

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NEGOTIATED RULEMAKING
STUDENT DEBT RELIEF COMMITTEE
SESSION 4, DAY 2, MORNING
FEBRUARY 23, 2024

On the 23rd day of February, 2024, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MR. ROBERTS: Good morning, everyone, and welcome to this final day of session four and of the Student Debt Relief negotiated rulemaking process hosted by the Department. My name is Brady Roberts with the Federal Mediation and Conciliation Service. And I'd like to kick us off with a quick roll call. So representing civil rights organizations, we are joined by Wisdom Cole.

MR. COLE: Present.

MR. ROBERTS: Morning, Wisdom. His alternate India Heckstall might be a few moments delayed in joining us, but she will be joining us. Representing currently enrolled borrowers, we have Jordan Nellums.

MR. NELLUMS: Good morning. Here.

MR. ROBERTS: Morning, Jordan. Representing FFEL lenders, servicers, and or guaranty agencies, we are joined by Scott Buchanan.

MR. BUCHANAN: Good morning.

MR. ROBERTS: Good morning. Representing historically Black colleges and universities, tribal colleges and universities and minority serving institutions, we are joined by Carol Peterson.

MS. PETERSON: Morning.

MR. ROBERTS: Morning, Carol.

Representing legal assistance organizations for borrowers, we are joined by Scott Waterman.

MR. WATERMAN: Present.

MR. ROBERTS: Morning, Scott.

Representing private, nonprofit institutions, we are joined by Angelika Williams.

MS. WILLIAMS: Good morning. I'm here.

MR. ROBERTS: Morning, Angelika. And we are joined by her alternate, Susan Teerink.

MS. TEERINK: I'm here. Thank you.

MR. ROBERTS: Morning. Representing proprietary institutions, we are joined by Kathleen Dwyer.

MS. DWYER: Good morning.

MR. ROBERTS: Good morning, Kathleen. And her alternate Belen Gonzalez. I haven't seen her join quite yet. Representing public institutions, both two and four year, we are joined by Dr. J.D. LaRock. I don't think Dr. LaRock has joined us yet either. But we'll let you know once they join us. Representing state attorneys general, we are joined by Yael Shavit.

MS. SHAVIT: Good morning.

MR. ROBERTS: Good morning. The alternate position for state attorneys general is still vacant. Representing state officials of higher education,

we are joined by Lane Thompson.

MS. THOMPSON: Hello.

MR. ROBERTS: Good morning, Lane.

Representing student loan borrowers from institutions two year or less, we are joined by Ashley Pizzuti.

MS. PIZZUTI: Good morning.

MR. ROBERTS: Good morning, Ashley.

Representing student loan borrowers of institutions of four years, we are joined by Sarah Christa Butts.

MS. BUTTS: Good morning.

MR. ROBERTS: Good morning.

Representing student loan borrowers from graduate institutions, we are joined by Dr. Jalil Bishop.

DR. BISHOP: Good morning.

MR. ROBERTS: Good morning. And

Richard Haase.

MR. HAASE: Good morning.

MR. ROBERTS: Good morning, Richard.

Representing veterans or veteran organizations, we are joined by Vincent Andrews. I believe he's also going to be a few moments delayed. So he's not joined us quite yet. We'll let you know when he has. Representing student or sorry consumer advocacy organizations, we are joined by Jessica Ranucci.

MS. RANUCCI: Good morning.

MR. ROBERTS: Morning, Jessica. And her alternate Ed Boltz.

MR. BOLTZ: Good morning.

MR. ROBERTS: Of our nonfederal negotiators, we are lastly, joined by individuals with disabilities or organizations representing them, Mr. John Whitelaw.

MR. WHITELAW: Good morning.

MR. ROBERTS: Morning, John. From the Federal side of things, we are joined by our Chief Federal Negotiator, Tamy Abernathy.

MS. ABERNATHY: Good morning.

MR. ROBERTS: Go ahead, Cindy.

MS. JEFFRIES: Brady. I think we inadvertently missed Melissa Kunes.

MR. ROBERTS: Oh, I apologize. Sorry. Melissa.

MS. JEFFRIES: Thank you.

MR. ROBERTS: Got too excited to dive into the regulatory text. But also joining us from the Department, the Office of General Counsel, we are also joined by Soren Lagaard.

MR. LAGAARD: Good morning.

MR. ROBERTS: Good morning, everyone. Was there anyone else that I inadvertently skipped? And

apologies for that, Melissa.

MR. ROBERTS: Okay. Any old business to attend to before we dive into the business of the day? Not seeing any hands. Did everyone receive a copy of the updated regulatory text last night? Is anyone missing it? Alright. Unless there's something else to attend to. Tamy, I would turn it over to you and your team to walk the committee through the modifications made following session one yesterday.

MS. ABERNATHY: Thank you, Brady. Welcome back everyone and Happy Friday. As a reminder, this is the final negotiated rulemaking session on Student Debt Relief. We provided regulatory text. Excuse me. We provided revised regulatory text for your consideration last evening, and we plan to have the final consensus vote on the proposed regulations later today. Thank you all so much for the contributions to yesterday's productive discussion and your feedback on this proposed regulatory text. We appreciate all the comments, suggestions, and submitted proposals that we received, and we have reviewed and considered each one very carefully. Let us walk through those proposed changes now and as we go through them, I want to note that we are only showing you changes we think are appropriate for the regulatory text. There are several

