

U.S. DEPARTMENT OF EDUCATION

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BORROWER DEFENSES AND FINANCIAL RESPONSIBILITY
NEGOTIATED RULEMAKING COMMITTEE 2017-2018

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SESSION 1

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TUESDAY
NOVEMBER 14, 2017

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

PRESENT

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

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School of Law

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

CHRIS DELUCA, Attorney at Law, DeLuca Law LLC

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

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

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

JULIANA FREDMAN, Bay Area Legal Aid

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DAWNELLE ROBINSON, Associate Vice President for
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ABBY SHAFROTH, Staff Attorney, National Consumer
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VALERIE SHARP, Director, Office of Financial
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COLLEEN SLATTERY, Federal Contract and Compliance
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JONATHAN TARNOW, Partner, Drinker Biddle & Reath
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DEPARTMENT OF EDUCATION STAFF PRESENT

JIM MANNING, Acting Under Secretary of Education

CAROLINE HONG, Office of General Counsel

BRIAN SIEGEL, Office of General Counsel

JOHN KOLOTOS, Office of Postsecondary Education

ANNMARIE WEISMAN, Federal Negotiator, Office of

Postsecondary Education

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

2 (9:00 a.m.)

3 MS. CARUSO: Good morning, everyone.

4 Welcome back. We're going to go ahead and get
5 started. We are looking forward to a very
6 productive day today.

7 There is certainly a lot ahead of us.

8 The good news is that we, your facilitators
9 firmly believe that we have all of the tools and
10 resources here at this table to have that
11 productive day. So we look forward to continuing
12 our work together.

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

16 MS. WEISMAN: Good morning. Welcome
17 back to negotiated rulemaking, Session Number 1,
18 Day 2. Very happy to have you with us again. We
19 would like to make an announcement to get us
20 started that the audio recording that we
21 discussed yesterday and agreed to has been
22 arranged.

1 We have contracted for that for the
2 remainder of our sessions, including this one,
3 and it is beginning effective immediately. So
4 when we begin our session now the audio recording
5 has begun as well.

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

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

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

20 Unfortunately he will not be taking
21 questions today. But we did want to give you
22 this overview to get us started with some

1 information. And again, hopefully that will help
2 us to inform our process as we move forward.

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

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

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

22 While her commitment to getting

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

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

18 During the tenure the previous
19 administration had approved and discharged
20 approximately 15,000 borrower defense claims, all
21 from former Corinthian students. The Secretary
22 inherited roughly 65,000 borrower defense claims

1 when she assumed office.

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

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

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

19 These claims were approved in haste
20 just before the inauguration and there was no
21 infrastructure in place to adjust them, as I just
22 said. Given the budgetary implications to the

1 taxpayer and the impact on thousands of borrowers
2 and institutions it was necessary to conduct a
3 high level assessment of the program including
4 all these already approved claims.

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

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

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

22 In sum, this short term evaluation was

1 needed to ensure the administration of the
2 program was built on solid foundation that would
3 in the long term operate efficiently and
4 according to sound business practices and
5 processes.

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

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

17 For example, the Department began
18 approving claims from FFEL and Perkins loan
19 borrowers. However, the Department needed to
20 implement business processes and requirements in
21 order to consolidate those loans into direct
22 loans for discharge.

1 There were other scenarios where
2 borrowers with approved claims had multiple
3 outstanding loans, only some of which were
4 associated with their borrower defense claim.
5 This also made it an extended process.

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

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

17 Our internal saying about the program
18 is nothing in borrower defense is easy and these
19 claims certainly were not. As a side note, the
20 Department has continued to accept borrower
21 defense applications from FFEL and Perkins
22 borrowers under existing statutory authority and

1 the HEA and a part of the 2016 borrower defense
2 rulemaking that was not delayed.

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

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

18 Even the most strident borrower
19 defense advocate would recognize that undoubtedly
20 some claims are going to be denied. We have been
21 working carefully to ensure that any denial comes
22 only after a thorough review of the claim for its

1 potential applicability to an existing Department
2 finding and a full consideration of any evidence
3 provided in the application that would entitle
4 the borrower to relief.

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

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

18 The Department is also working to
19 adjudicate pending claims related to other
20 schools and we are making progress on that front.
21 However, I will admit that we're not as close as
22 we are with the Corinthian claims.

1 Unfortunately when we arrived in
2 January little to no work had been performed on
3 processes of adjudicating these claims, as I said
4 earlier. Another challenge, which I understand
5 was raised yesterday has been the difficulty in
6 assessing how to apply individual state laws to
7 particular claims.

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

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

20 I want to thank you again for your
21 service. Thank you for your commitment to this
22 process and I look forward to following your

1 work. Thank you so much. Good luck.

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

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

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

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

18 But we're back today and in good faith
19 to hope that it does. One of the things that
20 upset me on a personal note is the assumptions
21 that many of the negotiators have made about each
22 other before we got here.

1 You know, I represent the large for-
2 profits. People make assumptions about that.
3 They make assumptions about my party, my
4 motivation, my positions, what I will or will not
5 support.

6 That's a mistake. You know, I come
7 from a law firm of one, Linda Rawles Law. I paid
8 my own way to come here. I came here in good
9 faith.

10 Actually to make it very personal my
11 father just passed away. I came here and left my
12 mother's side after 61 years of marriage to come
13 here because I naively, even though I've been in
14 this industry for 20 years, thought that we would
15 all negotiate in good faith.

16 And that's still my intention. We're
17 all different. We shouldn't make assumptions
18 about each other. We should be open. We should
19 negotiate in good faith.

20 You all left businesses, families to
21 come here. We're going to be back here two more
22 weeks at least. So, you know, why are we here?

1 Are we here to make a point? Are we here to make
2 a rule?

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

9 Many people were retweeting what some
10 bloggers and press people were tweeting in the
11 audience. They have a right to tweet whatever
12 they want. They're the public and the press.

13 I think that retweeting folks who
14 dismiss some of our constituencies out of hand
15 while you're sitting next to me, not right next
16 to me and say that you're, you know, you're
17 retweeting that the whole for-profit industry is
18 evil while you're sitting at this table
19 negotiating with me in good faith is not good
20 faith.

21 And what I would like to ask this
22 morning when I asked this person if they thought

1 it was good faith they said, yes. They asked for
2 me Twitter handle or whatever you call it these
3 days.

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

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

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

21 So my proposal is that we agree not to
22 argue in social media or retweet negative

1 comments from people in social media as a sign of
2 good faith during these negotiations. Thanks for
3 listening.

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

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

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

21 Barring the fact that we didn't have
22 a recording yesterday it certainly is important I

1 think for many of our constituencies at the table
2 to know exactly what the discussions are. It
3 does point out that we're not allowed to comment
4 on each other.

5 I think that, I will agree to that
6 point. I think that is quite relevant.

7 Nonetheless, our own points of view which are
8 quite specific to our constituencies I think are
9 quite relevant and certainly pertain to these
10 conversations.

11 MS. RAWLES: Can I respond to that?

12 PARTICIPANT: Briefly.

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

1 who are denigrating the proceedings.

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

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

17 If respected by the group would that
18 address your concern?

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

1 recommitment to that protocol.

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

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

13 MR. BANTLE: Other Members.

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

17 MR. BANTLE: Correct.

18 MS. GARCIA: Okay.

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

21 MR. MADZELAN: As part of this
22 reaffirmation can we also reaffirm the protocols

1 in the context of the discussion yesterday around
2 the recording because I think Joseline had an
3 issue about well what happens if the Department
4 comes back and says, no.

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

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

11 MR. LACEY: I was just going to say,
12 I mean if someone, whether it be directly or by
13 retweeting or restating a statement of someone
14 else in the public or the press, I mean if
15 someone in the public or the press is making a
16 statement that any of the negotiators or any of
17 the constituencies we represent, and I do mean
18 any, saying something that's denigrating and you
19 retweet that or promote that I don't know how you
20 could say you are not characterizing the views or
21 motives of the negotiator who represents that
22 constituency.

1 And again, I think that's across the
2 table. I mean I am very happy to say for my part
3 that I will not do that.

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

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

20 I don't believe that anyone has
21 violated that and I don't think anyone sort of
22 has acted in a way that strictly violates those

1 terms. And, you know, I think, you know, it's
2 appropriate to hear from other people about how
3 they interpret that so that we can all have a
4 common understanding going forward.

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

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

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

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

20 I don't know if arranging for it so
21 quickly we're going to have the quickest
22 turnaround time. We can probably arrange, you

1 know, now that we're arranging for all three
2 sessions at one time we can probably get a more
3 quick turnaround time for Sessions 2 and 3.

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

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

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

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

22 As a facilitator again, appreciating

1 all the comments made, I would say I think it's
2 time we moved back into the issues. If there are
3 any outstanding concerns regarding, you know,
4 behaviors at the table, you know, feel free to
5 bring them to us as facilitators.

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

11 MR. BOTTRILL: Yes, one quick comment.
12 Appreciate wanting to move on. But because we
13 didn't have a recording yesterday I actually
14 agree with Aaron that I think we should reaffirm
15 the protocols today and have that on record.

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

22 MS. GARCIA: For the Department I know

1 that you just made the contract and so you don't
2 have a firm answer as to when we can get it. For
3 the meetings in January and February would the
4 audio recording be released out at least within
5 the week that the negotiations are taking place?

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

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

13 MS. GARCIA: Okay.

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

17 MS. WEISMAN: If I can add one other
18 thing. I think just so you're clear it's not
19 that we don't endeavor to be quick about it. We
20 have agreed that we would post a 508 compliant
21 recording and we want to make sure we have time
22 to allow for all of the processes that the person

1 that we've contracted with needs in order to make
2 that happen, have the time to get it posted to
3 our website.

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

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

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

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

21 Is it all right if we take a formal
22 vote on the ground rules and then open up the

1 floor to you?

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

4 MR. BANTLE: Okay.

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

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

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

17 MR. BANTLE: Okay.

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

20 MR. BANTLE: Okay. With that and
21 again, with the thought that we are going to open
22 up the floor to 1 and 2 again if there are any

1 additional comments before moving on to Bullet 3,
2 can we see a formal show of thumbs on affirming
3 the ground rules or protocol document as is?

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

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

18 MS. CARUSO: Great. Thank you, Ted.
19 Okay, so what I'm going to start with is, I'm
20 actually just going to open it up for Bullets 1
21 and 2 if there were any comments, concerns after
22 yesterday's discussion and you would like to

1 return to either of those two please feel free.
2 Michael.

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

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

22 I'm just trying to get a sense of it.

1 And from your viewpoint is there a way to make
2 that regulation a workable one?

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

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

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

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

1 pursue a discharge.

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

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

21 And we want the Department potentially
22 to be able to do that because we want them to be

1 able to point out to an institution that there is
2 something that they think needs to be fixed.

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

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

20 So I, even in addition to the fact
21 that I think the misrepresentation definition,
22 statute misrepresentation are very confusing I

1 think there is also a really important reason to
2 have two different standards. Thanks.

3 MS. CARUSO: Linda had a comment.

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

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

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

18 So we should also, I think, consider
19 some type of safe harbor for mistakes that were
20 reasonably corrected in a reasonable time. Some
21 of us have bandied about the idea of if you have
22 a compliance program along the lines of the

1 Federal Sentencing Guidelines' seven elements,
2 some of you may be familiar with that.

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

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

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

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

22 MS. RAWLES: I think it might find its

1 way into many parts of things we're talking
2 about. But I would prefer to see it in the
3 definition itself.

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

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

12 MS. RAWLES: It would be from any
13 perspective.

14 MS. HONG: Okay.

15 MS. CARUSO: Abby.

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

21 In terms of whether that should mean
22 that thousands of borrowers who attended the

1 school should all get relief, I would offer that
2 should depend on whether, you know, the or at
3 least in 2016 we decided that should depend on
4 whether it's a substantial misrepresentation.

