having to repay the Department simply because a borrower got \$2,000 discharged because they dropped out of a vocational program that simply did not meet their needs, and was not what they expected or were promised.

I just want to call that out and just observe that we need to think about some of these discrete pieces in the broader context of the entire borrower defense process. Thanks.

MR. TONCHI: Thank you, Suzanne. Just really quick, Michale, if you could turn off your camera that would be great. Thank you.

Okay. At this stage I'd like to take a temperature check. And in line with Justin's comment from earlier, this is on the concept, okay? This is not on specific redline language. So, I'd like to see thumbs on the concept that the Department has put forward -- put forth at this stage.

Unless I'm missing one, I see that there aren't any thumbs down at this stage. Thank you for that feedback, everyone. I see it's 3:10.

Let's present -- let's proceed rather to the next issue: "definition of omissions". Jennifer, can you please take us through that?

MS. HONG: Yes, probably Misty will have some comments, I'm assuming, as you had some questions earlier about it. But in brief, we are proposing to define a misleading or deceptive omission by an institution as an act that could lead to a successful borrower defense claim. We also propose to provide examples of omissions that could be grounds for BD claim. And those are bulleted right there.

Some examples might be significant exclusions from -- or methodological problems with -- job placement rates. So, this might go to Michale's point in terms of these little tweaks with job placement. We're talking about significant exclusions, omissions, problems with methodology for job placement.

Second bullet point: "If additional education is needed in the field, such as obtaining additional credentials in a field that requires program completers to go into that line of employment."

Thirdly, "If the academic program lacks certification or approvals." And then fourth, "Transferability of credits."

So, I'm happy to hear what others feel

about these.

MR. TOTONCHI: Thanks, Jennifer. Clarifying questions or comments from the committee? Jeri, please.

MS. O'BRYAN-LOSEE: I just want to talk about the last point, the transferability of credits, because that can mean several different things. Somebody could accept credits to be a million elective credits or a -- as something that doesn't quite transfer into the actual program they're coming into, so, where people may be accepting credits. I've had so many students that have lost credits because they only need 20 elective credits, but they transferred in 46, and were told that they could transfer in 46, even though they don't fit directly into the program. And it also comes a little bit -- somebody mentioned earlier about residency requirements. So, I'll just throw that out there when we talk transferability.

MR. TOTONCHI: Thank you, Jeri, for your comments. Jessica.

MS. BARRY: Yeah, I just have a question for Jennifer. And so, on the second bullet, when we talk about additional education, is the Department talking about additional education for entry level employment? Because, obviously, with lots of professions, there's different educational requirements that might happen later in your career, so I've wondered if that's

something we would need to clarify that this is for entry level.

MS. HONG: That's right, but we wouldn't want to limit it to that either.

MR. TONONCHI: Okay. Daniel.

MR. BARKOWITZ: I want to swing back to the transferability of credits issue that was raised. I'm just -- it's hitting me that transferability is really subject to individual transferring institutional perspective.

So, if I'm attending a school that I'm then asking for consideration. The subject transferability is going to differ based on whether I'm going to a university, a college, a tech school. It may differ by program, it may differ by type of institution, and different institutions may have different reads on that transferability. So, I just wonder how that could be claimed, and what the set of rules and opportunities around that would be, and how that would play out.

MR. TONONCHI: Heather.

MS. PERFETTI: Thank you. I'd like to call on Michale again. He has a few comments he'd like to make.

MR. TONONCHI: Okay, yeah, he can stick immediately because there are no other hands in the

queue.

MR. MCCOMIS: Just real quick. Under this, I wonder if given that the definition of misrepresentation says any of false, erroneous or misleading, I think, is how -- it's -- I have to scroll back and forth -- any false, erroneous or misleading statement. So, I wonder if, in this definition of omissions, we say, "the Department proposes defining a misleading or deceptive," would that also be misleading, erroneous or deceptive omission?

MR. TONCHI: Jennifer, if you have an immediate reaction --

MR. MCCOMIS: Yeah, I'm getting to the point that it looks like, from the first bullet, that we're talking about erroneous data, is not something as a significant error -- significant exclusion, not just these one or two kind of cases that were a close call kind of thing. So, I'm just wondering -- just to be mindful that if we're talking about erroneous is because it's in the definition and might be useful to include that in the definition of omissions as well. I just bring it up as a parallel construction comment.

MR. TONCHI: Thanks, Michale. Ah, Eric.

MR. APAR: I have a question with respect to the first bullet, "significant exclusions from, or

methodological problems with, job placement rates." So, would that include, for instance, inflating the job placement rate by including students who obtained jobs in unrelated fields, so, fields unrelated to the course of study?

MS. HONG: I think so. I mean, we've seen very kind of egregious instances of that where students are working their regular jobs totally unrelated to the fields in which the field of study is supposed to be preparing them for, and they're counting that job, but I'm eager to hear more from you or if you have any feedback based on your experience. (audio).

MR. APAR: Sorry, Jennifer. Not based on my experience in particular. I just know that's a common practice where schools will inflate their employment numbers by including, say, somebody who's working at Starbucks or something like that, where it has virtually nothing to do with the course of study.

MR. TONCHI: Thank you. Bobby.

MR. AYALA: For -- maybe something for us to consider with regards to certificates and job placement, with regard to omission, or this may be representation where a school -- they might say they need a level two certificate and when they actually need a level one certificate or less, less time for completion of a

certificate for a particular job, say, would it be allowed to be considered as a possible omission?

MS. HONG: Can you put that proposal in the chat, Bobby? Just want to make sure we all (audio).

MR. AYALA: Sure, yeah. For example, I was thinking of Welding, for instance, in a two-year program or one of these technical schools. Welding certificates have level one, level two, all the way up to associates, but many times, at least here in Texas, with regard to the oilfield, you can get a level one certificate and get a 6-figure job. So, just something to consider, but I'll go ahead and place them in the chat.

MR. TONCHI: Thanks, Bobby. Dixie.