other items brought up that we agree with, but we think that are not necessary for the actual text, but they would be captured in our preamble. And I believe the screen sharers are already sharing that amended proposed regulatory text. First, we agree with the suggestion to change the title of the regulation to refer to waiver rather than forgiveness in order to make it consistent with the other provisions and subpart (g). We have made this change. For paragraph (a), we received a suggestion to add language that the provision applies whether or not such loan has been reduced to judgment. We appreciate the suggestion. However, we do not believe this needs to go into the regulatory text, but we will work to include as many loans as possible under this provision. For paragraph (b), we received several suggestions. First, we received the suggestion to be more explicit that the provision also applies to parent borrowers, and for parent borrowers, the indicators of hardship may be related to the parent borrower or the student on whose behalf the parent borrowed. As a reminder, this language is added to part 30, subpart (g). There are no restrictions within that section related to the type of loan, which is unlike the regulations related to the Income Driven Repayment Plan regulations. So we will clarify in the preamble of our negotiated notice of

proposed rulemaking that this language also applies to Parent PLUS Loans, but we do not feel the need to include this in the regulatory text. We also received a suggestion to add more factors in paragraph B, such as bankruptcy status. We have not made this change because the bankruptcy process has certain rules and requirements, and we do not think it is appropriate to address those through this regulation. We also received suggestions about adding service or errors to the factors showing hardship. We do not think this change is appropriate to make here. As we noted, the Department takes action in multiple ways when we discover servicer errors. In widespread cases, we provide automatic corrections to many borrowers, such as the account adjustment or when we place some borrowers into forbearance in the first months of the return to repayment. We also have processes for individual correction of errors, which may be handled through our ombudsman's office. We think it is critical that errors be caught and identified. However, that is different from the other situations we are identifying here that are signs of hardship. There were also several suggestions. Excuse me. There were also several questions and suggestions to add more specificity to how we were using certain terms. Overall for the factors in paragraph (b),

we do not want to get too specific in the delineation of certain terms, because these factors are just examples, part of a non-exhaustive list, and the Department wants to retain the flexibility to consider these factors broadly. For example, the Department does not think it appropriate to further define what we mean by household in the regulations, because we can describe this in the preamble and want to retain breadth and flexibility. The same is true for disability. The Department thinks it is better to keep the factor broad to maintain flexibility. We also received the suggestion to consider high-cost burdens such as housing. We would like to point out that factor 15 does consider high-cost burdens for essential expenses, including housing. As for the suggestion to take into account regional housing cost variations, nothing precludes the Department from considering housing costs based on regional areas. And as before, we think it's better to keep the factor broad to maintain flexibility. Moving on to factor six. Based on your feedback, we removed the term consumer to make it less limiting and preserve the Secretary's discretion to consider different types of total debt balances. For factor seven, we received a question with regard to its reference to the FAFSA and what we intend to include. We have not changed the text but want to clarify our

interpretation that this would include information submitted by the borrower and their family at the time the loan was made. For instance, we can learn things on the FAFSA, such as whether a student's parents attended college or if they were homeless or foster youth. For factor eight, we have changed the term sector to type based on your feedback. Factor nine, we've taken the suggestion to change the language, so it is clear that the Secretary can consider typical student outcomes associated with any program or programs attended, rather than the last one attended. We agree with making this language more flexible and broader. We also received the suggestion to add a number of factors such as natural disasters, loss of a caregiver, racial and economic disparities, historical debt patterns, and Parent PLUS borrowers, among other factors. We have not added those factors at this time. We think other factors would help to capture these borrowers who are experiencing hardship, and factor 17 already permits the Secretary to identify other indicators of hardship where appropriate. Turning to paragraph (c), the Department has accepted the suggestion to change the word discharge to wave in accordance with the Secretary's authority and other provisions in subpart (g). The Department thanks the Committee for this feedback. We also received

recommendations to remove the Secretary's discretion to waive all or part of debt and to change the threshold from 80% to a standard of more likely than not. The Department has not taken those suggestions at this time, but we appreciate the input we received. We want to point out one more thing from the end of paragraph (c), the version we sent out last night inadvertently excluded the final clause of that paragraph. What we shared before this session was that this would apply to borrowers likely to be in default in the next two years after the effective date of this regulation. We are proposing to change this from effective date of this regulation to publication date. We wanted this change because it helps us with the construction of our model. We do not think this would appreciably affect the number of discharges. Moving to paragraph (d), the Department has added the term including automated relief, to clarify the type of relief that the Secretary may provide under this paragraph. The Department has not taken the other suggestions, but we want to restate that the Department also likes automatic processes and interagency matches, and the Department is committed to pursuing automated relief where it makes sense. And the Department can specify this in the preamble. We are proud of our work on the matches for total Permanent Disability Match and for

PSLF. However, we do not think inter-agency data-sharing agreements should be written into the regulatory text since we cannot regulate other agencies and the provision already specifies the Secretary may use data in his possession, which could include data obtained through such agreements, and as such, future agreements could be accomplished without needing to include them in the regulation. We also received a request to provide an example of a borrower who would receive benefit under this proposed regulation and a borrower who would not. We think the proposed text sufficiently provides specificity about how the Secretary would exercise his discretionary authority. We do not think hypothetical examples are helpful, because the Secretary's discretionary determination would depend on all of the particular facts of a situation, which may include the factors described and that we have discussed in paragraph (b). We're going to turn it back over to FMCS for any questions or additional discussion at this time.

MR. ROBERTS: Alright. Thank you, Tamy. I did see one question in the chat. Jessica, did you want to come off mute and just speak about that?

MS. RANUCCI: I just wanted to point out to the Department, unless I'm missing something, I think the version of (c) that you showed on the screen

with the brackets is not the same one that was emailed to us last night. So I doubt that's what you want but I just wanted to clarify that there are now three versions, I think the original one that you emailed, the one you emailed last night, and then the one you showed on screen.

MS. ABERNATHY: Right. You're talking about the addition of the publication date. Yes, I did address that in the remarks that we did send you a version last evening that was- and also posted that inadvertently left out that clause. So that's why you got- we did it on screen so that we could address it with you guys this morning.