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

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

19 So I don't see those two things as
20 incongruous or as harming the Department's
21 enforcement ability. With respect to the
22 proposal about having an intent standard in part

1 to allow, to protect schools that engage in sort
2 of innocent mistakes.

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

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

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

21 And the students enroll, you know,
22 thinking that this is a school where they are

1 very likely to get a job then they're harmed even
2 though that wasn't intentional. They might also
3 be harmed even if that recruiter is, even if the
4 school later counsels that recruiter and says,
5 no, it should be eight percent.

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

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

20 MS. CARUSO: Okay. Ashley and then
21 Aaron.

22 PARTICIPANT: I was going to agree on

1 the intent standard. No student would be able to
2 benefit from that because that would be
3 incredibly hard to prove for most students
4 through the evidence that they have.

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

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

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

19 MR. LACEY: Yes. Just so first of all
20 I agree in the sense that to your first point,
21 Abby, about the idea that the, I mean last year
22 in 2016 basically what you guys did was you came

1 up and said we do think there should be a higher
2 standard for borrower discharge and use of
3 substantial misrepresentation, that concept plus
4 actual reliance.

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

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

20 Also I mean in your example the thing
21 I would point out is there's no actual, in your
22 analogy demonstration of harm or damage to the

1 student. Now there could be.

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

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

17 You know, we talk a lot about
18 defrauding students and that's often the tag line
19 in the press. And I don't think there's anyone
20 at this table, I can't speak for everyone else,
21 but I am assuming there is no one else who would
22 disagree that if a student is defrauded, meaning

1 an institution commits fraud that the student
2 shouldn't have relief, right.

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

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

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

21 It puts 100 percent on the risk, of
22 the risk on institutions. And I also want to

1 make a really important point. When I say
2 institutions I'm not talking about some amorphous
3 legal entity in the sky.

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

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

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

22 Again, I don't think anybody disagrees

1 with that. But a mistake standard with no
2 materiality element relating to harm I do not
3 represents a reasonable allocation of risk.

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

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

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

19 And I do agree I think there ought to
20 be some sort of an opportunity for an institution
21 to demonstrate that it cured whatever damage
22 occurred. Although, if you have a substantial

1 damages standard then the cure ought to sort of
2 be wrapped into that because an institution ought
3 to have an opportunity to demonstrate that the
4 substantial damage didn't occur in the first
5 place.

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

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

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

20 MR. OCHINKO: So I would like to talk
21 a little bit about what is misrepresentation and
22 give some concrete examples of it because I don't

1 think it's very abstract and I don't think it's
2 confusing.

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

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

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

19 The school is Ashworth and the
20 settlement was about misleading students about
21 the training they received and their ability to
22 transfer credits to another school. The FTC

1 found that many programs offered by this for-
2 profit institution did not meet state
3 requirements for those careers including two
4 programs that are approved for the GI Bill, home
5 inspections certificates and early education
6 degrees.

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

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

19 One student who was interested in
20 becoming a home inspector in Indiana was told by
21 an Ashworth admissions advisor the program
22 satisfied licensing requirements in that state.

1 After graduation however, the state licensing
2 board told the student that the degree was not
3 recognized in Indiana for purposes of state
4 licensing.

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

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

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

1 benefits.

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

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

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

18 MR. OCHINKO: I'm almost done.

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

21 MR. OCHINKO: Yes.

22 MR. BANTLE: Okay, just because it's

1 longer. Okay, thank you.

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

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

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

19 MR. BANTLE: Okay, Linda.

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

1 new people I will always yield to the new people.

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

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

17 So what we really want, as Aaron so
18 eloquently pointed out, is something that's fair
19 to the students and the schools. We're here
20 representing our constituencies but also care
21 about vets, consumers and students as well all of
22 whom we wouldn't have a school without.

1 But that we should think about whether
2 the student if they were harmed attempted to
3 mitigate harm. If you get a degree from a school
4 and perhaps there was misrepresentation
5 intentional or not or what have you and you don't
6 try to get a job and use your degree, you know,
7 there needs to be quantifiable harm.

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

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

22 MR. BANTLE: Okay. And just a

1 facilitator note, we're going to move on to Kay.
2 Aaron, did you, is your tag up again or, okay, no
3 problem. We know it's easy to forget that.

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

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

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

18 And then there is a different standard
19 whether not an institution also needs to be then
20 held accountable for that. And so when we're
21 talking about just cases of mistakes,
22 unintentional then the institution maybe wouldn't

1 be held to a standard of having to recover or
2 payback part of those funds

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

6 MS. CARUSO: Ashley Reich.

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

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

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

21 MS. CARUSO: Yes, Aaron.

22 MR. LACEY: Just two comments. I'll

1 be quick. Two quick comments. The first is I
2 just, with regard to the examples of
3 misrepresentation I do not -- I mean clearly
4 there are schools, company, every industry, every
5 sector of higher ed, outside of higher ed it's
6 all people and people make mistakes.

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

11 And there's no doubt that in some
12 cases it will be misrepresentation that rises to
13 the level of whatever standard we come up with.
14 So I readily acknowledge that.

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

19 But my concern is if you create two
20 different standards, one for discharge of the
21 claim and one for recovery from schools, you
22 expose the taxpayer pretty significantly, right,

1 because you could discharge thousands and
2 thousands of dollars of loans and then if you
3 have a second standard that's higher so that you
4 can't recover, we're all just paying for that.
5 So just a point for thought.

6 MS. CARUSO: Dan.

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

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

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

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

22 Most, generally private student loan

1 contracts are subject to this thing called the
2 FTC holder rule which means that borrowers would
3 be able to raise any of the state law claims and
4 defenses to repayment of that loan that they
5 could against the school.

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

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

22 MS. CARUSO: Joseline.

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

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

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

17 MS. CARUSO: Linda and then Mike.

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

22 When I say mitigate damages I don't

1 want to be too lawyer-ese here. I don't mean
2 that they have to go and fight the school on
3 their own.

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

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

12 MS. CARUSO: Thank you. Mike.

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

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

21 MR. BUSADA: And so I just wanted to
22 share briefly where I come from on a lot of these

1 issues and what really is the foundation for a
2 lot of the points that I'll be making. I am the
3 general counsel and vice president of a very
4 small school in Shreveport, Louisiana.

5 We have about 100 students. We have
6 about 100 students regularly students starting,
7 students stopping. City of Shreveport is about
8 300,000 people.

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

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

18 And I said why? They said because we
19 want to make sure that we have the most compliant
20 system and there's going to be a lot of changes
21 and we need a lawyer that can make sure that
22 we're doing everything right.

1 I said with all due respect, Dad,
2 you're a small school and attorneys at big firms
3 get paid a good bit of money. Let's be honest.

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

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

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

1 profit regulations.

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

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

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

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

20 I will tell you right now definitively
21 any institution whether it's public, private,
22 for-profit, not for-profit that takes advantage

1 of a student, that doesn't do what they deliver
2 they need to be removed from this industry and
3 there needs to be significant swift consequences
4 because it's bad for everybody.

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

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

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

21 I feel safer being here knowing that
22 my wife is at a home with a system that's secure.

1 So we have to work with those people and deal
2 with those people.

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

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

19 I thought, okay, that's a school.
20 That's neat, you know. Didn't really understand
21 it. And a kid in my gym class in a public high
22 school, I mean a public middle school we were

1 sitting in the gym and I was not the most
2 athletic person and so I tried to sit on the side
3 as much as I could.

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

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

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

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

1 just waited.

2 And then the next day we would worry
3 about it all over again when we came to school.
4 He said my dad finally went to your school,
5 graduated from your school.

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

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

14 These are our friends, people in our
15 community. That's how I was brought up. So I
16 just want to make sure as we do all of this that
17 we make sure that we put in strong, stringent
18 regulations that protect students but that also
19 allow us, those schools that can't hire a bunch
20 of attorneys unless you've got one related to you
21 in the family that's willing to do some, you
22 know, some very cheap work.

1 You can't hire accountants. Can't
2 hire all these professionals. But we want to do
3 the right thing and we do the right thing.

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

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

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

19 The challenge certainly with military
20 veterans, military connected students, their
21 families is they're dealing with a system that's
22 perhaps only more complicated than the Department

1 of Education system which is not simple which is
2 the VA system, equally complex if not more so.

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

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

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

17 Mike, your story, they're right at the
18 top of the pyramid in that case. And to say that
19 the student didn't try hard enough to get a job
20 is ignoring the fact that the piece of paper they
21 graduated with potentially, not always but
22 potentially could be worthless.

1 And so to say that the student hasn't
2 done enough would be a lot like telling a person
3 who is injured physically that they're not trying
4 hard enough to live. It just doesn't make sense.

5 MS. CARUSO: All right. We're going
6 to take a 15 minute break. It is currently
7 10:10. Please come back at 10:25. And be
8 prepared to speak to Points 5 and 6 under Issue
9 1. Thank you very much.

10 (Whereupon, the above-entitled matter
11 went off the record at 10:10 a.m. and resumed at
12 10:25 a.m.)

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

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

20 So if in the course of your remarks
21 you're aware of some examples you want to raise
22 or some people that you would like to reference

1 just keep in mind that we should limit our
2 remarks or comments about individual schools or
3 people to what's already part of the public
4 record in the media and not talk about things
5 that may not already be out there in the public.

6 Thank you.

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

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

18 MR. MADZELAN: I'm not sure which
19 bullet this falls under because this was a
20 thought that occurred to me when I was listening
21 to the discussion about, you know, definitions of
22 misrepresentation, that sort of thing.

1 And I just want to raise an issue and
2 I don't have an answer because I haven't thought
3 it through. But there is a provision in the
4 promissory note that basically says, you know, I
5 promise to repay even if I don't like the result
6 of my education.

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

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

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

21 MS. CARUSO: Sure, Evan.

22 MR. DANIELS: I just wanted to point

1 out going and this relates really to Bullet Point
2 1, but John articulated the view of the states
3 that state law provides adequate definitions for
4 these things.

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

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

18 So I can't help but wonder if the
19 Department is trying to reinvent the wheel and of
20 course we think that state law in large part
21 provides adequate definitions to evaluate
22 borrower defense issues. And to that point, you

1 know, there was some discussion yesterday about
2 whether a federal standard would provide the
3 floor from which the states could build up if
4 they wanted.

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

11 MS. CARUSO: Sure. Michael and then
12 Linda.

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

18 They all may have and they may be
19 different measures the extent to which one
20 attorney general works towards those claims can
21 be very inconsistent to the next. It's just,
22 there is just simply not consistency amongst the

1 states.

2 MS. RAWLES: Believe it or not I
3 almost didn't talk because that's close to what I
4 was going to say. But and I hate to argue with
5 my colleague from Arizona being an Arizonan, but
6 I think, you know, I've taught constitutional
7 law.

8 I don't see the same constitutional
9 issue that you gentlemen do although I'm happy to
10 discuss it. But practically speaking if you have
11 an online school that's operating in most of the
12 50 states I think you're really putting a tough
13 burden on those schools who are trying to do the
14 right thing and operate in 50 states.

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

22 MR. BANTLE: Briefly, yes, and then we

1 have Suzanne.

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

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

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

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

1 us all to look at.

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

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

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

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

19 But, you know, states do have a role
20 here. They do have to conduct active review over
21 schools. And so there are already laws out there
22 on the books that schools are, you know, on

1 notice that they have to comply with.

2 So I think that the, I just wanted to
3 echo the, you know, the important role of states,
4 state AGs and state laws in protecting students.

5 MR. BANTLE: Thank you. Abby, Chris.

6 MS. SHAFROTH: On the UDAP point so
7 UDAP, Unfair and Deceptive Acts and Practices,
8 sorry for the alphabet soup here. The, many,
9 yes, I believe all the states do have UDAP laws
10 and in large part those laws are in many ways
11 consistent with or explicitly modeled after
12 federal law including the definition of unfair
13 under the Federal Trade Commission Act and the
14 definition of deceptive conduct there as well.