MS. SAMANIEGO: I'm also wondering -- and if anyone could provide any feedback or perspective -- but adding lying about course offerings as well, because I know that a lot of students, even when they do transfer or whatever, other institutions most likely lie about what they've offered, but also, in a lot of cases, they'll have on their website or in pamphlets and stuff like that their course offerings. But a lot of those courses haven't been offered in X amount of years, and sometimes it's like five to ten years, right? And so, could that be added as a part of the definition of omissions? If anyone has perspective to that or would be

willing to comment on that?

MS. HONG: Again, Dixie, if you could add that to the chat so that we could -- our staff could take a closer look at it. And yeah, obviously I'm happy to hear what other members have to say.

MR. TOTONCHI: Thanks, Dixie. Heather.

MS. PERFETTI: Thanks to Dixie. I don't have a response to your question, but I did want to ask Jennifer, if you could -- I know you spoke a little bit already about pulling omissions out of the general category of misrepresentation. Can you talk a little bit more about the Department's motivation to do that separately as we see it here?

MS. HONG: We felt -- We felt it was deserving of its own category and was sufficiently distinctive from misrepresentation. Well, we felt -- I mean, you could omit certain information from students -- from -- how you calculate job placement rates, for example. That may not be exactly conforming with our current definition of misrepresentation.

So, we wanted to kind of build that piece out more, I guess, if that's helpful. So, that it's not, I guess, in a sort of misrepresentation, necessarily, but just an act of omission by an institution that we felt was sufficiently distinctive that we needed -- deserving

of its own category.

In other words, if a student is just completely blindsided and is not aware of what they're getting into in terms of transferability of credits, for example. We felt that that fit more neatly in an omissions category, rather than misrepresentation. Is that helpful?

MS. PERFETTI: It is. I think that the current definition includes any statement that omits information in such a way to make the statement false, erroneous or misleading. So, I was just curious as to the motivation to separate it and I think you've answered that.

This does include the word "deceptive" here, too, that I don't think it's included in the current language. I don't know if that was intentional or you thought that was (audio) necessary in a separate description on the category.

MS. HONG: Yeah, I think it was intentional. I kind of wanted to separate that out in terms of not being forthcoming about how an institution may be operating and the claims that they're making to students versus an erroneous claim. There's an erroneous claim, and then there's the claim that they're hiding. So, there's some deception involved. So, I realized it's a

fine distinction but we felt like it was worthy of pulling out.

MR. TONONCHI: Thank you. Just a quick comment before Marjorie. We are about eight to nine minutes away from public comments.

We have instituted a waitlist as you all know. However, only four people of those public commenters are currently in the waiting room. Okay?

So, if there's someone you've arranged with to make public comments, you should probably doublecheck with them to make sure that they're actually signed in into the zoom link, okay? Because we only have several people in the waiting room right now, okay?

Another comment before Marjorie goes. I just want to give everyone -- I want to continue to encourage the solution-oriented comments. The questions are great, these chats that you're putting in with language in the chat are very helpful. I just want to continue to encourage that kind of feedback. Marjorie, please.

MS. DORIME-WILLIAMS: So, I think this might be maybe a point of clarification. This is from the perspective of being an administrator in a lot of different institutional settings. And so, there are sometimes omissions that aren't malicious or intentional,

but certainly have to do with course offerings, I think. Thank you, Dixie, for that example. And it's not necessarily due to ill intent on the part of the institution. It's just the administrative assistant hasn't updated the webpage in who knows how long because there are lots of other issues.

So, I guess, I wonder how are we maybe creating that distinction, because I think I would hate for institutions to be held responsible for something that they're not actually doing, if that makes sense.

And so, I'm just concerned by some of these -- or even the example of job placement. Lots of students don't necessarily pursue careers in what their "degrees" are in.

But that doesn't necessarily mean a negative educational outcome or a negative career outcome. And again, certainly that's not always within the realm of responsibility of the institution, right? It's our economy, people can't find jobs.

So, I guess I just want to be -- I know, we're talking about language, I just want to be careful about avoiding making these too broad where anything that can just sort of be a part of institutional functioning now falls under these definitions of omission.

MR. TONCHI: Thank you, Marjorie. Bethany.

MS. LILLY: Jennifer wants to go first.

MR. TONCHI: I apologize. I just saw that.

MS. HONG: No, no, I didn't raise my hand.

Just real quickly, Marjorie, your point is very well taken. And I think the key here is the words "misleading" and "deceptive". We try to put those qualifiers and descriptors in there to exclude the situations that you just described.

MR. TONCHI: Thank you. We have time for -

-

MS. LILLY: That was going to be my guess, which is why I wanted Jennifer to come before I did. That was the intent, statutory -- or regulatorily to adjust that.

But I do want to emphasize here that we're trying to protect students. And to some degree, I don't have a ton of sympathy for institutions in this context. I mean, if you haven't updated your class list in a couple of years, you should be taking a look at it.

And not -- I understand that everyone has ten billion things going on. I get that. So, I don't mean to be too critical of that. I also know students who have particularly gone to a college because it's the only one that into their district offers this class, and then had to wait years to take that class.

That's not helpful for anyone involved. And so, I do think that it's helpful to have this list. I like Dixie's addition and I just wanted to say all of that.

MR. TOTONCHI: Thank you. Dixie, please stick, and then we're going to take a temperature check.

MS. SAMANIEGO: No worries. So, I will be critical of institutions who don't update their course listings, especially speaking as a first-generation high school student -- first-generation high school graduate first off, and may even have an older brother who dropped out of high school and specifically for him, he's making right now his decision to transfer out of a community college into a four-year institution, specifically on course listings that are available to students. And so, Jeri, in the comments or in our chat, had made a perfect point that, as students, we make these decisions to attend these institutions, based on public course listings.

So, if folks at institutions are not updating that they should be held responsible because, at the end of the day, students are making decisions on public information, things that are provided publicly for students, right?

So, yeah, we need to add omission of course

list -- listings, excuse me -- because we're making these decisions to attend these institutions based on what we publicly made available.

So, if those aren't up to date, we are not making the best decision for ourselves based on what the institution has put out outwardly and to -- We have to be critical of institutions who don't regularly update their course listings, because these are most of the time courses that aren't made available or haven't been made available in five, ten plus years.