MS. RANUCCI: Okay. Got it. I just thought you were talking about the first one. Anyway. There's three. As long as we got it that's fine. Thanks.

MS. ABERNATHY: Sorry for the confusion. Thanks for clarifying.

MR. ROBERTS: Thank you. Any other questions? Comments? Yeah. Richard, please.

MR. HAASE: Hi. Good morning, everyone. First I just want to start by thanking the Department and also, you know, recognizing the commitment of the Biden-Harris Administration. And really, I think tackling this work, I know, I feel like it's been an

interesting experience. I've learned a lot. I think looking at the proposed regulations that you guys brought to the table, based on our recommendations from November and December the work we've done around hardship, I think, really has the potential to help a lot of people. And I just want to applaud the effort at doing that. I think all too often there are branches of Government that fail to help people when they truly need it. And I think that this is work that really has the potential to help a lot of people. I do want to kind of bring that back to some of the testimony a little bit from yesterday and to a question or more of a request as you continue to do this work moving forward. One of the things that, you know, I found inescapable and common, you know, across all of the testimony that we've heard, not just yesterday, but moving forward was how tragic so many of the stories are that we've heard time and time again from, you know, borrowers across the age spectrum, across the economic spectrum who've tried to do everything right. And again, I'm really grateful that hopefully some of what we're doing here will actually be able to help them come out from under the crippling student debt that they've been dealt. But I think one of the things that came up and it's really apparent from a lot of the testimony, is how widespread servicer error is in

creating the hardship that they experience. Yesterday, a number of people who testified cited it directly, but even the ones who didn't, you know, when you hear someone who's 68 years old who owes four times or five times what they borrowed 30 or 40 years ago, it's almost impossible not to connect the dots. So I did hear you, Tamy, and I do recognize that there are programs in place and that there are efforts that are taken to try and address servicer error when it's identified. But I have to just again, as you move forward from these regulations, I can't- I really would be remiss if I didn't say, like, anything we can do to expand and improve those efforts would be really helpful because clearly, based on the testimony, there's a lot of error out there. And it is what's often in these cases, more than just a student loan in general, like someone borrows a small loan and they're paying it back. Those are the tragedies that we hear. I think the really compelling stories come from people whose loans have been mishandled and compounded in ways that make them impossible to climb out from under. So again, thank you so much, you know, to the Department, to everyone in this room to the Biden Administration for really trying to help people who need it. And I would just again, as my parting comment here really request that anything else we can do to expand our work into

tackling servicer error would be really critical. Thank you.

MR. ROBERTS: Thank you, Richard. There was a bit of a shuffle in the line, but we'll go to John next. I have his hand first.

MR. WHITELOW: I have some comments that I want to make about the automation later, but I just want to echo and make some broader points about servicer error. I think I want to take a step back. The whole point of hardship as a specific area, my understanding, is to capture those circumstances which are not captured by some other program or some other mechanism of providing waiver. So, for example, the area where I have the most knowledge disability. I think everyone understands that there is a TPD discharge for people who meet the requirements of that, but that doesn't necessarily capture people with disabilities who are experiencing significant hardship. The same with Income Based Repayment. Everyone here understands that we have an Income Based Repayment Plan, but my understanding of the whole point of having a hardship as a separate entity is for people who are suffering hardships that do not quite fit within any other mechanism for relief. And it seems to me that, notwithstanding the Department's best efforts, and notwithstanding everybody's good faith,

there are going to be cases where service error occurred. There is no remedy for that through looking at the service error, but that we would want that to be taken into consideration for hardship. And while I think there is a strong argument to be made that it could be covered in the catchall, which basically says and everything else, I do think it is important to include it as a specific category, to message to people that they should feel free when they are asking for a waiver based upon hardship to set out servicer errors that can have contributed to the hardship as we heard through the what I thought was devastating testimony of a public comment yesterday. In ways that, again, notwithstanding the Department's good faith to correct errors, not even withstanding the servicer's attempt to correct errors. We all know when you are working with millions of people and lots of agencies to use an overworn frame. Mistakes happen and not every mistake is correctable through the mistake correcting functions of both the servicers and the Department. So I do think that it would be important to have the message sent so that folks who are suffering hardship as a result of servicer errors know that that can be included in their ask for a waiver and that the Department may, again may, consider it. So I agree with the earlier comment that that is a specific example that

should be included. I also want to echo my gratitude for the Department for coming back to us this week to talk about hardship. Hardship is difficult. It's difficult to quantify. It's difficult to set out. And I do want to commend the Department for both coming back to us with it and for making the changes that were made overnight, even though, as always, I think from the advocate side and I suspect you all know this, it's never going to be enough. Right? We always want more. But I do really urge you to reconsider on naming hardship specifically and to add it and then I will comment a little bit later on the last part about automation. Thank you so much.

MR. ROBERTS: Thank you, John. Lane, we'll go to you next.

MS. THOMPSON: Yeah. I just wanted to talk about FFEL borrowers for a second. I know that folks with commercial FFEL Loans are able to consolidate those into a Direct Loan and then get some of the benefits. That doesn't always appear to be a sufficient process for everyone who has an FFEL Loan. So I wanted to just tell y'all a little story. One of my borrowers went to school undergraduate degree finished in the 90s and has been paying off her debt since then. So she has FFEL Loans that she thought would be canceled under the account adjustment. Well, going back through the servicing, some

of those servicers did not keep records. So when you go back, it looks like the first loan she ever had was a consolidation in 2010. Well, that's not true. She had loans before that, right? They just can't find the information on it. So I think that for her, that's a perfect example of where a servicer's error did actually cause the hardship that she's experiencing. The account adjustment should have taken care of that for her. And it didn't. People with FFEL Loans didn't decide to get those loans. And I just am hearing more and more from folks who are very exasperated that they need to take action in order to access benefits that are automated for other people. And I understand that's not within the Department's control completely. And at the same time, these were Federal Loans when they were made. So I think it's really important that we don't forget about these borrowers and that we don't ignore them just because we don't have the same kind of control over those loans. Thank you.