15 So, you know, if we're looking for a
16 basis to start for a federal standard that could
17 be a complement to state law basis for relief
18 looking to the FTC Act and its definitions of
19 unfair and deceptive acts and practices seems
20 like it would make sense.

21 MR. BANTLE: Chris.

22 MR. DELUCA: I just wanted to go back

1 to some of the points that were made earlier this
2 morning.

3 (Off-microphone comment)

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

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

18 And in order to do that in an
19 efficient manner plus, you know, when we're
20 talking about relationships between the students
21 and the federal government with federal student
22 loans it seems like a uniform standard, federal

1 standard would be one, fair; two, constitutional,
2 I believe and three, help with this process.

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

10 MS. CARUSO: Great. Thank you, Chris.
11 Valerie and then Aaron.

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

17 I do agree that, with Abby that it
18 might be very helpful to if it is working and
19 providing relief for students that it might be
20 good for this committee to see that and be able
21 to use that as we try to frame what we want to
22 look at as misrepresentation.

1 And if we could have some of that for
2 those of us who aren't familiar with that to
3 inform our discussions. I don't know if our
4 state attorney general representatives would be
5 willing to do that for us.

6 MR. BANTLE: Seeking volunteers.

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

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

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

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

22 MR. BANTLE: Okay. We'll turn it over

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

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

18 It did not specify unfair practices,
19 you know, deceptive acts laws in particular. So
20 if we're going to go the route of referencing
21 state law instead of using a federal standard I
22 just want to say we also need to think about

1 drawing a box around exactly what state laws
2 we're talking about or at least being clear
3 because, you know, otherwise it could be
4 anything.

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

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

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

21 MS. CARUSO: Linda.

22 MS. RAWLES: If we're going to break

1 up the breach of contract as a basis for relief
2 and revisit the last proposed rule that was
3 rescinded we have to remember that those breaches
4 of contract had to relate to the educational
5 experience of the loan of the student.

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

9 MS. CARUSO: John.

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

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

18 MS. WEISMAN: I appreciate the
19 dialogue. I think we've gotten some good
20 information from you on Bullet Points 1 through
21 4. But I think we could use a little additional
22 fleshing out of things like burden of proof and

1 the ideas of full versus partial relief.

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

5 MS. CARUSO: Michael.

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

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

14 MS. CARUSO: Yes, Linda and then Will.

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

22 I think we should also consider

1 whether those damages should be full or partial
2 depending on the harm. If we really are
3 concerned about students and the damage to
4 students we shouldn't be afraid to say let's make
5 sure that particular student was damaged.

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

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

20 MR. BOTTRILL: Sure. And again,
21 taking this again from our experience in the
22 accreditation community. If an institution makes

1 a claim whether it's an employment raid or the
2 transferability of credit or the issue of the
3 student, the burden should not be on the student
4 to then go and identify the veracity of that
5 claim when making determinations about whether or
6 not to enroll in that institution.

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

10 MS. CARUSO: Thanks, Michael.
11 William, did you put your name tent down, okay.
12 It's up.

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

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

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

20 If you go to the store and the
21 assumption that you are forced to make is that
22 everything that you purchase, perhaps that stick

1 of gum is no good it's on you as the consumer to
2 then prove that it's not good before you consider
3 it as something for purchase.

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

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

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

19 And I just want to note that, you
20 know, last year the Department said that standard
21 strikes a balance between ensuring the borrowers
22 who have been harmed are not subject to an overly

1 burdensome evidentiary standard protecting the
2 federal government, taxpayers and institutions
3 from unsubstantiated claims.

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

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

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

18 And the challenge is, and again I
19 represent small schools. I mean I'm here because
20 of the American Association of Cosmetology
21 Schools. We've got 600 plus member institutions.
22 They're all very small.

1 Almost all of them are. Most of them
2 don't have attorneys on staff and compliance
3 people or they have compliance people. They
4 don't have attorneys on staff full time.

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

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

16 And then they have state rates. And
17 each one has a different definition and it's a
18 different number as far as what's there. And so
19 my point is that, you know, while I agree
20 students should not have to make any extra effort
21 to figure out, you know, is everything that the
22 school is telling them correct.

1 But recognize too I think through this
2 process is that there are multiple sources of
3 information out there and that for example or
4 it's information that may be corrected and if a
5 school is going through and updating data and
6 providing updated data to a student afterwards
7 that those things should be part of the factor
8 and part of what we're considering as far as, you
9 know, the level of harm to the students.

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

13 MS. CARUSO: Stevaughn and then Aaron.

14 MR. BUSH: Good morning, good morning.
15 I've been kind of holding my tongue just a little
16 bit. I had a point to make or a question to ask
17 the gentleman who was first here this morning.

18 The Department has been talking about,
19 you know, all of the wonderful things that it's
20 doing right now to adjudicate borrower defense
21 claims and really what's been pressing on my mind
22 is what is the Department also doing concurrently

1 to make sure that students are aware of their
2 rights under borrower defense law and what's the
3 outreach looking like.

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

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

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

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

1 questions.

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

4 MR. BUSH: Yes. I can truncate it.

5 MR. BANTLE: Thank you.

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

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

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

16 MR. LACEY: And I had asked and maybe
17 one of the AGs when you guys get a chance could
18 take a minute to, I had suggested maybe they
19 could talk a little bit about what the
20 differences in these standards of proof are for
21 the non-attorneys at the table and frankly for
22 the attorneys who aren't litigators.

1 I think that could be helpful. But
2 the other point I wanted to make just with regard
3 to, you know, Michael had talked about this last
4 sentence should the Department consider whether
5 borrowers should ascertain the truth without
6 difficulty, inconvenience or special skill.

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

15 So you would have the behavior on the
16 part of the institution and then you've got the
17 damage and the student would have to establish
18 that there was some reasonable reliance. So if
19 somebody said inadvertently our placement rate is
20 184 percent and they meant to say 18.4 percent or
21 maybe that's a bad example.

22 But the point is if there was some

1 reliance that we would all agree was not
2 reasonable because it was so outlandish or
3 impossibly true that, you know, there would be an
4 opportunity for an institution to say this was a
5 mistake that the reliance there was not
6 reasonable.

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

10 MS. CARUSO: Walter.

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

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

22 And in bold it says if a specific

1 Herzing University program at a specific campus
2 does not state it has programmatic accreditation
3 in writing students should assume the program
4 does not have programmatic accreditation.
5 Students should not rely on oral or unofficial
6 confirmation of program accreditation.

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

13 Herzing University makes no
14 representation unless explicitly written --

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

20 MR. OCHINKO: Well the whole point is
21 that the university is essentially putting it
22 upon the student to make a determination

1 themselves of whether or not the school has
2 appropriate accreditation. And it's saying that
3 if somebody has told you that its accreditation,
4 it's appropriately accredited and you don't see
5 it in writing, then it's not true, don't believe
6 it.

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

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

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

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

1 are giving full relief to students.

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

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

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

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

1 education.

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

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

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

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

21 I don't think anyone around the table
22 would say let's not do something unfair or not

1 clear. So if we hold those standards in mind,
2 you know, I want to make a few comments.

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

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

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

20 So I'm only arguing for fair and clear
21 and so that would to me require partial redress
22 and that's it.

1 MS. REICH: I just want to touch on
2 Abby's point that she made about the full versus
3 partial. I think we're assuming that the student
4 is staying in the same program the entire time
5 that they're there.

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

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

20 MS. CARUSO: John.

21 PARTICIPANT: Just because AGs were
22 asked to comment about the burden of proof

1 question, basically when we talk about burdens of
2 proof we're talking about the degree of doubt
3 that in this case could be in the Department's
4 mind about the facts.

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

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

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

22 But there are definitely situations

1 especially where specifically fraud is alleged
2 where clear and convincing evidence is the
3 appropriate standard. So hopefully that's of
4 some use to anyone in the room who is fortunate
5 enough not to be a lawyer.

6 MR. BANTLE: Thank you, John. Ashley.

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

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

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

22 They used all their resources to go to

1 school to begin with. So when we put and we gave
2 them the seal of approval. We told them, you
3 know, this is a university. You get federal
4 funding to go here.

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

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

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

17 MS. SHAFROTH: Thanks, John, for
18 talking us through the preponderance of the
19 evidence versus clear and convincing. With
20 John's explanation in mind I would offer to the
21 group that to the extent the Department finds
22 it's more convincing to it that the student is

1 telling the truth that they were scammed into
2 taking out federal loans that it is more likely
3 than not that is true, I would suggest this group
4 should agree that the Department should not
5 continue to try to collect on those loans then if
6 it believes that the student likely was scammed
7 into taking them out.

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

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

17 And I should say, I'm referring on
18 that point to a document that the legal
19 assistance community put together sort of
20 annotating these issue papers with information
21 that the Department previously provided mostly in
22 the context of last year's rulemaking because I

1 think it's a helpful starting point for
2 understanding sort of where the Department came
3 out before.

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

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

11 MS. CARUSO: They have not been
12 shared.

13 MR. BANTLE: We still have them.

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

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

22 So I think that can be consistent with

1 the point about their, you know, if there is, if
2 a student was misled into taking out loans with
3 respect to one program but not another then it
4 might be certainly appropriate just to get relief
5 with respect to the program where there is the
6 misrepresentation.

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

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

21 So to the extent that they are still
22 able to get a job notwithstanding having gone to

1 a program rather than because they have gone to a
2 program they've still suffered harm in taking
3 out, you know, say \$10,000 of debt to go to a
4 program that is not helping them advance their
5 career, that is not helping them earn more money.

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

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

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

21 One of the things that I would like
22 the committee and the Department to realize is

1 when you're dealing with accreditation, when
2 you're dealing with fiscal issues such as going
3 concerns students aren't going to know these
4 things.

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

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

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

20 Again, we go back to all of these
21 different agencies that you're saying that a
22 student should understand the complicities of.

1 EZ audits for DOE, federal clearinghouse, state
2 regulation agencies, state examiner's agencies,
3 then whomever is auditing the financial
4 statements.

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

13 MS. CARUSO: Thank you. Joseline.

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

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

1 institutions.

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

5 PARTICIPANT: Never heard of him.

6 MS. GARCIA: Really, you know, I am
7 5'2". I am a soccer player and a track runner,
8 not a basketball player. If I'm put up against
9 to go against a game around Stephen Curry,
10 someone who is trained, someone way taller than
11 me, someone who has the resources to beat me
12 there is no way that, you know, it's going to be
13 a long shot for me to win.

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

19 And I know that we keep talking about
20 having a fair and clear. But the situation is
21 that it is very unfair for a lot of students
22 right now.

1 MS. CARUSO: Thank you. Kelli.

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

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

15 MS. CARUSO: Dan.

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

21 MS. CARUSO: Department, do you have
22 a direct response to that question? Okay, we're

1 going to hold comments for a minute. I just want
2 to get to everyone. Walter?

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

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

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

18 MS. CARUSO: Okay. I just want to
19 turn it over to the Department for a moment. A
20 couple of questions. How are we doing? Where do
21 you need more discussion? Where do we need more
22 discussion with the amount of time that we have?

1 There is an interest to get to all
2 eight of these issues. We just want to
3 understand, you know, how much more discussion we
4 need and where.

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

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

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

20 So if it's something that you're
21 interested in speaking out about we would like to
22 hear the opinions about those two issues.

1 MR. BANTLE: Okay. So while the group
2 thinks about those two issues Mike did have his
3 tag up. I know we've talked about a lot of
4 things. So if you could kind of give us a sense
5 of what you're commenting on.

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

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

19 And quite frankly, in the public
20 sector they have immunity in most cases. Talk
21 about fighting Goliath. The State of Louisiana,
22 the government their resources are much bigger

1 than our little bitty resources with 100
2 students.