And so, when an institution isn't updating their course listings, isn't that wrong? That's shady. That's not in support of students. And so, we have to be. We have to be critical of institutions who don't do that regularly, right? That's all I really wanted to add, but, yeah.

MR. TONCHI: Thanks, Dixie, for your comments. Okay. On the concept, I'd like some initial group feedback on this topic, okay? Can I see thumbs for the concept as proposed by the Department?

Okay. I see no thumbs down. Thank you everyone. Okay.

MR. HAUSCHILD: Emil, (audio).

MR. TONCHI: Oh, go ahead, Justin.

MR. HAUSCHILD: Apologies for interjecting.

Can I just get a sense -- are we finished with discussion on this point? It seems to be kind of consistent with how we've been operating. I think I'd like to maybe revisit this or have additional conversation. I'm just curious if we're intending to move on entirely from this.

MR. TONONCHI: Yeah, that's generally the intent at this stage. However, we certainly have not reached a consensus on this topic. We're certainly going to return to this topic. This is just an initial kind of gut check, a temperature check from the group for the Department. But we'll definitely come back to this topic at some point during the overall negotiation. Does that help, Justin?

MR. HAUSCHILD: Thank you.

MR. TONONCHI: Okay, excellent. David, I see your hand is raised. I can give you about 30 seconds.

MR. TANDBERG: Yeah, it's just at some point it would be nice to know a kind of timeline for when we'd be getting redlines and revised redlines and considering those, because that sounds like the next step for each of these.

MS. TONONCHI: Jen, do you have quick feedback on that?

MS. HONG: Yeah, we really wanted to get you some for this session. Unfortunately, we weren't able to,

so we plan to get that out at least a week before the second session.

MR. TONONCHI: Alright, thank you all. We are prepared to move into our public comments. I understand the first public commenter is Pam Hewitt (phonetic), who's representing the parent with a Parent PLUS Loan. So, if you could -- I believe she has been admitted.

I don't see her on screen yet. There she is. Welcome. You have three minutes to make your comments. I want to make sure that your audio is connected first. Yeah, you can unmute yourself, Pam, we should be able to hear you.

MS. HEWITT: There you go. Can you hear me?

MR. TONONCHI: We can hear you.

MS. HEWITT: Awesome.

MR. TONONCHI: Go ahead, Pam. You may start.

MS. HEWITT: (audio).

MR. TONONCHI: Yeah.

MS. HEWITT: Okay. Hi, I'm Pam Hewitt and I took out a Parent PLUS Loan to help my son pay for college, only to be defrauded by Full Sail University's predatory tactics, lack of upfront communication from my lender and no help from my government. Freddy (phonetic) is my youngest child and going to school for graphic art

and design was his dream. We were misled about the acceptance into his desired major and ultimately felt forced to enroll in a different major.

Sadly, that major did not lead him where he hoped to go and left him with a degree that would not benefit him in his future. I have over \$248,000 in Parent PLUS Loan debt. I've applied for borrower defense to try to get some relief, but our claim was denied with no real explanation as to why.

My husband and I are on fixed incomes. We've attempted to refinance our house, but we were denied due to the student loan debt. We were also told that no banks would help us as the monthly payment on the student loan wipes out my income, leaving just my husband's income for all of our cost of living, including the mortgage.

We sold our condo in the hopes of downsizing our mortgage, and we the housing situation now, we ended up spending more hoping that eventually we'll be able to buy something again.

My loan servicer has continued to (audio) the loan but failed to make clear that interest would continue to be added on, constantly increasing my debt obligation.

I consolidated the loans in hopes of

getting into one of the programs with a smaller payment that may be affordable, but with lower payment comes in fact more interest, so the balance will continue to grow even though payments are being made.

It isn't widely known how seriously student debt impacts parents. Payments may be able to be paused, but that only makes the debt increase. You start sinking. And by the time you fully understand the magnitude, well, there's no way to stop. What do you do? And who do you turn to?

We are in just as much trouble with this Parent PLUS Loan as the kids are, perhaps worse as our income has no chance of increasing. I'll never see an end to this loan. It will impact me for the rest of my life. This is devastating. And a worst-case scenario is that we could end up unable to put a roof over our heads. Where do we get help? Who do we turn to? The parents need to be heard. Thank you for your time today.

MR. TOTONCHI: Thank you for your comments.

MR. HEWITT: Thank you.

MR. TOTONCHI: We will next admit, and I apologize if I'm not pronouncing this correctly, Matthew Collenge (phonetic). Good afternoon. Is it Mr. Collenge (phonetic)? How do you pronounce your name?

MR. COLLEH: It's Colleh (phonetic)

MR. TONCHI: Colleh? Thank you. Please --

MR. TONCHI: Please proceed. You have three minutes.

MR. COLLEH: Awesome. Thank you. I'm ready. Hello, everybody. My name is Matthew Colleh (phonetic) and I'm a board-certified behavior analyst or BCBA, and I work in the field of Applied Behavior Analysis or ABA, which is the only evidence-based treatment that we have right now for people on the autism spectrum disorder.

I know we haven't gotten to it today. I wasn't sure how fast this would move along, but I want to comment concerning the Public Service student Loan Forgiveness program and the redefinition. So, I hope you guys can take my comment into account when you guys start discussing this. But the agenda stated that the Department proposes to establish a primary service definition to ensure that employers perform one of the public services included in the law as a primary function of the organization.

The Department seeks ideas on what should be included in such a definition, which is what I'd like to do today. I'd like to kind of advocate and just explain why I believe that ABA service providers should be included in this new definition, because we do actively engage in public service.

First, just some statistics, the prevalence of autism was last recorded by the CDC as one in every 54 births in 2016, which is up from one in every 150 births in 2000.

And the average cost in the United States over the lifespan of an autistic person is \$2.4 million. But with early diagnosis and early intervention, this cost can be reduced up to two thirds.