MR. ROBERTS: Thank you, Lane. Yeah, Yael.

MS. SHAVIT: Thank you. First I want to amplify Lane's point here. I think this is a critical point. And the Department, as part of this process, should take note of places where there are information

gaps as a result of the conduct of past servicers or other actors that are not the borrowers themselves and ensure that borrowers aren't the ones left bearing the burden of that type of information gap. Where it exists, it's the servicer that caused it and the borrowers should get the benefit of the doubt. But that aside, you know, I do also, though, at this point it's been said a lot. I think it could be said more, I thank the Department for engaging in this process. I'm very enthusiastic about it. And I realize that it was a lot of work. The points I want to make now are kind of process points going forward. I think a lot of the question of how effective these regs may be will have to do with how accessible borrowers actually find the non-automated provisions or parts of these regulations going forward. And there is no way around the fact that from the Department's perspective, some of this may be complicated, but it really needs to be made as simple as humanly possible for the borrowers themselves. And that includes not only the actual forms to the extent they exist or, you know, are they online? Are they paper? How are they submitted? Like those types of minute pieces, but also what the Department will accept as a demonstration of hardship. You know, there were some conversations specifically about, you know, forms that doctors need to fill out

versus accepting letters from doctors themselves. I think that's one good example, but it's not comprehensive. I think to the extent that these are the provisions that are intended to capture people who are experiencing any, you know, many types of hardships who aren't captured by other debt relief provisions that exist. It needs to really be as broad as possible to allow borrowers who are facing some of the worst hardships, who may be the ones least able to marshal the specific types of papers that would be, you know the most predictable, let's say. It's going to be really difficult and I think the Department, I'm sure, is approaching this with sensitivity. But I do want to encourage the Department to, you know, consult with the appropriate communities and the appropriate actors who may have a lot of experience thinking about how, you know, certain communities may understand requests put in paper. I think the more preemptive outreach the Department, sorry, the more preemptive outreach the Department can do to get the input from various communities from a wide breadth of communities, the better, including, you know, disability advocates and the like, to make sure that the process is as effective as I think the regs are going to have the potential to be. So thank you.

MR. ROBERTS: Thank you. Jessica, see

your hand next.

MS. RANUCCI: Thanks. At a high level, I want to echo what others have said. I thank the Department for putting out this proposal, for taking our suggestions both before the session and in yesterday very seriously for taking a swing here to do waiver based on financial hardship. I also want to echo what my colleagues have said about servicer problems and also just to give a couple more examples of what Yael was just discussing. You know, in my job, we often see borrowers with significant obstacles to obtaining relief. You know, we work with, you know, for example, a borrower who's unhoused and living in a shelter, who doesn't have a stable address, who doesn't have access to the internet, is a difficult person to interact with, you know, to help get a discharge to which they might be entitled, for example, because they need a mailing address to contact their servicer. They need everything done on paper. I also have had an extensive series of conversations with the Department about helping monolingual Spanish speakers, for whom many available avenues of relief are essentially inaccessible, including all disability-related information, because it's just not available in Spanish. Even though there are millions of Spanish-speaking student loan borrowers, not to mention all of

Puerto Rico. So I think that really thinking through the practical ways that this relief is addressed is really important. I'm not sure, Tamy, just from a facilitation point, if we're going to go provision by provision, is it okay to ask something about (a) now or do you want to hold off?

MR. ROBERTS: Tamy, you weigh in if you disagree, but I would say go ahead and pose the specific questions.

MS. RANUCCI: Thanks. I was heartened to hear your answer about judgments, but I just want to be very clear that I'm understanding you correctly. So I think what I understood you to be saying is that you didn't feel the need to include the language that specified that this would apply to student loan debt that has been reduced to judgment, because the Department's interpretation is that the language, as it stands, would extend to student loan debt that has been reduced to judgment. Again, understanding there may be other legal framework that also applies to those debts that have been reduced to judgment. Could you just clarify, if I'm understanding correctly, that the Department's position is that judgments would count here? And also, would you be willing to put something to that effect in the preamble?

MS. ABERNATHY: Yes, we are- we don't believe we need to specify in the regulations, because there are a number of ways we want to be able to leave that broader for all of the ways that a borrower could be experiencing hardship. I can't really speak to whether or not we would officially address that at that level of specificity in the NPRM. But what I can say is that we, you know, would have an opportunity for public comment on that when we do publish that notice of proposed rulemaking.

MS. RANUCCI: Thank you. I just want to say, you know, I work with a number of borrowers who have judgments, as I was explaining, you know, in Brooklyn, Queens, and Staten Island, all you needed was a \$600 Federal student loan debt in order to be sued on a judgment in the Eastern District of New York. So we see a lot of those judgments here, including for low dollar values. And I just think those borrowers have really, really limited opportunities for relief. So if the Department is, I think it's critical that this framework does not exclude those borrowers and anything the Department can do that would make it clear that those borrowers are not somehow inherently excluded from this relief would be really valuable.

MS. ABERNATHY: Well, we certainly

agree with you that we'd like for them to be included, and we will work toward that. But it is subject to a whole line of things coming forward. So thank you, Jessica.

MS. RANUCCI: Thanks.

MR. ROBERTS: Thank you both.

Apologies for not mentioning this sooner, but Jalil is coming in on behalf of graduate student borrowers. But first, we have Angelika. Your hand, go ahead.