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

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

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

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

21 MS. DOBSON: I was going to comment on
22 both things. So can I do that quickly as long as

1 I'm brief?

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

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

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

17 It would be full relief for the
18 damages. Does that make sense to everybody?
19 Okay. And then I'll just leave my card up for
20 the other question.

21 MR. BANTLE: Aaron.

22 MR. LACEY: Just a couple of comments

1 on the partial relief concept. I mean the first
2 is, you know, I think, I'm not sure I understand
3 why we would want to hem in administrative law
4 judges or hearing officials from having the
5 opportunity to grant partial relief.

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

10 If you hem in hearing officials so
11 that their only option is to grant complete
12 relief I could see the idea that the standard
13 that has to be satisfied is higher or a
14 reluctance potentially to grant relief because
15 the understanding is I can't grant \$5,000 or
16 \$7,400 for a small infraction. It's all or
17 nothing.

18 So I just, I think that's something
19 worth considering. You know, I also think there
20 is a concept as the Department and I'm sure most
21 folks here know in the closed school loan
22 discharge, you know, there is this idea that if

1 you have your credits and even if your school
2 closes and you would be eligible for a closed
3 school loan discharge, you know, if you have your
4 credits and you could take them somewhere else to
5 complete your degree you're no longer eligible.

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

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

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

21 You know, let's say there's an act or
22 omission on the part of an individual of that

1 institution in the last semester of an eight
2 semester program, right. Student has no issue
3 with the education it was provided in the first
4 seven semesters.

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

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

17 I'm not talking about the situation
18 where we're saying the student has to prove that
19 they couldn't have overcome the misrepresentation
20 or whatever. What I mean is if you have a
21 situation where a student graduated from an
22 institution and they are claiming the degree and

1 all of the credentials and they have put that
2 degree on their resume and they have secured a
3 job in part on the basis of that degree being on
4 their resume and they're three years out, and
5 again, this is not a for-profit institution.

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

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

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

1 surrendering the credits.

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

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

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

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

20 And obviously look at the loans that
21 were taken out for that particular program. I
22 think that would also allow for some sort of due

1 process at the institution where the Department
2 would then come back to the institution for
3 information.

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

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

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

18 Not least of all I want to remind
19 people that very frequently we end up serially
20 victimizing people. The Department of Education
21 facilitated placement of Corinthian students with
22 ITT blocking them from discharging the Corinthian

1 debt they had accumulated only to be victimized
2 even to a greater extent in the hands of another
3 subpar provider.

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

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

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

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

22 PARTICIPANT: Well it was just like a

1 response to Aaron. You know a question to think
2 about is how do we prove that the graduate has
3 made full use of the degree.

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

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

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

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

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

22 MR. BANTLE: Real quick, okay.

1 PARTICIPANT: I don't disagree. I
2 don't think the transferability of credit and
3 whether they can transfer is a great idea because
4 that's totally in the control of the receiving
5 institution.

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

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

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

1 money back and they get to keep the product.

2 MR. BANTLE: Okay, on, okay.

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

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

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

22 MR. BANTLE: On transfer of credits,

1 okay. Last comment and then just to give the
2 Department a heads up I'd like them to kind of
3 frame our second issue.

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

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

19 Okay, on the transfer of credits we
20 can jump, save the refunds until after kind of
21 the Department frames it. But we'll go Ashley,
22 Abby and then to the Department.

1 MS. HARRINGTON: Well mine was about
2 partial relief. I just want to be careful that,
3 the statute says that the Department can't give
4 relief beyond the loans that were taken out.

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

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

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

18 MS. SHAFROTH: I think that's mostly
19 the point I wanted to make. And also in terms of
20 the sort of giving the widget back, I mean I
21 don't know how that would work in practice if
22 someone actually did complete a program that

1 induced them to enroll based on
2 misrepresentations.

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

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

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

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

18 So there is a wash here, right. I
19 mean there's costs that they don't recover.
20 There are benefits that they still receive. But
21 in terms of and this was a partial relief point,
22 right.

1 I mean my point was if a student
2 wanted to come and say I don't want any of this
3 then I think that gives additional credence to
4 the idea that there should be full relief. But
5 if a student says you know what I want to keep my
6 two years' worth of credits and I do have an
7 institution that's going to accept them or
8 whatever because I don't want to mire in the
9 transfer of credit.

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

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

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

21 PARTICIPANT: So this is in response
22 to the issue that Dan brought up, his question

1 about should we look into refunding amounts
2 already paid. So not just looking at amounts
3 that are still owed on a loan, but if a discharge
4 is given what is the groups feeling about amounts
5 already paid.

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

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

16 Loans get repaid based on family help,
17 on taking on second jobs, on the fear of
18 repercussions of default and delinquency and
19 accruing interest and not, just the uncertainty
20 and the length of time with which the processes
21 take loan amounts are going to vary based on
22 numerous different factors.

1 And I think it would be grossly unfair
2 not to give the money back to a student who did
3 everything that they could in order to pay down
4 those loans. And then briefly because somebody
5 had mentioned relief not just for amounts already
6 paid but also for amounts that were refunded to
7 the student for educational costs not directly
8 related to billable charges.

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

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

20 MS. MILLER: Okay, Michael.

21 MR. BOTTRILL: So, Anmarie, just so
22 that I understand the statute, it does say that

1 there is an opportunity for the borrower to
2 recover amounts that have already been repaid on
3 a loan. Is that correct? Am I reading that,
4 it's in your Issue Paper Number 1.

5 MS. WEISMAN: Yes.

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

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

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

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

1 why it's a question?

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

7 You know, outstanding amounts or
8 something in addition to that. I wasn't, you
9 know, I wasn't paying a lot of attention to the
10 2016 effort.

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

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

1 recover those amounts.

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

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

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

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

22 So I don't think that you should look

1 at it as any indication that we aren't planning
2 to go there, so to speak. It's more that we're
3 trying to address the question that was already
4 put on the table by another negotiator and we
5 just want to make sure we have the flavor of the
6 group.

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

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

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

21 PARTICIPANT: Well and that issue has
22 been raised previously. And I think that's why

1 we want to consider for any language that we're
2 writing something that's very specific about what
3 the intent is to make sure that we've covered all
4 of our bases.

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

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

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

13 MS. MILLER: So, Ashley Reich.

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

19 So I also know that there are a lot of
20 institutions that have implemented financial
21 literacy programs across their campus and many
22 others that are looking to do the same. And I

1 feel as though if we do not allow for some of the
2 money that has been repaid to be a part of this
3 that flies in the face of what schools are trying
4 to do to educate their students financially about
5 how to properly pay their loans back.

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

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

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

22 I think consistent with that

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

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

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

17 MS. MILLER: Valerie.

18 MS. SHARP: I just wanted to speak to
19 the refund of the prior loans paid. I strongly
20 support that. And I do agree with Alyssa in that
21 if there is extra cost that the student incurred
22 related to their education that they used loan

1 money for that was a valid educational concern
2 that we should consider that.

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

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

22 But we have to be careful to protect

1 institutions because institutions do not have
2 options to tell students they cannot take their
3 loans that they opt to take and it does happen
4 where we have students who do have opportunities
5 through scholarships or even VA payments who are
6 taking out massive loans that we recommend
7 strongly they do not take.

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

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

18 MS. MILLER: Suzanne.

19 MS. MARTINDALE: I just wanted to make
20 this quick point since it actually has not come
21 up yet. Correct me if I'm wrong, but in last
22 year's regs there was a statute of limitations

1 applied on debts that were already paid.

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

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

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

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

1 could consider.

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

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

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

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

18 PARTICIPANT: So I just wanted to
19 raise again that someone made this point earlier.
20 We are currently I understand talking about the
21 process for borrowers to get relief from the
22 Department of Education on whether they have to

1 repay their loans or can get refunds, not about
2 whether schools should be liable or whether the
3 Department can recoup from the schools.

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

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

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

19 And as I as the facilitator kept
20 letting comments in, Annmarie, can you just state
21 the test of thumbs just so it's in everyone's
22 mind and we'll get a show of thumbs?

1 MS. WEISMAN: So again, it seems as if
2 most of the group was in favor of the idea of
3 refunding amounts already paid. So if you are in
4 agreement with that if we could get a thumbs up.

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

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

12 Just a facilitator note here, it is
13 11:48. We have promised to be respectful of
14 breaks. Noting that in this area 12:00 is a busy
15 time and you generally want to break before, you
16 know, or after, does the group have a preference
17 on how we proceed?

18 Should we introduce Issue 2 and give
19 you all time to think about it and maybe have a
20 discussion until 12:15 or so or would you like to
21 break now and come back a little earlier than
22 1:00?

1 Okay, I'm hearing a lot of break news.
2 So let's take a break, our typical hour. So
3 we'll be back at 12:50. And at that time the
4 Department can kind of give us a sense of Issue
5 Paper Number 2. Thank you.

6 (Whereupon, the above-entitled matter
7 went off the record at 11:48 a.m. and resumed at
8 12:50 p.m.)

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

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

1 document where it comes from. So, Abby, please.

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

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

20 And I just wanted to, I just asked for
21 it to be distributed because I had already, I had
22 been referencing it for my own like use. I think

1 it's useful to see sort of how these things were
2 resolved last time as a reference point and I had
3 shared copies with a few negotiators and I didn't
4 want some people to have it and some people not
5 to have it.

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

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

14 So with that in mind, we need to focus
15 on being concise, being succinct, attempting not
16 to repeat ourselves. And I think as the
17 facilitators were discussing over lunch we need
18 to focus on answering the questions at hand
19 because those questions will help the Department
20 in drafting language that we will then be able to
21 look at and evaluate and negotiate on during the
22 next meeting.

1 So with that in mind, if we can keep
2 the discussion pointed on the issues, on the
3 questions at hand that would be much appreciated.
4 Kind of a supplementary note to that, you know,
5 we are all here in good faith to negotiate.

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

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

20 So I appreciate everyone's best
21 efforts to stay on track. And I will warn you in
22 advance noting that we have 21 issues left your

1 facilitator team is going to give you a shorter
2 time span on comments and we will be cutting off,
3 you know, people or at least jumping in and
4 asking you to summarize succinctly at times.

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

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

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

17 But since we were kind of leaving off
18 on that discussion and people were starting to
19 have some really fruitful comments we thought it
20 might be helpful to go ahead and keep down that
21 path for just a little bit so that you could have
22 your say on that issue now.

1 Again, because we seem to, the
2 conversation seemed to naturally flow there. So
3 if people have comments about statute of
4 limitations whether there should be one,
5 shouldn't, if so how long this would be the time
6 to have that discussion.

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

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

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

22 MS. MILLER: Thank you.

1 MR. BANTLE: Okay. Opening up the
2 floor to comments on the statute of limitations.

3 MS. MILLER: Ashley Reich.

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

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

16 MS. MILLER: Aaron.

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

22 And we haven't really gotten in the

1 process. But if we're talking about the idea
2 that there would be one decision made with regard
3 to discharging the claim and a second process and
4 decision made with regard to whether or not the
5 Department could recover then you're talking
6 about two statute of limitations.

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

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

20 With regard to any recovery action we
21 absolutely believe there should be a statute of
22 limitations. We would suggest that something

1 tied to the period during which institutions are
2 required to keep documentation which is usually
3 about three to five years would be reasonable.

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

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

13 MR. BANTLE: Additional comments.

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

21 But it doesn't really create a new
22 cause of action against institutions. Whatever

1 the Secretary's authority is that authority
2 exists with or without a successful defense or an
3 unsuccessful defense.

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

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

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

17 PARTICIPANT: So I disagree strongly.
18 I think there are multiple reasons to have a
19 single process and not a bifurcated process.
20 First, I think with due respect to the
21 departmental staffers that staff members at the
22 Department are more subject to political pressure

1 than you would expect an administrative law judge
2 to be.