What ABA service providers do is we do that in early intervention. And we actively contribute to saving millions of dollars from both the families of these people and the government, as the government funds through Medicare a lot of the services we provide, which is, I believe, a huge benefit to the public and the public service.

Also, ABA providers are frequently contracted by schools to aid teachers and students on students who are (audio) autism spectrum, and students of other disabilities.

And so, again, we do a lot of things. We look at these public service jobs like schools, we were right there with them doing a lot of these jobs and helping them with these particular students who are on the autism spectrum. And then just the --

MS. MACK: (interposing) 30 more seconds,

Mr. Colleh (phonetic).

MR. COLLEH: Right, thank you. The ABA providers are considered a part of the medical field, such that we are given NPI numbers, and that healthcare is commonly regarded as a public service. ABA services are considered a medical necessity, and those engaging ABA services are engaging in a public service. I would say such that -- it's such a medical necessity that during the course of the pandemic, we continue to go into people's homes to provide this central therapy for our clients.

And so, just -- we're attempting to define what qualifies an organization for public service --

MS. MACK: (audio).

MR. COLLEH: -- public service that function, then we should --

MR. TONCHI: Thank you, Mr. Colleh (phonetic). I'm so sorry, but time is finished. Just out of respect for other commenters.

MR. COLLEH: Absolutely.

MR. TONCHI: Okay, I understand who we have next is Stephanie Stiefel (phonetic), and I apologize if I've mispronounced your name. Please, correct my pronunciation if it's incorrect.

MS. JEFFRIES: And Emil, this for the record

-- I want to say that Ms. Stiefel (phonetic) is a veteran representing herself.

MR. TONONCHI: Thank you. Is Ms. Stiefel (phonetic) here?

MR. ROBERTS: She's in the meeting, but she has to enable her sound and video, if you can hear me.

MR. TONONCHI: Thank you. If you can hear me, Ms. Stiefel, in the lower left-hand corner, there's a mute button or as an audio button. We'd ask you to connect to audio, the computer audio option. Are we having any success yet?

MR. ROBERTS: No, it still looks like she needs to enable audio and video. I can let in the next person if you'd like.

MR. TONONCHI: Please do, and if someone could work with her to get her video and audio enabled during the next commentary, that would be great. Thank you.

MR. ROBERTS: I'm admitting Michelle Poitier (phonetic) who is a veteran representing herself.

MR. TONONCHI: Thank you so much. Hello, Ms. Poitier (phonetic). Is that the correct pronunciation?

MS. POITIER: Yes, it is. Good afternoon.

MR. TONONCHI: Good afternoon. You have three minutes to comment.

MR. POITIER: Okay. Well, good afternoon, my name is Michelle Poitier (phonetic). I'm a veteran who served in the U.S. Navy for 13 years as a cryptologist. I'm here today to ask the Department of Education to prevent for-profit colleges from targeting veterans with false promises, leaving us with crushing loan debt and worthless degrees.

After I was honorably discharged from the military in 2003, I decided to use my GI Bill and Voc Rehab benefits to pursue a college degree.

In 2006, I enrolled in the University of Phoenix in the business management program. As I was in the process of getting my benefit set up, the school had me sign a lot of documents, which I didn't realize at the time that I was also signing up for loans that I never requested, and I did not want.

I graduated with a bachelor's degree in 2010, but remained in the dark about the loans. I first found out about them when I tried to purchase my first home.

I applied for a home loan and then I started receiving letters in the mail that I had about \$30,000 worth of student loan debt.

The University of Phoenix had told me that my GI Bill and my Voc Rehab benefits would cover

everything. And that wasn't bad enough, but after looking for a job in my field for more than a year, I realized that I couldn't get an interview, let alone a job.

So, the Phoenix degrees really aren't worth the paper that they're printed on, and certainly not worth going into \$30,000 worth of debt for.

I enrolled in Phoenix hoping to secure a six-figure salary as a business executive then. They told me it was all but guaranteed, but I graduated in pretty much the same situation that I was in before I enrolled, except now that I had debt hanging over my head.

I could never find a job that paid the bill, let alone work in the chosen field that I desire. So, I ended up starting my own company as an inspirational speaker.

This has worked out for me professionally, but my credit is still in ruins. Even after my loans were discharged, I'm still fighting tooth and nail for more than 11 years to get the loan debt that never should have been there in the first place wiped from my credit report, and to this day, it still hasn't happened.

So, all of this has greatly impacted my quality of life, my mental health and stress levels. I have complex post-traumatic stress from my days in the military and I'm now 100 percent disabled. So, problems

that have only been exasperated [sic] by the hassles with (inaudible). I want to --

MS. MACK: (interposing) You have 30 more seconds, ma'am.

MS. POITIER: I wanted to share my story with you today in hopes that no other student is allowed to be targeted by a school like Phoenix and forced to go through what I've been through. I also want to thank you for the TPD process because I did get my loans cancelled after the VA gave me that 100 percent disability rating, so thank you for making the TPD work for veterans.

MR. TONCHI: Thank you, Ms. Poitier (phonetic).

MS. POITIER: Thank you.

MR. TONCHI: I understand that Stephanie Stiefel (phonetic) is ready to speak. However, she will be joining us via audio only. Ms. Stiefel (phonetic), are you there?

MS. STIEFEL: Yes.

MR. TONCHI: Please, correct my pronunciation.

MS. STIEFEL: No, you said it perfectly. I'm so sorry. I didn't hear anything before.

MR. TONCHI: Okay, yeah. Okay, so, Ms. Stiefel (phonetic), you are a veteran representing

yourself. You have three minutes to make a public comment.

MS. STIEFEL: Thank you. Good afternoon, my name is Stephanie Stiefel (phonetic). I'm here today to tell my story in the hope that what happened to me will not happen to anyone else. When I was 18 years old and attending the University of South Florida, I attended a career fair to look for employment outside of the normal minimum wage retail jobs.

The International Academy of Design and Technology was at this career fair and their counselors spoke highly of their programs. I told the counselors at IADT that I was really struggling with the large class sizes at USF. And they told me that the class sizes at IADT were small and that getting one on one time with professors was simple. These counselors also made the program at IADT sound appealing because they said graduating from their programs would provide a promising lucrative career in big name design firms.