MS. WILLIAMS: Thank you, thank you. And thank you, Tamy, and the Department for the revised text. I was the individual that brought up natural disasters. And I want to expand on a little bit of why I mentioned the need for that particular item to be explicitly stated because I feel like it's a common factor. So I'm looking at the factors that are listed and the factors that are common and impact many borrowers. We're talking about past and current borrowers. So we're talking about victims of Hurricane Katrina, Hurricane Rita, and Hurricane Harvey in addition to multiple issues with the California wildfires. And so I do understand that when we have regulatory text in this realm, a lot of this text is copied and pasted into the application. And then going back to the previous note of the Department asking, why aren't borrowers applying for relief?

Sometimes it's easier to make a lot of things more explicit in the communication and make it more clear in the communication. There are options for applying for relief or waivers. And so that's why I wholeheartedly mentioned about explicitly mentioning natural disasters because it does impact many borrowers. My last note is more so of a question, because I brought up yesterday about the text to number 7, and I just want to get clarification when it says- or as its stated about other information from the FAFSA. Are we talking about the information on the FAFSA or the information as a result of the FAFSA? And that's just the question or clarification of what is that particular item. Because one, Pell Grant is a result of the FAFSA is derived from the FAFSA. It's not on the FAFSA. So I just want to make sure what do we mean by other information from the FAFSA?

MS. ABERNATHY: So as I mentioned in my opening remarks, a couple of those examples are looking at first generation like is a student a first-generation student? And gleaning some information if perhaps they are foster youth or homeless. Those pieces of information at the time that the borrower completed that FAFSA. That would be some information. So just some examples of what we're looking for. So Pell Grant recipient we have that information in our database. Like

we know who our Pell Grant recipients. But there is always some other information that we think that is pertinent to the data that remains on our system from the time that the borrower applied, that we could glean and try to further establish whether or not this borrower is experiencing hardship.

MS. WILLIAMS: Okay. Because from a financial aid administrator point of view, it's our understanding that the FAFSA data that's on the FAFSA is not available once the award year is closed. So not even a student can see in some cases or obtain that information after the fact. So how would this information be gathered from a previous borrower?

MS. ABERNATHY: So we have data available on our systems. So we would be able- so the whole purpose of that respective section is to look at when we're talking about both and process where the information that is available to the Secretary that information on our systems that we are able to see, we can get that information. It's also a process of application. So I don't think we're expecting a borrower to prove to us something that they completed on their FAFSA ten years ago or five years ago. That would not be our intent Angelika. Our intent is to streamline the application process, to make it as easy as possible for

borrowers to identify to us that they are experiencing some form of hardship. We certainly do not want to exacerbate the problem of hardship by creating a process that would be too cumbersome for a borrower to even tackle and requesting us to look at their respective situations for hardship. So I think as we can do it from the Department standpoint, we're going to glean as much information about a borrower as we can from their previous FAFSA forms that they've completed. Where they Pell Grant recipients? What were other indicators of data that we have on our system that could help us look and evaluate a student borrower's claim of hardship?

MS. WILLIAMS: Okay, Tamy, I appreciate that clarification. That helps out a lot.

MR. ROBERTS: Alright. Thank you, both. Jalil, go ahead.

DR. BISHOP: Thank you. I wanted to circle back to Tamy's opening remarks that I appreciate the acknowledgment to include Parent PLUS borrowers in the preamble and making sure that borrowers understand that this hardship regulation is targeted and meant for them, I think will be important. But I also, you know, have learned [inaudible] for advocacy work I've learned and, you know, being a student loan borrower, being a Black person navigating higher Ed policy, student loan

policy, is that it's really important to put your trust not just in what people say, but really in what they do. And I think for the Department, the question I have is how can Parent PLUS borrowers or borrowers who have had hardship where they've been on \$0 payment year after year. How can they trust what you're going to do based on kind of what you have done in the past? So when I think about Parent PLUS borrowers, when we look at some of the last commentary released and previous rulemaking, it was a suggestion that parents and student borrowers are different because parents have more stable earnings, that parents giving them some type of relief could create some type of moral hazard where they may borrow more, I think is the suggestion there. It also was argued that giving parent borrowers relief would not be and this is a quote it would not accomplish our goal of focusing on the loans at the greatest risk of delinquency and default, which again, suggests that parent borrowers are not a group that needs that type of support. And that really goes against the data where we know, particularly for Black and Brown Parent PLUS borrowers, that they often have a \$0 expected family contribution, they're one of the fastest growing groups in the Parent PLUS Loan portfolio, especially since 2000. So I'm just trying to understand if we have all this messaging that continues to say

Parent PLUS borrowers and borrowers who have \$0 payments aren't necessarily, again, the quote is a part of accomplishing the goal of targeting relief for those who experience the most at-risk outcomes. How can a borrower trust that this time they will be included if in past commentary you have said they're now a part of your goal of applying relief? So just trying to again, how can we send that message and make it clear in these regulations that Parent PLUS borrowers are included since they've been excluded from relief multiple times?

MS. ABERNATHY: So one of the ways Jalil, thank you for your comments, we really appreciate hearing your insight on this. One of the ways that I think this particular proposed regulatory text is a little bit different is because it specifically is for the type of borrowers that you're mentioning. It does not exclude them. It's not an Income Driven Repayment Plan. It is a very- it's a specificity around the Secretary exercising his authority over specific instances of borrower hardship. And the loans that are included are Department held loans of which are Parent PLUS Loans. So I believe our messaging in good faith when we craft our notice of proposed rulemaking, and we put this information out to the public, we can be very clear, as we mentioned in the opening remarks, we can say these are

the types of loans that are included. And give our very best effort for the information that's on our websites related to the specific information that you're detailing. There are ways that we can get the message and present a good faith effort to our borrowers. And we would employ all of those mechanisms across the Department to reach these borrowers that are experiencing hardship.