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

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

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

22 But if you've got staff members who

1 are part of a White House at that point in time
2 that for whatever reason feels under whatever
3 standard is in place they want to discharge a lot
4 of loans and then ALJs who are making different
5 decisions with regard to the exact same claim,
6 all of those discharged loans can't be recovered
7 which I think is extremely problematic.

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

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

21 So and we can talk about this more
22 later. But I just want to highlight that I have

1 multiple reasons that I think a bifurcated
2 process is problematic.

3 MR. BANTLE: We'll go, Suzanne.

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

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

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

22 But there's a weird construct there

1 when you're trying to attach it to the student
2 and to the school. So I would say conversely I
3 think we need two different definitions because
4 of that.

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

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

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

1 before the Department.

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

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

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

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

20 But it seems to me that the interests
21 of the Department are with students who are
22 accessing federal resources.

1 MS. CARUSO: Ashley Reich.

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

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

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

22 PARTICIPANT: No, I think the point

1 that I was trying to make is that attaching a
2 student's limit to our record retention limit
3 isn't fair because it's going to be different for
4 each student depending on how long they're in the
5 program, when they separate from the school where
6 they could have experienced the same
7 misrepresentation but their statute of
8 limitations would be different just based on
9 their period of attendance.

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

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

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

1 Linda.

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

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

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

20 MS. DOBSON: I would, from my
21 perspective, yes, I think that they should still
22 be able to bring a claim in that case.

1 MS. RAWLES: I just want to make a
2 suggestion which is we may want to tie this
3 conversation into the financial responsibility
4 conversation because depending on whether or not
5 we bifurcate and we don't favor that, whether or
6 not we have a statute of limitations, which we do
7 favor especially vis-a-vis institutions.

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

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

19 PARTICIPANT: I also think it's useful
20 just to be practical and realize that, and I've
21 already stated the reasons I think a bifurcated
22 process is not the best. But the other thing is

1 I think it's really important to appreciate that,
2 look, if the Department is discharging loans
3 there will be enormous pressure to recover those
4 amounts.

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

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

19 So you're creating, talking about risk
20 allocation. I mean my point is I don't think
21 it's fair to say if we've got a bifurcated
22 process we don't create any risk for

1 institutions. That's just not realistic.

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

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

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

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

21 MS. CARUSO: Do you have something
22 specific to the statute of limitations question?

1 MR. BUSADA: I just want to, yes, I
2 mean on the statute of limitations I do think it
3 matters which process you go down whether it's
4 bifurcated or unified. I do think it makes a big
5 difference.

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

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

22 And looking today, yes, it is a little

1 bit easier today with electronic documents. But
2 let's keep in mind that if we extend electronic
3 documents one, you're still having, it's still,
4 it's going to increase costs significantly to
5 hold those documents longer.

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

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

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

22 MS. CARUSO: Okay. Thank you, Mike.

1 Joseline and then we're going to go back to the
2 Department.

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

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

11 MS. GARCIA: Okay, thank you.

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

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

20 MS. GARCIA: As much as you can.

21 MS. CARUSO: Okay. So I would ask the
22 Department are there any other questions that you

1 have around statute of limitations or any other
2 elements of Issue 1, okay.

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

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

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

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

22 We want to make this easy to

1 understand for all parties involved. We want to
2 make sure that we have a process that would
3 include submission of sufficient evidence to make
4 a claim.

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

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

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

20 MR. BANTLE: And just as a facilitator
21 note, we know this is a somewhat amorphous
22 question. So just please be aware of the, you

1 know, the time we do have left.

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

4 MS. CARUSO: Kelli, please.

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

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

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

20 And you just mentioned that there
21 haven't been a lot of claims probably from a
22 misrepresentation perspective that the Department

1 has had to deal with. We also talked in Issue
2 Paper Number 1 about the federal statute versus
3 the state statute.

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

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

16 So if it's a situation where the
17 Department is trying to expedite the process of
18 discharging these claims and a good chunk of them
19 is being brought based on a school closure, would
20 it make sense to look at that school closure as
21 one claim and the Department take action simply
22 based on the fact that school is closed?

1 MS. CARUSO: So responses to Kelli's
2 point and also any process suggestions in general
3 based on Bullet Point Number 1 or the process for
4 submitting and evaluating a claim. Yes, Alyssa.

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

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

14 MS. CARUSO: Walter, Dan and then
15 Michael.

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

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

1 Walter.

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

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

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

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

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

1 should say.

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

10 MS. CARUSO: Michael.

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

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

21 And the metrics that are used to try
22 to determine that. So, Kelli Hudson Perry, to

1 your question or your statement are you
2 suggesting that in a closed school scenario
3 students go into this lane which may be an
4 express lane and in an open school scenario there
5 is another lane whereby there's more gathering
6 and submission of evidence and more adjudication.

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

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

13 MR. BOTTRILL: Thank you.

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

16 MS. RAWLES: We just need a bigger
17 table.

18 PARTICIPANT: Can I just, one more
19 thing quick. Unless, Walter, you have some
20 information that I don't have I don't know and
21 the Undersecretary didn't say today and I just, I
22 don't know if this is accurate or not, the

1 reasons by which any defense claims are being
2 granted by the Department.

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

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

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

19 If there's a sufficient claim made to
20 the Department of course we would have to talk
21 about what sufficient claim is. And if that sort
22 of informal resolution does not create agreement

1 between the school and the student assuming that
2 the school is still open, then I think it should
3 go out to ALJ or administrative law judge for
4 those of you who may not know what that is where
5 there is due process for all parties.

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

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

14 MS. CARUSO: Thank you. Ashley Reich.

15 MS. REICH: Just for some clarity, the
16 90 some thousand outstanding borrower defense
17 claims that are, that you all are working on now,
18 how, are they filling out an application for
19 borrower defense?

20 And if so which application are they
21 using because the one on the web does not allow
22 them to, like there is no option for closed

1 school discharge under the circumstances where
2 that's appropriate. So how are they currently
3 doing this?

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

8 There is a separate application
9 available for closed school discharge if a
10 borrower feels that they meet those conditions.
11 And that includes things like enrolling within
12 120 days of the closure date of the institution.

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

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

21 There was a previous iteration of that
22 application. There was one that was streamlined

1 for Corinthian borrowers in some cases.

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

8 MS. REICH: Okay, thank you.

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

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

17 My understanding is that the
18 Department is not, does not interpret the 1995
19 regulation that way and is allowing affirmative
20 applications from students who are not in default
21 to be considered for borrower relief currently
22 under the current process.

1 And I hope, Annmarie or Caroline will
2 correct me if I'm wrong about that. And I would
3 offer that's the right approach, that it doesn't
4 make sense to say that only student borrowers who
5 have defaulted on their loans should be eligible
6 for relief.

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

12 So I hope we would not go that way.
13 Second, in terms of, you know, going back to
14 Question 1, what process should a borrower
15 follow? I want to focus this on that question,
16 what should the borrower do.

17 And I think that the, that we should
18 in thinking through that keep in mind that the
19 vast majority of borrowers who feel that they
20 have been scammed, misled, defrauded, otherwise
21 taken advantage of by a school are not going to
22 be folks who are able to access assistance of

1 counsel.

2 I provide legal aid services to
3 borrowers in this situation. But I am only able
4 to help a small number and there are thousands
5 and thousands who aren't able to access counsel.

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

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

18 But that's to me another reason that
19 it's very important to have two separate
20 processes. If we have a process where the
21 student is, student borrower is pitted against
22 the school, yes, there may be some small schools

1 that also don't have legal counsel.

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

10 The other point I wanted to make is
11 this question was framed as what process should a
12 borrower follow to submit. I would argue that in
13 addition to there being a process for individual
14 borrowers to affirmatively seek relief there
15 should also be a process whereby the Department
16 of Education can initiate relief to groups of
17 borrowers if the Department has conducted an
18 investigation or received information from a
19 state attorney general or other law enforcement
20 agency where they have found evidence of
21 systematic misconduct that would give rise to
22 borrower defenses that the Department should be

1 able to initiate a process to provide relief to
2 groups of students rather than requiring each
3 student to raise their hand and come forward one
4 by one and to adjudicate each of those
5 independently.

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

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

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

22 I don't think it should be so complex

1 that you have to have counsel. On the
2 bifurcation point, you know, the idea that we
3 should keep the process simple so we don't pit
4 schools against students, unless you're going to
5 exclude schools entirely from the initial
6 determination they're already pitted against each
7 other.

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

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

21 With regard to closed schools I just
22 think we need to be careful. And some folks may

1 know this, I know they do, some others may not.
2 But when you talk about a school at the
3 Department you're talking about a regulatory
4 concept, an OPE ID, right.

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

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

20 So I do not think that, at least in so
21 far as we're determining the liability of an
22 institution, it makes sense to limit the rights

1 of a "closed school" because again I think
2 there's an organization there that could really
3 care about responding.

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

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

16 But I think it would be helpful. I
17 mean what I had proposed as opposed to the
18 exhaustion of internal remedies was the idea
19 that, you know, you get a claim and you notify
20 the parties and you tell them you've got 60 days
21 to try to meet and settle and let us know if you
22 can come up with something.

1 At least then they have a chance.
2 Again, if the student doesn't want to talk to
3 them understood. But at least give the
4 institution a chance to reach out to the student
5 if student is interested and to see if they can
6 resolve it and then you save on the
7 administrative time and costs and all that kind
8 of jazz.

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

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

20 So there's not an actual finding on
21 the merits. I think that way you ostensibly can
22 weed out claims that don't even on their face

1 satisfy the components or elements of the
2 standard that we design or come up with.

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

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

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

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

1 establish.

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

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

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

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

20 But that's actually a tremendous myth.
21 We know that certainly reservists who don't have
22 access to the GI Bill, military families, those

1 who perhaps expended on prior education and those
2 who are coming with prior debt are affected.

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

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

16 MS. CARUSO: Wanda.

17 MS. HALL: Not to restate what Dan and
18 Abby said, I mean they don't, they shouldn't go
19 to the point where they're defaulted, absolutely
20 not. By the time they get to that point there is
21 already a lot of damage done from the perspective
22 that their credit has been affected because in

1 most instances we're reporting that they are, you
2 know, they have adverse credit when they're 90
3 days delinquent.

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

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

13 MS. CARUSO: Jaye.

14 MS. O'CONNELL: So to follow Wanda
15 that was largely the comment I was going to make.
16 And I was, had a question as to whether
17 682.211(I)(7) from the 2016 regs which is the
18 administrative forbearance, if that was not
19 delayed because as guarantee agencies and lenders
20 we are receiving lists to apply administrative
21 forbearances or if that's just part of the
22 Department's process.

1 Just curious as to whether we are
2 regulating this piece truly or was that one of
3 the provisions that was approved for
4 implementation.

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

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

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

21 But I also don't want to pull people
22 artificially into a structure. If we're going to

1 start on automatic administrative forbearance the
2 only thing I would say is to remember we also
3 need to hear about the idea of stopping
4 collection activity as part of that as well.

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

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

17 MS. CARUSO: Okay. So we have a
18 request from the Department to move to the
19 discussion of automatic administrative
20 forbearance including the question of stopping
21 the collection activity as well as opt in versus
22 opt out.

1 So if you could address those that
2 would be great. Certainly not cutting off
3 discussion on the other items, but noting that,
4 the desire to move in that direction. Linda, are
5 you, go.

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

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

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

21 But we talk a lot about incentives and
22 we have to think about what kind of an incentive

1 we are sending out for folks to file claims with
2 or without merit if we make loan forbearance too
3 automatic or easy.

4 MS. CARUSO: Chris, you're up.

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

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

19 We've got issues where students are,
20 you know, have process to file complaints with
21 state regulators, a process to file complaints
22 with accrediting agencies and processing, filing

1 complaints with the Department on other issues.

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

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

15 So thinking about that in terms of in
16 here again, but the way that works is that a
17 complaint gets filed and then you've got some,
18 whatever body it is that does an investigation.
19 But they gather information from the school as
20 well to come up to determine whether or not there
21 was a violation of whether it was state regs,
22 accrediting standards or Department standards.