At this point, I was very interested and I set up a tour at their school. During the tour, I was told that it was a great school and even if things didn't work out, or if I didn't like it, whatever classes I took there could transfer to any other school that I wanted.

So, shortly after, in October of 2005, I

enrolled at IADT. I started taking classes. I felt pretty quickly that most of the classes I was taking were just to check in the box. I was not trained on some of the advanced software that was needed for certain projects that were assigned to me and I was given minimal instructions.

It did not matter if the work that myself and my peers turned in was stellar or just terrible, we could receive passing grades regardless.

IADT told me that they help their students get jobs. After graduation, I moved from Tampa to Los Angeles, and I called IADT's Career Services Office to get career assistance, but I was told that since I still did not live near school, they could not help me.

I applied to every interior design related job I could find for both big and small firms. Many firms didn't even call me back. And then when I did get lucky enough to have an interview, it was always with the reception or for a receptionist or an assistant type job, doing clerical work, jobs that I could have gotten with a high school diploma without ever attending college.

All of these jobs paid minimum wage, and I certainly was not going to make ends meet making minimum wage in Los Angeles.

In fact, I found out that I could not even

be a junior interior designer until I spent a certain amount of time practicing under a licensed interior designer and became licensed myself.

IADT did not tell me any of this. They made it seem like it was likely to be working as interior designer and making more than minimum wage right out of school upon graduation.

MS. MACK: (interposing) You have 30 more seconds.

MS. STIEFEL: To this day, I have not found a career in interior design. Instead, I work for the Department of Homeland Security as an explosive canine handler. I also served in the United States Army.

And after many years of mental health deterioration -- like the previous speaker said, I was lucky enough to have my loans discharged upon receiving 100 percent disability rating.

I do thank you for that benefit that I receive now. But my time spent at the IADT where I graduated with a bachelor's degree was a complete waste of my time. And the year spent after that fighting for loan discharge and to be heard with this story was very negative for my life.

MR. TONCHI: Thank you, Ms. Stiefel (phonetic), for your comments. I understand the next

public commenter is Mike Pierce, representing Student Borrower Protection Center. Please proceed, Mr. Pierce. You have three minutes.

MR. PIERCE: Thank you so much for the opportunity to join everybody today. My name is Mike pierce. I am the policy director of the Student Borrower Protection Center and I'm here on behalf of 45 million Americans who owe student loan debt today.

For far too long administrative fixes to consumer protections for student loan borrowers in distress, particularly IDR, have been prospective. They've shut out millions of people that have debt today from any possibility of debt cancellation, and in some cases, even from immediate debt relief.

Any effort here to be able to reform income-driven repayment, Public Service Loan Forgiveness, and even some of the discharges for borrowers that are disabled or in distress, as a result of a school closure or due to fraud by their school -- these changes need to be retrospective, not just prospective, they need to look backward.

It's also important that any changes to these consumer protections are inclusive, make sure to offer the same kind of safety net to parent borrowers or borrowers in default.

The two-tiered system that we've created in particular for borrowers in default has really undermined the principles that Congress intended when creating a student loan safety net, whether that is income-driven repayment or Public Service Loan Forgiveness.

We'd also urge that any action here taken through rulemaking is paired with executive action to ensure faster implementation. And in that vein, we were heartened to see on Friday that NPR reported big changes were coming to the Public Service Loan Forgiveness program to provide additional avenues to access PSLF for many borrowers who've been shut out to the -- by the program to date.

It's critical that negotiators be fully briefed on what these changes are before they're asked to negotiate new rules for PSLF. Any new changes to PSLF executive action need to work hand in glove with new rules to ensure the program lives up to its promises.

I want to close by emphasizing that the student loan system itself is brutally punitive. From interest capitalization to payment shocks, the costs for borrowers in programs are mishandled or when ED's vendors lie or cheat student loan borrowers is appalling.

The past decade has showed us that when things go wrong, it is always student loan borrowers that

are asked to pay the price, and that these administrative failures are inevitable. So the system needs to not assume perfection.

Instead, it needs to be able to tolerate failure, and it needs to make sure that borrowers are protected when things go wrong. Thank you again for the opportunity to comment today.

MR. TOTONCHI: Thank you for your public comment, Mr. Pierce. I understand our next public commenter is Karen Cody-Hopkins, an attorney.

MS. CODY-HOPKINS: (audio).

MR. TOTONCHI: Hello. Ms. Cody-Hopkins, there's background noise on your end. Can you hear me?

MR. ROBERTS: No, I think it's actually the livestream. So, if you wouldn't mind just turning that off or pausing it while you're speaking, you won't get that feedback.

MR. TOTONCHI: Thank you, Brady. Ms. Cody-Hopkins, are you able to turn off the public stream?

MS. CODY-HOPKINS: Yeah, I'm not sure. I can hear you. Can you hear me now?

MR. TOTONCHI: Yes, I can hear you.

MS. CODY-HOPKINS: Hang on.

MR. TOTONCHI: That's okay. That's okay.

MS. CODY-HOPKINS: Now?

MR. TOTONCHI: We can hear you and we can also hear someone else. (audio)

MS. CODY-HOPKINS: If I turn off the public stream, I turn off the sound, but let me try. Just a second.

MR. TOTONCHI: We can hear you, but the sound quality is very poor. And it's, I think, because we hear the public stream in the background.

MS. CODY-HOPKINS: If I change the sound --

MR. TOTONCHI: That's better. That's better. Let's go with that. Okay?

(audio)

MR. TOTONCHI: We'll move on to the next person. We'll see if you can get this sorted out on your own, but please close out of the public stream completely, and then we'll come back to you hopefully after the next speaker. Okay?

MR. ROBERTS: And I'll message you, but right now I'm admitting Theresa Sweet, who's representing herself.

MR. TOTONCHI: Thank you. Ms. Sweet, are you there? Ms. Sweet, can you hear me? Is Ms. Sweet's audio and video on? I see neither are on. Ms. Sweet, someone will have to (inaudible) because you cannot hear what I'm saying right now because your audio is not on. Here we

go. Excellent. Ms. Sweet, can you hear me?