DR. BISHOP: So, Tamy, just a quick clarification. So are you saying that the Department now has a shift in language where before has said we do not believe extending the benefits to Parent PLUS borrowers would accomplish our goals. Are you saying now under this regulation, it would be made explicit that Parent PLUS borrowers would be a part of the benefits?

MS. ABERNATHY: This particular regulation is different. So this particular regulation talks about the Department-held loans and the Secretary's specificity around these particular regulations and different statutory goals. Right? So this is about offering borrowers of which in this particular instance, Department-held loans including a Parent PLUS Loan would be considered as loan borrowers that are experiencing hardship. So it's different in the sense that this particular very narrow provision of subpart (g) speaks

specifically to borrower hardship or Department-held loans. It's not about Income Driven Repayment Loans or Parent PLUS Loans, excuse me, PSLF or any of those types of things. This is a very narrow specific subpart. Another component to subpart (g).

DR. BISHOP: Okay. Thank you for the clarification. And what I'm hearing is also an agreement to make sure that borrowers, particularly Parent PLUS borrowers, are aware and made explicit that they're included in this regulatory text.

MS. ABERNATHY: Yes, we want any borrower who is experiencing hardship within the parameters of what this regulation is to feel that they can seek this benefit.

MR. ROBERTS: Alright. Thank you, both. Ashley, I have your hand next.

MS. PIZZUTI: Hi. Thank you. I also want to, you know, circle back and say thank you again for including the text for- on number eight, the type of school we heard yesterday from several for-profit borrowers who have been incredibly harmed by choosing the school that they went to yesterday, including myself. I want to circle back to servicer error a little bit and something that I've experienced, just speaking with a lot of the Sweet v Cardona members is that for many of these

loan holders, their servicers have changed either due through their own consolidation or the company has gone out of business and, you know, sold off the loans to somebody else. And for Sweet v Cardona members those who have paid on a Direct Loan are due a refund. So what we are finding now is that a lot of these servicers that have obtained the loans over many, many years do not actually have the payment history. And so a lot of these full class members that are due refunds are not getting the either correct amount of refund or they're not getting refunds at all because they don't have the payment history. Now, so I guess my question would be, is it going to be on the student to prove they were harmed in the servicer harm? Or how is that going to play out in fixing this issue? I'm just wondering if the burden of proof is going to be put onto the borrower to show that they had made, you know, 20 years of payments when they don't actually have a payment history. Now, I have a second question to that. And that is the errors that are popping up actually on the student aid website, if you download your data, you can kind of see the history of your loans there. Now, there's been several instances where that is actually not accurate. For example, my husband's loans originated in 1901 on his history which is pretty interesting because he's not that old. I don't

even think student loans were around back in the early 1900's. Yeah, that's all I have to say. Really, the question is, is the servicer error going to be the burden of proof onto the borrower?

MR. ROBERTS: I'm not seeing an immediate response to your question, Ashley. We can capture that and then I have John's hand next. John, do you want to go ahead?

MR. WHITELOW: Please. It's going to be two parts. One, I want to talk about subsection (d), and then I also want to talk and expand upon what both Jessica and Yael have said. I understand- I appreciate the adding the words including automated relief in section (d), and I think that's helpful. And I also understand that the Department doesn't want to put data sharing into the regulation. What I think an alternative thing to do, which I think is consistent with the Department's stated goals and their stated commitment that they believe in automation is to include, and we're going to fill something in the preamble that is where it says the Secretary may rely upon data in the Secretary's possession to talk about, in some level that, you know, that that also includes the Secretary will, you know, may take various efforts to gather data from appropriate sources, even if they don't currently have it in their

possession. So some language there that talks about it. So again, I really would like to see something that data sharing, which the Department has done in the past is just something that is in their arsenal and that they acknowledge that that's something that they do have done. And, you know, it's in the game. More generally, I cannot stress enough how important what both Jessica and Yael said about the application process. I have been doing client service work for more than 35 years, and the bulk of my job has been helping people applying for various benefits from a Governmental system, and the actual application process itself defeats multitudes of eligible individuals because they cannot master it. Depending on what agency it is and depending on where you are, many of us think that that is frequently intentional. And that it is designed to weed people out. We know that that is not the Department's intent, and I cannot tell you how important it is for the Department to consult with various advocates at the sub regulatory level to make the application process the least disruptive it can. Thank you.

MR. ROBERTS: Thank you, John. Tamy, you briefly came off mute, but then you- did you want to respond or would you like to take Jessica's comment as well?

MS. ABERNATHY: Oh, no. Please, let's listen to Jessica.

MR. ROBERTS: I also recognized you were mid-cough. So Jessica, go ahead.

MS. RANUCCI: Thanks. I want to echo what John said. I also just as a drafting matter, I really would encourage the Department to put the words or without an application in this provision, if you intend to do debt relief without an application, which my understanding is that that is your intent. I really appreciate you adding the words automated relief. I think that that goes a step towards clarifying. I just think that automated relief and without an application are actually slightly different things and that you can imagine debt relief that requires an application and then upon application is automated. I'll put a different kind of language in the chat. I'm not wedded to how that goes. I just think I support what you're doing here. I just think it would be prudent to be really crystal clear that if you're saying you can rely on an application, you also do not need to rely on an application just so it's not misunderstood.

MS. ABERNATHY: Thank you, Jessica. Let us go back and try to massage the language a little bit. And we appreciate that suggestion, so thank you.

MS. RANUCCI: Sure. I just put another version in the chat or a version I put yesterday. I'm not wedded to any version. I think you understand the concept.

MS. ABERNATHY: Yes. Thanks so much. We appreciate that.