1 And so it seems like, you know, we can
2 still have a simple process or a single process
3 that's, you know, but again with an opportunity
4 to encourage students who have valid complaints
5 to be able to submit those on borrower defense
6 yet still engage the school without it being a
7 process of where it's something like we would see
8 on some sort of a law procedural on Thursday
9 nights where you've got people in a room fighting
10 against each other and the school and the student
11 having to hire a team of lawyers to do that.

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

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

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

22 That is to say if I opt in am I

1 meaning that I would be granted the
2 administrative forbearance and everything would
3 be on hold. Are the stakes that if I choose to
4 do that all the interest continues to accrue and
5 I'll have to pay that at the end or if I just
6 decide to opt out I'm just going to keep going
7 down the path as I was before?

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

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

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

20 But in a general sense, you know,
21 supportive of the administrative forbearance. I
22 think that there are a number of administrative

1 processes that support the idea of putting either
2 some kind of quasi injunctive or at least stasis
3 kind of process in place while something is
4 pending and being determined.

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

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

17 MS. CARUSO: Alyssa and then Abby.

18 MS. DOBSON: Just some comments about
19 administrative forbearance and, yes, I think they
20 should be granted an automatic one. But we've
21 already kind of brought up the impact of interest
22 and it was kind of a welcome surprise this

1 morning from the comments that we heard that
2 interest on those loans that have kind of been
3 held up in the process for a very long time I
4 believe he said one year that interest that would
5 accrue after that time would be forgiven for any
6 student whose borrower claim was denied or sorry,
7 defense repayment was denied.

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

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

18 And further I think the longer it
19 takes to process a claim probably the more
20 complex it is which means that it's not just a
21 frivolous type of case brought by the student but
22 rather that there are some nuances that need to

1 be parsed through. And along with that I wonder
2 if one year is actually even too long before
3 interest forgiveness is granted to those types of
4 students.

5 MS. CARUSO: Abby.

6 MS. SHAFROTH: Thanks. I'm going to
7 try to tick through a few different points here.

8 There was some discussion about
9 whether students should be required to exhaust or
10 an internal grievance procedure with the school
11 before pursuing a claim with the Department of
12 Education or even if not required to exhaust it
13 told that they are encouraged to meet with the
14 school and have the school notified and to not
15 allow the Department to begin its process until
16 after there's been an opportunity for the school
17 to try to work things out with the student.

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

1 fine.

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

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

16 In addition, I think that would have
17 a negative impact for students, for future
18 students and for the public and taxpayers in
19 terms of it would tend to quiet and chill
20 information about predatory and illegal conduct.
21 We want, if there is illegal conduct we want
22 students and borrowers to tell the government.

1 We want the Department of Education to
2 know about this and to investigate it rather than
3 to encourage an opportunity that could lead to
4 cover up or quieting of what's going on. We want
5 everyone to know about this before it gets worse
6 and hurts more students.

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

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

21 So I think someone from the Department
22 would need to be involved and they would need to

1 be sharing information with the compliance unit
2 and that sort of thing. Third, Linda raised a
3 point that she doesn't think there should be a
4 group process because she doesn't think that
5 could be consistent with there being due process.

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

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

19 So there's no, I don't think that
20 there is, that this is any way antithetical to
21 allowing due process for different parties.
22 Finally, there's the specific request for

1 comments on administrative forbearance and
2 stopped collections.

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

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

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

22 And to the extent that the Department

1 is willing to forgive interest while in
2 forbearance all the better.

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

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

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

15 MS. WEISMAN: The status is removed.

16 MS. ROBINSON: Okay.

17 MS. CARUSO: Ashley Harrison.

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

21 We also would agree with a group
22 process being necessary and we would think that

1 it would be better for both schools and students
2 if there was a common set of facts that the
3 school had to defend against and the students
4 were brought together.

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

12 MS. CARUSO: Wanda.

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

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

1 they want the forbearance.

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

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

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

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

18 PARTICIPANT: Forgive me for
19 backtracking a little bit. There was a
20 discussion of sort of administrative exhaustion.

21 And to the degree that's part of the
22 discussion I think it's also worth considering

1 whether there's a formal role for trying to
2 leverage whatever state enforcement authorities
3 exist at that point, whether there's a formal
4 part of that process where for instance borrowers
5 could be asked to report any allegations of
6 misrepresentation, fraudulent conduct to relevant
7 state enforcement authorities or whether or not
8 there's a formal role in that process whereby the
9 Department to the extent allowed by all other
10 relevant laws, privacy laws and the like, can
11 report those allegations to the relevant state
12 enforcement authorities.

13 MS. GARCIA: So I know that earlier
14 there were requests made to not group schools
15 together and, you know, say that all schools are
16 bad schools. And I just want to put it out there
17 that I would request a similar thing for
18 students.

19 I feel like there has been some
20 comments that I don't appreciate about students
21 and their incentives for making claims. And
22 students having incentives that are in their

1 self-interests where they're not genuine or
2 they're not actually trying to better themselves.

3 So I would just put out that request
4 as well as not to group students intentions to
5 better themselves when they have been taken
6 advantage of. The second thing that I'll point
7 out that in terms of process I had a question for
8 the Department.

9 So you all have access to these claims
10 and within those claims there's probably some
11 trends of where they're taking place. And I'm
12 wondering if you all reach out to students who
13 are in those institutions and let them know like,
14 hey, there have been claims taking place from
15 these institutions because I do believe that
16 knowledge is power.

17 And I think it would be a proactive
18 measure or letting students become aware that
19 former peers have been found in a situation like
20 this.

21 MS. WEISMAN: We made a request to get
22 information about the outreach that was asked

1 this morning by Stevaughn. And as far as I know
2 we're still gathering some of that information.

3 So we can kind of group that question,
4 if you don't mind if we can kind of tag that onto
5 the earlier question and try to provide that
6 answer together.

7 MS. GARCIA: Okay, thank you. And
8 then just a really quick because we have all,
9 well not everyone, but it seems that the trend
10 that we want to do is to make this process simple
11 and easily understood for students.

12 I do think that, I would agree with
13 Abby's comment about being able to opt out. And
14 the second thing I know that Linda had mentioned
15 about students being in a position where they
16 have to exhaust their resources and speak to the
17 institution.

18 I also worry about the situation that
19 the student would be in there and whether they
20 would have all the resources necessary to get
21 into an agreement or a settlement with the
22 institution that they're dealing with.

1 MS. CARUSO: Mike, Linda, check in.

2 MR. BUSADA: Just to address a couple
3 of points and see if we can just get some
4 clarification and maybe come to a little
5 consensus. One, going back to what Abby and I
6 think William talked about and I agree with you
7 don't want to force somebody to have to deal with
8 somebody that has, you know, done wrong by them I
9 mean in any situation.

10 I was wondering though would you be
11 open to, I mean a lot of you know, federal
12 programs whether it's Department of Labor or
13 other areas it's, there's a mediation process but
14 the mediation process is managed by, for instance
15 the Department of Labor.

16 So there is an intermediary trying to
17 bring the two together, making sure that nobody
18 is treated unfairly. And my thought there is
19 that the last thing, I mean I tell clients all
20 the time, you know, private clients outside of
21 school stuff that even when they a good claim
22 sometimes they say I want to go sue somebody.

1 I say you can sue and you'll probably
2 win. But it's going to cost you a lot of money.
3 It's going to take a lot of your time. A lot of
4 times people, if you sit down with them they'll
5 say hey, I was just mad about this. Let's come
6 up with a solution.

7 There are other times they won't. If
8 they're bad people, they're bad people. They're
9 not going to. But I just think that, you know,
10 we do a disservice to everybody I think if we
11 tell a student that, you know, we don't give them
12 an opportunity with someone from the Department
13 involved to try and come up with a solution.

14 I mean I think it would get both of
15 those, accomplish both of those. So something
16 like that is kind of a middle ground.

17 In terms of, and I do want to address
18 what Joseline said and I agree. We don't want to
19 say that anybody is bad or guilty. But I do want
20 to say this and I was the one that brought up the
21 original point about not grouping all schools
22 together.

1 And so I want to be very clear. I
2 live, you know, I think we all have to agree just
3 pragmatically that any kind of entity you look at
4 whether its schools, charities, churches,
5 businesses there's good and there's bad.

6 There's always bad actors. I mean
7 there's always going to be bad actor whatever
8 you're looking in. I mean I think if anybody can
9 tell me, I mean I'm a lawyer, there are good law
10 firms there are bad law firms.

11 There's good charitable organizations,
12 there's bad charitable organizations across the
13 spectrum. I think we need to acknowledge that
14 education is going to be no different.

15 There's going to be good schools
16 regardless of what sector. There's going to be
17 bad schools. There are going to be most schools
18 we hope and our effort is to make them all good
19 schools and make sure we have all good schools.

20 I think we have to be realistic though
21 and say there are some people out there that have
22 no intention of being actual students. You can

1 look at indictments for trying to commit fraud.

2 And those aren't the people you
3 represent and I understand that. But I think we
4 need to be realistic in saying there's good
5 schools and bad schools. There's good potential
6 students, you know, there are good students and
7 there are people that aren't serious students
8 that have another ulterior motives.

9 MS. CARUSO: Mike, I just want to
10 limit the comments to the questions and the
11 issues at hand.

12 MR. BUSADA: Yes.

13 MS. CARUSO: And so I'm going to
14 redirect.

15 MR. BUSADA: Yes.

16 MS. CARUSO: Okay. Linda, please.

17 MS. RAWLES: Yes. I had really wanted
18 to clarify something before Joseline spoke and
19 now it's even more so. When I'm talking about
20 incentives I mean every rule creates incentives,
21 right.

22 I mean any rule that the Department

1 would write on this, any rule that we would come
2 up with incentivizes people and discourages other
3 behavior. Not to repeat too much, but what I'm
4 thinking of a student exhausting their remedies
5 or at least trying to settle the issue with the
6 school that could be a student with a legitimate
7 fraud complaint or it could be a student who is
8 just mad and has no legitimate complaint.

9 It's a mix. So if you have some kind
10 of precursor to a lengthy, expensive process that
11 allows us to sort that out a bit to figure out,
12 you know, you ask any of the accreditors, I won't
13 speak for Michael or others but anyone who works
14 with students realizes that most of them are
15 sincere and mean well, et cetera but that there
16 are some who don't.

17 And you get some frivolous complaints.
18 So we're just saying it would be nice to have
19 something at the beginning if it's not an
20 exhaustion of remedies some kind of step that
21 helps us sort out legitimate complaints from non.

22 It's just as naive and wrong to say

1 that all the complaints are going to be
2 legitimate as to say all the complaints are going
3 to be illegitimate. They will be a mix.

4 MS. CARUSO: Okay. Understanding that
5 we still are on Issue 2 back to the Department to
6 direct us in any form or fashion you see fit,
7 areas where you want to explore within Issue 2.

8 MS. WEISMAN: I'd like to move to
9 Issue 2.3, what evidence should the borrower be
10 required to provide to support a borrower defense
11 claim?

12 MS. CARUSO: Abby, Joseline.

13 MS. SHAFROTH: Thank you. So in
14 working with borrowers who want to submit
15 borrower defenses I can tell you that they rarely
16 have evidence beyond their own testimony about
17 what happened to them.

18 There are some circumstances where,
19 you know, where they happened to still have a
20 handout or something. But for the most part they
21 get materials in the beginning, recruitment
22 materials and they throw them out because they

1 are not, they don't have any record retention
2 requirements and they're not holding onto things
3 thinking I'm going to have to prove a case one
4 day.

5 They don't think that they're being
6 taken advantage of and they're trusting
7 everything that they're receiving. So they're
8 not stockpiling evidence for a later claim.