MR. ROBERTS: It looks like her audio is not connected, but I'm talking to her now. Do you want me to admit the next person?

MR. TONONCHI: If you could, that would be great. Ms. Sweet, please standby if you can hear me.

MR. ROBERTS: It's Tyler Johnson, who is an attorney.

MR. TONONCHI: No, it just looks like Ms. Sweet just connected. Ms. Sweet, can you please speak?

MS. SWEET: Hi, can you hear me?

MR. TONONCHI: Yes, we can. Thank you so much.

MS. SWEET: Okay.

MR. TONONCHI: You have three minutes to make your public comments.

MS. SWEET: Okay, and I have my own timer set, so please don't interrupt.

Hi, my name is Theresa Sweet, I'm named plaintiff in Sweet v. Cardona. I'm here mostly to address members of the public who are watching because there are things that you all deserve to know about this committee, and I feel it's fair that I should scorch a little earth.

Despite having taken part in federally mediated interest-based bargaining in the past and

despite having the endorsement of more than 1500 members of the public, DOE did not see fit to grant myself or anyone else a seat at the table to represent borrower's defense to repayment, claiming long standing Department policy not to seat individuals who are named plaintiffs in active litigation against DOE.

Two additional and very well-versed BDTR advocates were also nominated and then voted down. DOE's claim about named plaintiffs does not hold up to scrutiny.

I think it's important to acknowledge that there are some true advocates on this committee, but I only have three minutes, so please understand the public does appreciate what you are doing. I'm available to speak to you anytime.

Now I'd like to address just a few of the committee members who have conflicts of interest so egregious that it's almost laughable to me that you could claim to be negotiating in good faith to protect students.

One of you works for ACCSC, an accrediting body that has a documented track record of poor oversight capabilities.

ACCSC has in the past allowed known bad actors to maintain accreditation in some cases for more

than a decade before finally shutting them down, including schools owned by the company that caused me to file my borrower's defense claim in the first place.

One committee member worked for a company called Education Corporation of America for nearly a decade. ECA was a for-profit education company that couldn't hold up to the scrutiny of gainful employment, and in 2018 they closed 70 of their campuses literally under the cover of night, leaving 19,000 students out in the cold with no answers, mountains of debt, and uncertain futures.

Another member of this committee was also a head Neg Reg negotiator under Betsy DeVos, when the decision was made to scrap the gainful employment rule, which had been one of the best protections available to protect students against fraud.

It is important to note that 98 percent of schools who failed the standards of gainful employment were for-profit schools and whose former students make up the overwhelming bulk of BDTR applications.

This committee member actually owns and operates their very own for-profit school.

Jessica Barry, based on your votes in your comments so far, you should have shown yourself to be a self-serving shill and you do not deserve a place on this

committee that will write rules specifically to protect students from people like you.

Like the more than 150,000 class members of Sweet v. DeVos, I've been waiting more than five years for a lawful decision on the merits of my claim.

The judge in my case has described the situation as disturbingly Kafkaesque and has said that students may have already suffered irreparable harm.

His words are not hyperbole. I have literally had class members who I have never met reach out to me and tell me they were considering suicide because of this inescapable debt. I have to talk strangers off suicide off a cliff.

You -- Yeah, here we are today. Hundreds of thousands of BDTR applicants have been shut out of the rulemaking process in favor of sharks suited for-profit lackeys and bankers, foxes guarding the henhouse.

DOE, in summation, your job is to protect students, not to welcome education profiteers to the table. You have let us down, and you should be ashamed of yourselves. BDTR deserves a vote.

MS. MACK: That's three minutes.

MR. TONCHI: If that was the three minutes -- Okay, thank you. Thank you for your public comments. Brady, who's next?

MR. ROBERTS: So, if Karen's audio is working, she is in the meeting. Karen, do you want to say something just to test out your audio?

MS. CODY-HOPKINS: Now can you hear me without the background?

MR. TONCHI: Yes, we can. Excellent.

MS. CODY-HOPKINS: My name is -- Go ahead.

MR. TONCHI: Please proceed. You have three minutes.

MS. CODY-HOPKINS: Thank you. My name is Karen Cody-Hopkins. I'm a student loan and bankruptcy lawyer in Denver, Colorado. I didn't ever expect to become a student loan lawyer. But in 2006, I went to bankruptcy discharge for a client with a very disabled child, and all the other attorneys in Colorado who knew nothing about student loans started referring clients to me.

So now I'm a student loan lawyer, and I've spoken to thousands of people in Colorado and sometimes other states who have had significant student loan problems.

You folks are here to represent the 45 million student loan borrowers, and if you add in their families, like Pam, who's also a borrower, but as a family member, then you are talking about probably a

third of the population who are going to be affected by what's going on.

And so, I'm going to skip over the kinds of comments the previous person made because -- although I agree with some of them about the fact that you're terribly unrepresentative for those 45 million borrowers -- it's important to remember that those 45 million borrowers are facing a broken system.

Yes, there are some people who navigate the federal student loan system successfully, but there are such a huge number in default or with other kinds of problems.

So, what I'm going to ask is that when you look through these rules and you get to the end, and before you finalize them, look for the broadest economic justice that you can provide and then you give the Secretary and the federal student aid operating officer as much discretion to deal with the incredible variety, and the many problems that come not so much just from the rules, but from faulty practices and policies that come out of these.

Specifically, I'd like to address -- I myself am disabled and for the TPD proposals, I thank the Department for making some very positive recommendations.

The only thing I would say about TPD beyond

what you're recommending is you were leaving out an entire class of people that I would appreciate it if you look at and that is TPD caregivers. The people whose children, spouses or family members or parents are totally disabled and they are trapped in the disable by having to be the caregiver sometimes paid for it but not very much.

And I believe eventually there should be a category for those people, but it may not be this round. But I'd ask that you start studying that because it's critical.

The second is under the closed school. Again, please give the Secretary more discretion.

MS. MACK: (interposing) 30 more seconds.