MR. ROBERTS: Any other questions, specific or general comments, or anything at all for the committee's consideration? Yeah. We'll go to Jessica first.

MS. RANUCCI: Thinks I just, you know, we haven't spoken about (c) and I think there was a pretty strong push from the negotiators yesterday to really critically think about that 80% number in section (c)C, and consider whether language such as more likely than not, which I think was proposed both by Lane and separately by me and maybe others would be a better formulation of the idea that the Department is intending to do immediate waiver of borrowers with significant default risk. I understand in your intro Tamy, you said something along the lines of like, we thought about it and we've declined, and I was just wondering if the Department might be able to expound a little bit on its reasoning. In my view, that language would really provide the Department flexibility to take this action to extend

relief to the borrowers that it really thought warranted that relief. And, you know, we discussed about how high of a threshold default is, you know, 270 days without a payment is a long time. And that we thought, you know, both that it would be more appropriate to include more borrowers, but also that, you know, language that provided the Department flexibility in its model would be good, you know, sort of in the vein of the Department's approach to this rulemaking.

MR. ROBERTS: Might need to wait if you don't have a response for that, Jessica. But Jalil go ahead.

DR. BISHOP: I'm going to- Jessica kind of is touching on the same point. I think what I heard the Department say yesterday and today is that when it comes to the 80% and how it's trying to move through the regulations internally, is that it still needs time to look at the data, to look at the best way to create a model that allows them to answer this question of likely default or likely to experience hardship. And if that is the case, it seems like if more research and time is needed to build to explore how to provide relief and how to understand the data. The 80% seems- it could feel that without us understanding how you got to the 80% it could feel like we need a little bit more clarification. So I

think the more likely to default over the 80% first honors what the Department is saying is that it needs more time to look at its data to understand what's happening with borrowers, but also gives us regulation that really accomplishes the goal of making sure that we're not doing something that would narrowly focus the regulation before we have all the information, or before the Department has had time to really evaluate the student loan portfolio and understand what it means by default. I think by putting 80% to me, it suggests that you then need to tell us how you reach the 80% so that we can know whether that is going to really get to the borrowers who we know are in default, and if they're in default, it means that they have already experienced close to almost a year of hardship if not more. So I just think if the Department could talk a little bit more around why the 80% versus the proposed revised text of more likely, I think would help us just understand a little bit more that number and you know, and then make us also feel a little bit better about whether or not it's going to get to the target, which is helping borrowers who are in default experiencing some of the worst outcomes of student loan debt.

MS. ABERNATHY: So Jalil. Thank you and thank you, Jessica, for bringing this back up to us.

At this point, the Department is not able to speak to this question. Perhaps the team can look at this and get back to you later today.

MR. ROBERTS: Thank you, both. Any additional comments? If there are none. What I might suggest is like a 15-minute break. And then we come back if there's more from the Department in terms of some of the questions, if there's more in terms of what you'd like to cover today, we can get to that. But if there's not I would ask that we consider a consensus check before the lunch hour. So does anyone have an issue with that if we take a 15-minute break? Okay seeing none. Why don't we pick back up at ten after the hour? So I have 11:10 Eastern and we'll go from there. We can pause the live broadcast. Welcome back, everyone. Hope you enjoyed that short break. Tamy, if it's okay, I'll turn it right back over to you. I know we left with a few questions that the Department might have some additional consideration on so I'll turn it over to you and your team.

MS. ABERNATHY: Thank you, Brady. We would like to respond to the questions and the concerns regarding the 80%. We really appreciate your input, your feedback, your rationale. We will take all of that under consideration. However, we think 80% is appropriate. And that is the percentage at this point that the Department

will propose in this regulatory text.

MR. ROBERTS: Alright. Oh, go ahead, Tamy. Yeah.

MS. ABERNATHY: The other thing well, we'll talk about revising the regulatory text after all of the questions.

MR. ROBERTS: Okay. Yeah. Jalil, please.

DR. BISHOP: Thank you. If the Department and other negotiators are open to it I would love to go into a caucus with the Department to not so much talk about the 80% in part (c), but to have a little bit more of a conversation around the how and some of the context. And if we could have some time to go into a caucus to discuss that, that would be helpful.

MR. ROBERTS: Sure, just for the record's sake, would you mind just saying the names of the constituent groups of folks you'd like to invite?

DR. BISHOP: Well, I'm open to other negotiators who want to come in, please let me know. But I will say Wisdom, and Jessica as the two. But if other folks would like to enter please just speak up.

MR. ROBERTS: Anyone else?

MS. ABERNATHY: Do you need the Ed team?

MR. ROBERTS: I would, yeah, I would say Tamy, Soren, and then do you also want Ben, Genzie, and Toby?

MS. ABERNATHY: Yes. And Brian Siegel.

MR. ROBERTS: And Brian. Gotcha.

MS. SHAVIT: I'm happy to join Jalil, but-

DR. BISHOP: Yeah. You're invited.

MR. ROBERTS: So that was Yael Shavit for state attorneys general. Anyone else?

MR. WHITELAW: Yeah, I'd like to join too.

MR. ROBERTS: John Whitelaw. Jalil, about how much time do you predict this caucus to last?

DR. BISHOP: Maybe ten minutes.

MR. ROBERTS: Ten minutes?

MR. WATERMAN: I would like to join too.

MR. ROBERTS: Scott Waterman for legal aid. Alright. We'll check in in about ten minutes. And then if you've concluded the caucus at that time, we'll come back to the main session, we'll ask for a report out, and then we'll go from there. Does that sound okay?

MS. ABERNATHY: Thank you, Brady.

MR. ROBERTS: You can now we can pause

the live stream now. Welcome back, everyone. From that caucus break. First and foremost, Jalil, you had called the caucus. Do you want to do a brief report out to the committee and the viewing public?