9 In addition to that a lot of the
10 misrepresentations that occur or at least the
11 ones that I hear about are oral
12 misrepresentations. It's, you know, a borrower
13 is called by a recruiter or meets with a
14 recruiter on campus and it is at that point that
15 they are given misinformation about job placement
16 rates or they are guaranteed that they will get a
17 job or they are told that they, that their
18 expenses are all going to be covered.

19 Those sorts of things. These are all
20 oral misrepresentations where there won't be,
21 that borrower isn't going to have any other
22 evidence other than their own testimony.

1 So for these reasons in order to make
2 sure that the process is accessible to those who
3 have meritorious claims but don't have other sort
4 of documentary evidence and of course don't have
5 subpoena power or anything to go after and depose
6 the institutions that they should be able to
7 support their claims with their sworn testimony.

8 And they can, you know, maybe it
9 should be signed under penalty of perjury or
10 something like that to ensure that it sort of
11 counts as testimony the way their testimony would
12 be evidence in a court of law.

13 And that, you know, in addition to the
14 borrower's own, whatever evidence the borrower is
15 able to submit the Department should also
16 consider evidence in its own records or evidence
17 submitted by state AGs or other enforcement
18 authorities and doesn't need to like just
19 consider the borrower's evidence in a vacuum.

20 And to the extent that the Department
21 does not credit a student's sworn testimony I
22 would say the Department should provide an

1 explanation in writing of what other evidence it
2 has that contradicts the student's sworn
3 testimony or what other reasons they have for why
4 they don't find the sworn testimony credible.

5 MS. GARCIA: I have a question for the
6 Department. External evidence that is made or
7 excuse me that involves like investigations or
8 judgments like how much of a weight do those have
9 for borrower defense claims?

10 MS. WEISMAN: So I think that really
11 the one set of claims that were filed from former
12 Corinthian borrowers are the only ones that we
13 can really speak to related to that.

14 There were a couple of other schools
15 that Mr. Manning mentioned this morning as well
16 that would fall into that where we had sufficient
17 information and that was really the majority of
18 what was looked at for those claims.

19 We have not really gotten into the
20 level of processing individual borrower claims
21 yet. So I can't speak to what might be the
22 process for those.

1 I think in many of those cases they
2 were kind of put aside because we didn't have
3 that information for those. So where we have
4 good information I think we're using it.

5 But we're really trying to look
6 forward and say we want to create a process to
7 really outline what we would do and talk about,
8 you know, how useful is that. But in a lot of
9 cases I think we won't have it.

10 And so that's really what we're trying
11 to gather some more information on as well is
12 what happens when that information isn't
13 available to us.

14 MS. GARCIA: Thank you.

15 MS. CARUSO: Michael and then Aaron.

16 MR. BOTTRILL: Well thankfully my
17 agency doesn't receive a whole lot of student
18 complaints. But of those that we do I would say
19 they mirror what Abby described without much, if
20 any, documentation.

21 And I, you know, from experience will
22 say that makes it very difficult to, you know,

1 try to suss out what if anything can and should
2 be done. Oftentimes a student might claim that a
3 recruiter or admissions individual stated
4 something and what we'll get back in return is
5 well here it is where it's in the catalog on, you
6 know, page 56.

7 But in addition here's where the
8 student signed their initials and said they
9 received this information. And here's where it
10 says, you know, the specific, you know,
11 opportunity and, you know, has far greater
12 evidence that contradicts the student's claims.

13 So that makes it, I'm sure, a very
14 difficult process for the student, I mean for the
15 Department to try to again determine the truth of
16 the matter.

17 But I think at a minimum to Abby's
18 point there, because of those circumstances there
19 has to be, you know, at least some kind of
20 affidavit or sworn statement or something that, I
21 just don't think you're going to get much else in
22 these misrepresentation or substantial

1 misrepresentation claims.

2 When you get to the next bullet about
3 due process I think you'll have an opportunity to
4 talk also about the opportunity and how
5 "adversarial" you want to make it with regard to,
6 you know, how many times so and so gets to
7 respond back to the other person and the other
8 claimant and whatnot.

9 But, you know, again minimally I think
10 there has to be something where the student is
11 attesting to, swearing to the testimony that
12 they're providing.

13 MS. CARUSO: Aaron.

14 MR. LACEY: Yes, just following up on
15 those comments. Actually I would sort of
16 encourage that the Department aside from just
17 setting that floor which I think is consistent
18 with false certification, discharge and closed
19 school, I mean having to have a sworn statement
20 from the student.

21 But I would actually suggest not
22 penning yourselves into a policy corner by trying

1 to articulate anything beyond that. I mean
2 you've got a standard, you know, of proof.

3 You've got whoever it's going to be in
4 ALJ making or whoever making the decision. You
5 know, you've got the claim articulated. I mean
6 the responsibility of that individual is to
7 gather, you know, through the process and the due
8 process whatever evidence they have and to make
9 the decision they have.

10 And I don't, you know, I guess my
11 recommendation would be that you not try to
12 articulate some specific set of documents or
13 standards that have to be satisfied. I mean at
14 the end of the day you want a just decision and
15 you want that person to be able to gather
16 whatever they can.

17 So beyond the floor the certified
18 statement I would probably say, my suggestion is
19 not to try to articulate any particular pieces of
20 evidence that would be required.

21 PARTICIPANT: In the same vein as
22 Aaron's point I would actually say the opposite.

1 And I would say you could give examples of what
2 might be considered evidence so that there's an
3 understanding of what the opportunity is to
4 provide that evidence.

5 But not, it doesn't necessarily paint
6 you into a corner if you give a couple
7 opportunities. So you might say, for example, a
8 sworn statement could be considered evidence on
9 and on and on though not saying exclusively that
10 those items would be the evidence required.

11 MS. CARUSO: Are we all set on
12 Question 3? Let's go to Question 4.

13 MS. WEISMAN: So Question 4 asks what
14 due process and notification requirements should
15 the Department provide to an institution of a
16 pending borrower defense claim and what
17 opportunities should be provided for the school
18 to respond to a borrower defense claim?

19 MS. CARUSO: The floor is open.
20 Valerie.

21 MS. SHARP: I do think that
22 definitely, in order for due process to take

1 place, we do need to set something in the
2 regulation.

3 It was something that was not
4 clarified in the 2016 documents that there would
5 be a notification to the school, and the school
6 would have proper opportunity to respond and
7 provide documentation.

8 I don't know necessarily that it's a
9 matter of trying to pit the school against the
10 student, because both responses and things are
11 going through the Department of Education for
12 review, and that is protecting both interests at
13 the same time.

14 But I do think it is important for
15 schools to have an opportunity to be aware. If
16 nothing else, if it is an inadvertent mistake, it
17 allows them to catch it before anybody else is
18 harmed, but also have an opportunity to respond,
19 provide the documentation that they have.

20 And in the prior considerations, there
21 was given opportunity for students to appeal
22 decisions, but none for the institution to

1 appeal.

2 So, I think we've talked about fair
3 and equitable, and we certainly want fairness for
4 the students, but we want a balance in
5 legislation as well to make sure that schools
6 have an opportunity to also share their side.

7 And as mentioned several times today,
8 most schools are responding on their own without
9 the backing of law firms in these cases.

10 Usually I am the respondent, and I do
11 not have a law degree. And so, it is important
12 to note that many times the schools are just
13 providing you with, the Department with the
14 information that they have in allowing the
15 Department to make the decision.

16 PARTICIPANT: Michael, Abby, and then
17 Kelli.

18 MR. BOTTRILL: So, this might be the
19 bifurcation of the bifurcation, which would be a
20 quadfurcation, and it goes to what we said before
21 about, you know, if it meets the definition of a
22 closed school, you go into this lane, whatever

1 that definition is going to be.

2 You know, precipitous closure, but
3 with an open school where there is an opportunity
4 for the institution to have notice and an
5 opportunity to respond, I think those are the two
6 lanes that you might want to consider as you're
7 thinking about crafting the process.

8 And so, in an abundance of fairness,
9 to give the institution notification and an
10 opportunity, I don't know that it needs to be,
11 again, a back and forth tennis match of
12 responding to the different responses.

13 I'll leave that up to the lawyers to
14 argue about, but you know, certainly notification
15 and an opportunity to respond would seem fair,
16 across for all parties.

17 PARTICIPANT: Abby.

18 MS. SHAFROTH: So, I'm not sure what
19 the due process would be beyond notification to
20 the school, or what's being proposed for due
21 process, if it's anything other than notification
22 to the school that a borrower has submitted a

1 claim.

2 To me, in terms of due process, if we
3 do have a bifurcated proceedings, if there is a
4 distinct process where a borrower can get relief
5 from the Department of Education, it's just
6 between the holder of the loan and the borrower,
7 and there's an entirely separate process where
8 the Department might decide it wants to seek
9 recoupment from the school, or it might decide it
10 doesn't want to seek recoupment from the school,
11 then I'm not sure that -- it's not clear to me
12 that schools would have any due process interest
13 with respect to the first proceeding, because the
14 outcome would not make them liable for anything.

15 It would only be if the Department
16 decided to conduct a second proceeding, that the
17 school's due process interests would be at play.

18 So, I mean, my main concern here is I
19 want to make sure that the first process, the
20 process by which the Department can decide
21 whether to forgive a student's loans, isn't
22 adversarial in terms of between the student and

1 the school, and also moves at a reasonable clip.

2 If there's a lot of process points
3 where the school has 180 days to respond, and
4 then the student has time to review with what the
5 school's submissions, and then the school has an
6 opportunity to somehow appeal the decision, that
7 is about whether the Department should forgive a
8 student's loans.

9 That strikes me that it would really
10 slow down and burden the process for getting
11 students relief who really need it.

12 PARTICIPANT: Kelli.

13 MS. HUDSON PERRY: In an effort to try
14 not to echo what Valerie and Michael said, I do
15 want to just provide some context about what Abby
16 just said as well.

17 Where it becomes important from an
18 institutional perspective is when we get to Issue
19 Paper 3, and the determination of what the
20 liability is to that school.

21 So, if a claim is presented and the
22 liability does not come back to the school, there

1 may not be a situation where the institution
2 needs to get involved in that point other than if
3 it was somewhat of a mistake by an individual at
4 that institution, because there needs to be
5 clarification made at the institution so that
6 that mistake doesn't get made again. So,
7 processes might need to change at the school.

8 So, notification is important from
9 that perspective, but where it really becomes an
10 issue is if there's liability that the
11 institution is going to incur based on that
12 discharge.

13 PARTICIPANT: Linda, and then Aaron
14 and Dan.

15 MS. RAWLES: Due process is a very
16 important concept, and it's sort of like free
17 speech or some of our other rights.

18 All of our opinions change, I guess,
19 depending on where we are looking at it. But I
20 think we ought to really pay attention to this
21 issue.

22 The thought that -- first, of course,

1 I don't favor a bifurcated process, but if you
2 had one, and we were supposedly only looking into
3 whether the loan would be discharged, and not the
4 liability of the institution, that's a little bit
5 of a false paradigm, or quite a big false
6 paradigm, because the school has, if nothing
7 else, reputational liability.

8 The school has an interest from the
9 point someone says to the school, you committed
10 fraud, and so this person doesn't have to pay
11 their loan back.

12 So, the fact that due process to a
13 school, in that context, consists only of notice,
14 goes against any notion of due process or
15 fundamental fairness I've ever heard of.

16 What I've always told my clients is
17 make sure that, especially if they're private
18 schools, make sure you're at least giving
19 fundamental fairness, if not due process.

20 And even if you're not a lawyer, you
21 know, there are just different standards of how
22 much process you give somebody.

1 So, let's say we're only going to give
2 a school fundamental fairness and not due process
3 from the beginning of the process, that usually
4 requires, or always requires notice, an
5 opportunity to present evidence, and a right of
6 appeal.