MS. CODY-HOPKINS: -- because the circumstances that come up are broader than the rules are going to cover.

Interest capitalization. We have generations now of people whose interest capitalization is leaving them with no retirement and no ability to do anything but feel hopeless.

The amount of hopelessness I see -- because I see borrowers in their 20s, 30s, 40s, 50s, 60s, 70s and a few 80s, and many of them feel hopeless, and the system of the interest capitalization --

MS. MACK: (interposing) we're on time.

MS. CODY-HOPKINS: -- (interposing) tripling their debt.

MR. TONCHI: Ms. Cody, please --

MR. HOPKINS: (interposing) Thank you for your work. We appreciate your work no matter who you are, but there is so much work to do. Thank you.

MR. TONCHI: Yeah. Thank you for your comment. To future commenters, going forward, you are to hard stop it. Okay? But thank you so much for your comments. Tyler Johnson, attorney, I understand you're our final public commenter of the day. You have three minutes to make your public comment.

MR. TYLER: (audio) Can you hear me okay?

MR. TONCHI: We can.

MR. TYLER: Thanks for holding this negotiated rulemaking. So, I am an attorney at legal service. My first name is Johnson, my last name is Tyler. Everyone gets that wrong, except for my parents.

I want to talk about the TPD rule -- our proposal here -- and why automation is really important.

So, in 2019, about 175,000 people applied for TPD, but the administration this year, when they automated it, they found over 300,000 people who are eligible hadn't applied for it. That's a huge number,

that's almost twice the number of people who apply.

In addition, that's in a category -- that's a minor category. It's a pretty small category. It's only one out of every ten Social Security Disability recipients fall into that category.

So, consequently, there are a lot of other disabled people who are very disabled, who should be getting their loans discharged, who are not. And in fact, people who go on Social Security Disability generally stay on for about ten years whereupon they either pass away or they retire and get social security retirement then, so it's a large group.

The other thing I want to talk about is what happens when you don't apply for this discharge. Often people have their social security benefits reduced by 15 percent. That's what happens when you're in default, that half people who have been applying on their own have been in default when they apply, and they're trying to stop that.

That has a huge impact on people, because with disability comes a low-income generally. It's very costly.

I have a client, Linda, who was on for ten years, during which time about \$6,000 were taken from her in social security, disability benefits.

And, consequently, she came to my attention because she's being evicted. And so, we had an attorney and the public assistance people involved in trying to save her housing and keep her out of a shelter, but she had been very sick. She'd been on dialysis. She'd had a kidney transplant and she never fell into any category that would have automatically discharged her.

So, I really want to applaud this idea that Bethany and John had been advancing, of measuring the automatic time period from the onset of disability.

Everyone who applies for disability has (audio) their onset, and the Social Security administration adjudicates a finding of when the disability began.

And just to -- it takes quite a bit of time to adjudicate a case. The average time is a little over two years for a claim that goes in front of an ALJ for their decision to be rendered, and most people end up at that stage.

There's just a lot of people who by the time anyone starts measuring it, they've been disabled within the meaning of the social security act for many months, if not years, prior their application.

That information is recorded in the onset date in the social security file. That's where I would

say the measurement should be happening, 60 months from that date --

MS. MACK: (interposing) You're out of time, Mr. Tyler.

MR. TYLER: Okay. Thank you very much.

MR. TONCHI: Thank you for your public comment, and thank you to all of the public commenters today.

Just a few final notes before we close for the day, we are just over time. Those who were on the waiting list that registered for public comments today, we encourage you to register for tomorrow since you didn't get to speak today. Okay, that's number one.

Number two, we recognize that there are a number of emails for the committee that we have seen throughout the day. We will respond to those as soon as possible, okay? including mailing out the language of documents that have been provided.

Last comments, I believe David asked a question as to when the Department would provide updated added edits of the language. That would be one week prior to the start of the November session.

So with that, I want to thank the committee. I want to thank the advisors. I want to thank everyone involved in the public commenters for their time

today. Thank you for the productive discussion.

We very much look forward to continuing with this very important discussion tomorrow morning, 10 a.m. Eastern. Thank you all and have a good evening.

Appendix

Department of Education, Office of Postsecondary
Education
Zoom Chat Transcript
Affordability and Student Loans Committee - Session 1,
Day 2, Afternoon, October 5, 2021

DISCLAIMER:

Note: The following is the output of transcribing from a recording. Although the transcription is largely accurate; in some cases, it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

From Bethany (P) Disability (she/hers) to Everyone:

One other question--do we have demographic data on the population?

From David (P) - State hi ed agencies to Everyone:

Just a reminder of my data requests:

From David (P) - State hi ed agencies to Everyone:

1. What data does the Department need "to define this more broadly and give more borrowers the opportunity to still re-enroll and get relief."?

2. What share of students who continue their education and apply for discharge get their request approved?

From Raj - Advisor Econ/Higher Ed/Data to Everyone:

In response to a question from Bethany (and a DM), there is not demographic data reported in the GAO report. It would be possible, with some work, to get an approximation of the demographic characteristics on the student bodies of the students who attended closed schools (from publicly available IPEDS data), but I cannot think of a good public source that would give demographic information on borrowers at those schools

From Bethany (P) Disability (she/hers) to Everyone:

Thank you!

From Raj - Advisor Econ/Higher Ed/Data to Everyone:

A few other takeaways from slides 3-8 in the presentation that I sent you but did not have an opportunity to cover: - Slides 3-7: Generally, for fields that are commonly offered at proprietary institutions, and where students typically get credentials, there are comparable programs at public institutions nationally (but not necessarily locally) - Slide 8: Research evidence suggests that when FP institutions lose ability to disburse federal financial aid, a prominent proportion have local options (within the same county) and enrolls at them (transparently my own work, so at the risk of seeming self-serving, but I believe it largely considered some of the best available evidence on this topic). To be clear, none of this work speaks to the costs of transfer, including financial costs and the difficulty of transferring credits

From Marjorie, (P) 4 Yr Institutions (she/her) to Everyone:

Apologies, I'm here. My connection is unstable.