DR. BISHOP: Yeah. So we had a caucus to discuss part (c). The main point for the negotiators were ensuring that as part (c) is being designed and implemented, that borrowers who have indicators of likelihood around default, both past and present, are being considered, making sure that borrowers who have used relief plans like Fresh Start or SAVE are not somehow penalized for using what was available to them at that time. And now that a new opportunity, a new relief plan is becoming available we just really insisted that that doesn't somehow penalize borrowers who use Fresh Start or other options prior to. The Department made clear that their 80% threshold is something that they feel confident around but still welcome proposals around what parameters, evidence, or other criteria should be considered as they think about the design of part (c).

MR. ROBERTS: Thank you, all. Tamy, I think I'll turn it back over to you. Did you want to- did you have anything else for the committee?

MS. ABERNATHY: I do. I think we have heard some really good suggestions related to some of the

amendatory text, and we're going to need a few minutes to go through that and finalize that language for you guys and present that to you. So I think we're just going to need some time so that we can circulate and get that right and then present it to you guys. So, Brady, I don't know if you have a suggestion as to how we should handle that. We're open to suggestions.

MR. ROBERTS: If I can suggest it. If no one's opposed, we could just take lunch about 25 minutes early to give the committee about an hour and 20-ish minutes to do that work. And then you'd want to pick up at 1 Eastern with presenting any modifications made and then any further discussion.

MS. ABERNATHY: That works for us.

MR. ROBERTS: Is anyone opposed to that suggestion? I'm seeing an emphatic no from John Whitelaw. What I would say to the public at this time is, A, as usual, there is a different viewing link for the afternoon session. So there's a secondary link that should have been provided in the registration emails. This first link that you're currently viewing on will not be live in the afternoon. That second link will be and then we will pick up at 1:00 pm Eastern for the resumption and conclusion of session four of this negotiated rulemaking. With that, I think we are okay to

take our lunch 25 minutes short and pick up as I said at 1:00 Eastern. So thank you all.

MS. ABERNATHY: Thank you, Brady.

Zoom Chat Transcript

Student Loan Debt Relief Committee - Session 4, Day 2, Morning, February 23, 2024

***Chat was copied as presented, as a result minor typos or grammatical errors may be present.**

From P- Jessica Ranucci (Consumer Advocates) to Everyone:

To ED- the end of paragraph (c) that Tamy just showed on screen is not the same that was circulated to us last night

From A-Jalil Mustaffa Bishop-Graduate Student Borrower to Everyone:

Coming in for graduate borrowers


From Edward Boltz (A: Consumer Advocates)(he/him) to Everyone:

+1 Jessica about broad inclusion of borrower (including those in bankruptcy)


From P - Lane Thompson, state officials to Everyone:

+1 to including natural disaster as a hardship factor (maybe an "other potential factors" section that lists this and other possible hardships)

From P-Yael Shavit-State AGs to Everyone:

Reacted to "+1 to including natu..." with 


From Sarah Butts, P-4-year Borrowers to Everyone:

Reacted to "+1 to including natu..." with 

From Sarah Butts, P-4-year Borrowers to Everyone:

Reacted to "+1 Jessica about br..." with 

From P - Kathleen Dwyer - Proprietary Institutions to Everyone:

Reacted to "+1 to including natu..." with 

From A-Jalil Mustaffa Bishop-Graduate Student Borrower to Everyone:

The Department in the SAVE regulations said this about Parent Plus:

“The Department considered suggestions by commenters to provide payments equal to 5 percent of discretionary income on all loan types. However, we **believe that doing so would not address the Department's goals** of targeting benefits on the types of loans that are most likely to experience delinquency and default. The result would be expending **additional transfers to loans that have a higher likelihood of being successfully repaid.**”

My understanding is the Dept is agreeing to not make these type of statements that could exclude borrowers under hardship

From A-Jalil Mustaffa Bishop-Graduate Student Borrower to Everyone:

Replying to "The Department in th..."


"However, we do not believe that extending benefits to these borrowers would accomplish our goal of focusing on the loans at the greatest risk of delinquency and default. Moreover, we are concerned that extending such benefits could create a high risk of moral hazard for borrowers who are close to retirement age. Instead, we think broader reforms of the Parent PLUS loan program would be a better solution."

I ask that the Department does not use statements like this to shape their model or public facing documents.

From Sarah Butts, P-4-year Borrowers to Everyone:

+1 on making the application user friendly

From A-Jordan Nellums-Currently Enrolled Students to Everyone:

Reacted to "+1 to including natu..." with 


From P- Jessica Ranucci (Consumer Advocates) to Everyone:

(d) Process for additional relief. In exercising the authority described in paragraph (a) of this section, the Secretary may rely on data in the Secretary's possession or acquired through an application to provide relief, including automated relief **without an application from the borrower**, based on criteria demonstrating the conditions described in paragraph (a).


From John S. Whitelaw, (he/him) (CLASI) P-Students with Disabilities to Everyone:

Plus one to Jessica's comments

From Sarah Butts, P-4-year Borrowers to Everyone:

Reacted to "Plus one to Jessica'..." with 

From P - Lane Thompson, state officials to Everyone:

Reacted to "Plus one to Jessica'..." with 


From P-Richard Haase (Graduate Borrowers) to Everyone:

+1 to reconsidering 80% threshold for part (c)

From P - Lane Thompson, state officials to Everyone:

+1 to Jessica - 80% likely to default within two years is a complicated metric

From Sarah Butts, P-4-year Borrowers to Everyone:

Reacted to "+1 to Jessica - 80% ..." with 

From A - India Heckstall, Civil Rights Orgs to Everyone:

+1 to Jessica - 80% likely to default within two years is a complicated metric