From Marjorie, (P) 4 Yr Institutions (she/her) to Everyone:

Research on loan debt | College on Credit: A Multilevel Analysis of Student Loan Default | <https://doi.org/10.1353/rhe.2014.0011>

From David (P) - State hi ed agencies to Everyone:

Could we "cap the amount of unpaid interest that can accrue each month in IDR plans, waive interest for low-income borrowers, or pause interest accrual during periods of deferment or forbearance when borrowers are enrolled in such plans."

From David (P) - State hi ed agencies to Everyone:

These ideas came from here:

https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/24/upcoming-rule-making-process-should-redesign-student-loan-repayment?utm_campaign=LM+-+GP+-+PSBS+-+Negotiated+Rulemaking+092421&utm_medium=email&utm_source=Pew&subscriberkey=0030P00001zA3RBQA0

From Persis (P) Legal Aid (she/her), NCLC to Everyone:

-share of total loan portfolio balance that is interest (broken out by capitalized and accrued and by repayment plan)

-share of total loan portfolio balance that is interest broken out by race and sex

-Data related to the frequency of how often interest is capitalized for each of the capitalizing events

-How many borrowers have recurring capitalizing events

From Suzanne (state regulators) (A) to Everyone:

I would appreciate any available data from ED on the # of borrowers on IDR who are not recertifying on time and the resulting \$\$ of interest capitalization

From Joe (P); State AGs to Everyone:

Does return to repayment raise any capitalization events?

From Bethany (P) Disability (she/hers) to Everyone:

Hi Todd!

From Persis (P) Legal Aid (she/her), NCLC to Everyone:

Josh the legal aid will also take over the seat

From Joe (P); State AGs to Everyone:

State attorneys general would be happy to provide legal guidance to the Department on discreet issues of state law to the extent that a state law standard is adopted.

From David (P) - State hi ed agencies to Everyone:

One standard and the state standard up front.

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:

https://s3.amazonaws.com/dodmou/dodmouwebsite/documents/Appendix%20to%20Enclosure%203%20DoDI132225p_Change%204_SAMPLE.pdf - see paragraph 3j

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:

j. Have policies in place compliant with program integrity requirements consistent with the regulations issued by ED (34 C.F.R 668.71-668.75 and 668.14) related to restrictions on misrepresentation, recruitment, and payment of incentive compensation. This applies to the educational institution itself and its agents including third party lead generators, marketing firms, or companies that own or operate the educational institution. As part of efforts to eliminate unfair, deceptive, and abusive marketing aimed at Service members, educational institutions will:

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:

(1) Ban inducements, including any gratuity, favor,

discount, entertainment, hospitality, loan, transportation, lodging, meals, or other item having a monetary value of more than a de minimis amount, to any individual or entity, or its agents including third party lead generators or marketing firms other than salaries paid to employees or fees paid to contractors in conformity with all applicable laws for the purpose of securing enrollments of Service members or obtaining access to TA funds. Educational institution sponsored scholarships or grants and tuition reductions available to military students are permissible

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:

(2) Refrain from providing any commission, bonus, or other incentive payment based directly or indirectly on securing enrollments or federal financial aid (including TA funds) to any persons or entities engaged in any student recruiting, admission activities, or making decisions regarding the award of student financial assistance.

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:

(3) Refrain from high-pressure recruitment tactics such as making multiple unsolicited contacts (3 or more), including contacts by phone, email, or in-person, and engaging in same-day recruitment and registration for the purpose of securing Service member enrollments

From Greg Norwood to Everyone:

Thank you for sharing your story!

From Michaela (P) Ind. Students to Everyone:

Thank you Dixie!

From Bethany (P) Disability (she/hers) to Everyone:

Thank you, Dixie!

From Rachelle - 4 Yr Public (A) to Everyone:

Thank you for sharing examples Dixie

From Dr. McTier (A) Priv. & Non-Profit to Everyone:

I agree with Dixie!

From Josh (A), Legal Aid (he/him) to Everyone:

https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf

From Josh (A), Legal Aid (he/him) to Everyone:

P 67 of the pdf, 61 of the report

From Joe (P); State AGs to Everyone:

I appreciate Dixie's comments. Student voices are very important in this process. I support including more.

From David (P) - State hi ed agencies to Everyone:

I feel the same way

From Bethany (P) Disability (she/hers) to Everyone:

I have nothing to add to Josh's and Justin's comments.

From Heather (P) - Accrediting Agencies to Everyone:

I had a thumbs down on the last ... no new reasons other than what was mentioned.

From Joe (P); State AGs to Everyone:

Eric, the state AG alternate, will be taking over for our constituency at 3pm EST. Thanks to all for the robust discussion today,.

From Jennifer - ED negotiator to Everyone:

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-F>

From Jessica (P) Proprietary Schools to Everyone:

Replace "job placement rates" with "employment outcomes"

From Rachelle - 4 Yr Public (A) to Everyone:

Transfer credits are different than applicability to program requirements. Good point Jeri.

From Michale - Accreditation (A) to Everyone:

ACCSC has a definition that would not allow an "employed-in-field" classification for non program related employment.

From Bobby (P) Two Year Public Colleges to Everyone:

With regard to omission/misrepresentation: An institution may misrepresent a requirement for job placement by stating a need for a level 2 certificate or AAS certificate when a level one will suffice for appropriate job placement.

From Dixie (P) Dependent Students (ella/she) to Everyone:

Definition of omissions: Lying about course offerings (especially courses that have not been offered in a certain number of years but will have the courses listed on their course listings and websites and/or a part of a degree completion pathway)

From Jeri (P) (she/her), Student Loan Borrowers, Primary to Everyone:

students make decisions based on those outward facing advertising.

From Michale - Accreditation (A) to Everyone:

DEfinition of Misrepresentation:

From Michale - Accreditation (A) to Everyone:

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-F/section-668.71>

From Bethany (P) Disability (she/hers) to Everyone:

sideways with the addition of course offerings

From Heather (P) - Accrediting Agencies to Everyone:

Program length may capture the concern about the steady offering of courses in an academic credential.