7 So, I think it's pretty obvious, if we
8 really mean that this process is going to be fair
9 to all parties, that the school needs to be
10 involved from the beginning with notice, an
11 opportunity to present evidence, and appeals. We
12 can argue the details of that later.

13 But to go any less than that, I think,
14 goes against our goal of being fair to all the
15 parties involved.

16 PARTICIPANT: Aaron.

17 MR. LACEY: Yes. I mean, I hear very
18 clearly, and I agree that there is a great
19 interest for students in having a process that is
20 fast. I get that. But between fast and fair, I
21 think we have to go with fair every time.

22 And I echo Linda, I was going to make

1 essentially the same point. I will add that I
2 think that the regulation should specify that
3 both parties have a right to present evidence, a
4 time period in which to present that evidence, a
5 right to understand and review the evidence that
6 the student has supplied so that they can
7 respond.

8 But I think those, some of the things
9 that were lacking in 2016 version, in my view,
10 were some guaranteed time frames, the opportunity
11 to provide that evidence, the guarantee that the
12 evidence would be considered by the arbiter,
13 those types of things.

14 So, and I think whether you have a
15 bifurcated process or a single process, which I
16 prefer, either way, you've got to have those
17 things from the very beginning, for school and
18 for student.

19 The other point I wanted to make is,
20 if we decide to move in a direction of permitting
21 or contemplating a group process, I think that
22 the due process afforded institutions, in that

1 context, and students, has to be greater in the
2 group process, because the stakes, conceivably,
3 can be very, very high for an institution.

4 So, if we decide in the individual
5 claim process to try to go lean and afford sort
6 of the minimum amount of due process to
7 institutions to, for the sake of expediency, I
8 think, in the group process, we need something
9 more like what looks in January, you know, in the
10 regulations that were provided there.

11 And I also don't know if, in the group
12 process, you would have a departmental
13 representative advocating on behalf of the group,
14 in which case, all the more reason that would
15 probably look a lot more like Subpart G, you
16 know, in the process that was laid out in
17 January.

18 PARTICIPANT: Alyssa, Ashley Reich,
19 Danny, Michael, and then check-in, which could
20 mean a break.

21 MS. DOBSON: I'm just having
22 difficulty understanding how the Department would

1 be able to arrive at a decision to grant the
2 defense to repayment claim without input from the
3 school.

4 I deal with students all the time, and
5 they'd say something like, well, this professor
6 did this to me.

7 As soon as I get feedback from the
8 professor, it quickly becomes apparent as to, oh,
9 I see why you thought that, but here's what
10 actually happened.

11 So, maybe you could help me understand
12 that, but I don't see how the Department could
13 even arrive at a decision without input from the
14 other party.

15 Oh, the other thing is that I don't
16 think it would have to be a long process.
17 Working in a school all the time, the Department
18 commonly gives us deadlines for reporting things
19 back that aren't an extraordinarily long window.
20 So, we're used to quick turnaround times and
21 providing documentation quickly.

22 PARTICIPANT: Ashley Reich.

1 MS. REICH: In an effort not to
2 repeat, I agree. And the Department, I believe,
3 and the OCR, when they send a request, I think we
4 have maybe five days for a turnaround.

5 So, I would say that those type of
6 standards would probably remain. I could never
7 imagine a situation why the Department would, you
8 know, ask for 120 day turnaround.

9 So, I think that those sorts of
10 standards, that shortened time frame, would
11 probably be appropriate here because you already
12 have that standard.

13 You already asked that of the
14 institutions to provide that. And then, I just
15 echo everything else you just mentioned.

16 PARTICIPANT: Danny.

17 MR. FLANIGAN, JR.: Okay. Hopefully,
18 I won't repeat what other people have said, but I
19 do think the process has to be fair, both from
20 the student's side, as well as from the college.

21 PARTICIPANT: Do you want to get
22 closer to the mic?

1 PARTICIPANT: Thank you. I do, I do
2 think the process has to be fair, both from the
3 student's side, as well as from the college side.

4 And you talk about due process of
5 fairness, I think in fairness, you have to notify
6 the college when a student makes a claim, about
7 what the claim is.

8 And I heard someone talk about five
9 day turnaround, a 30 day turnaround, 180 day
10 turnaround. I think a turnaround should be
11 quick, like 5 to 10 days, and I think that the
12 Department has to involve both the student and
13 the college in the process of making decisions to
14 what they're going to do.

15 PARTICIPANT: Michael, you're all set?
16 All right. So, Abby and then, and then we'll
17 have a check-in.

18 MS. SHAFROTH: Sure. I just wanted to
19 clarify that my position wasn't that the
20 Department shouldn't be able to get information
21 from the school to consider.

22 By all means, I wouldn't tie the

1 Department's hands in investigating a borrower
2 defense claim. It's simply that I wanted more
3 clarity around -- it's two points.

4 That, one, when we're deciding whether
5 the Department should decide to forgive a
6 student's loans, then I don't think that the
7 school has a due process interest in that
8 decision.

9 I think their interest is in whether
10 the Department is able to hold them liable or to
11 recoup from them.

12 And second, that if we're going beyond
13 notice to the school, that I'm wary of trying to
14 create a process where the institution has more
15 procedural rights in the decision of how to
16 allocate funds between the Department of
17 Education and a student borrower, especially if
18 we're beginning to talk about appeals of the
19 decision, a decision that is between the student
20 and the borrower.

21 If the institution isn't a party to
22 the decision, I am not sure why or how they

1 should appeal that, and that makes it sound, if
2 we're talking appeal, that makes it really sound
3 like an adversarial process between the student
4 and the school, which, again, I won't repeat
5 myself, but it's going to be very hard for any
6 student to navigate.

7 PARTICIPANT: Okay. Mike, you have
8 something on due process?

9 MR. BUSADA: No, and I completely
10 understand where Abby's coming from. The one
11 thing that I would say though is that, if you are
12 a smaller institution and you have a student that
13 goes, and the loans are forgiven, and they come
14 back to a small town like many of us live in and
15 they go to the newspaper and say, the Department
16 of Education agreed with me that fraud was
17 committed on me.

18 If we have one student do that in our
19 small town, we're done. You shut it, I mean,
20 Katie, close the doors, because it would have
21 such a big effect.

22 And so, that's the only place that I

1 would argue that I think it does have an effect
2 on the school, because if you're a small school
3 in a small town, their reputation is all you
4 have.

5 PARTICIPANT: Okay. We can take Dan
6 and Bryan.

7 MR. MADZELAN: No, just to reiterate
8 that, you know, every institution faces at least
9 financial risk, as well as reputational risk.

10 And even if there is not a financial
11 risk in a particular circumstance, a college or
12 university can certainly be facing reputational
13 harm in that circumstance.

14 MR. BLACK: One of the things that
15 we're very cognizant of is, for example, I went
16 on the internet and typed in student loan
17 discharges, and Student Loan Hero came up.

18 And you know, when we talk about a
19 reputation, of a school having a fine reputation,
20 but having something like that happen in a small
21 college setting, it becomes devastating, just as
22 Michael was saying. Let me give you some little

1 insight, and the way, for example, grievances are
2 handled.

3 As an attorney, you have a request for
4 investigation that's done through a written
5 response.

6 Following that, if they find that
7 there's a threshold merit that's been met, then
8 it goes to a mediation of three attorneys who
9 look at all the facts and the evidence. And
10 then, if they find it's warranted, then it goes
11 to a commission at the last stage.

12 So, there's always a tremendous amount
13 of due process in everything, and to suggest
14 anything less than that, especially in light of
15 our climate, where we have really seen where
16 students don't necessarily have a complaint
17 against our school, but they want to be
18 discharged of the debt. And so, that's a big
19 concern of ours. Thank you.

20 PARTICIPANT: So, sounds like we are
21 wrapping up Question number 4. So, back to the
22 Department, it sounds like we've heard some

1 responses to Question 5 in the course of our
2 conversation. Anything left there? And how
3 about number 6?

4 PARTICIPANT: The other thing I do
5 want to point out though, for Item 6 is, talking
6 about the opportunity for borrowers with other
7 federal loans to consolidate the loans into the
8 Direct Loan Program, we want to remind people
9 that, yes, we are already doing this as a
10 process, but we want to remind people that a
11 consolidation loan is a new loan.

12 So, we would want to consider that as
13 our discussion is framed here, that any language
14 we write, we'd want to make sure, if you wanted
15 to include then that consolidation loan, which
16 presumably you would, that that would need to be
17 written into language.

18 Because again, it becomes a new loan,
19 so the underlying loans are no longer what we
20 would consider.

21 So, it's just a point of
22 clarification, and happy to hear your thoughts on

1 that, as well as if you do have anything left on
2 Item 5, Bullet Point 5, whether the school is
3 open or closed and needing a separate process.

4 PARTICIPANT: Okay. Assuming Bryan's
5 tent is ready to go down, Alyssa, and then Wanda,
6 and then Abby.

7 MS. DOBSON: I think consolidation is
8 an, is an important piece to remain in there, but
9 my concern or question, or both, is would there
10 still be a process to parse out which loans
11 within that consolidation loan were subject to
12 the misrepresentation, or if a student had a
13 misrepresentation claim and consolidated, would
14 loans that were completely unrelated end up being
15 forgiven in that process?

16 PARTICIPANT: And my understanding is
17 that there is a way to do that, but that is some
18 of the delay in regards to the current process
19 that we're using, that some of the ones that are
20 taking longer to discharge than others, Mr.
21 Manning referenced that this morning, that that's
22 part of one of the reasons why that can happen.

1 PARTICIPANT: Wanda.

2 MS. HALL: A little bit back on 5, the
3 distinction, when you're looking at closed
4 schools is you're going to, you're still going to
5 have borrowers that are not going to be eligible
6 for the closed school discharge because of the
7 timing criteria. So, then you have another, I
8 guess another exit ramp or something, or go this
9 way scenario.

10 PARTICIPANT: Abby.

11 MS. SHAFROTH: I'm glad it sounds like
12 the Department is interested in ensuring a path
13 to forgiveness for student borrowers whose loans
14 are in the FFEL program, as opposed to the direct
15 loan program.

16 Since borrowers generally haven't
17 chosen the origin of their loans and which type
18 they get, it's very important to ensure that
19 borrowers with FFEL loans have an opportunity to
20 relief.

21 My preference would be to also revise
22 the FFEL regulations to provide those borrowers

1 with a direct path to leave, relief, without
2 having to go through the consolidation process.

3 But if, you know, as a sort of second
4 best, if the Department is not willing to go that
5 route, allowing a consolidation process and to
6 treat that direct, new Direct Consolidation Loan
7 as eligible for relief is very important.

8 This also though raises the issue of
9 refunds for amounts that the student already
10 paid. I would strongly counsel in favor of
11 finding a way to provide borrowers who had FFEL
12 loans and who have already had amounts paid or
13 collected on those FFEL loans before getting a
14 discharge with a way to get refunds of those
15 amounts.

16 PARTICIPANT: I do think that the
17 consolidation is a, is a good idea because if the
18 student has loans, they have loans, right?

19 And the idea is that we're discharging
20 them from payment based on some type of
21 misrepresentation.

22 I guess the part that I don't

1 understand is why would we make them go through
2 the consolidation process in order, before that
3 discharge is granted?

4 PARTICIPANT: There are some legal
5 barriers to discharging it directly from the FFEL
6 program, and that was the work around that we
7 were able to come up with to try to provide some
8 parity.

9 PARTICIPANT: Ashley Reich.

10 MS. REICH: When it comes to
11 consolidation for those that had older FFEL
12 loans, it actually may be advantageous for them
13 to consolidate because they could get a lower
14 interest rate.

15 And when we've been talking about
16 administrative forbearance and interest, you
17 know, capitalizing or continuing to accrue, you
18 know, while the student is waiting for their
19 particular application to be processed, that
20 actually might help them.

21 Like I said, especially if they have
22 a lower interest rate. So, just something to

1 consider there.

2 PARTICIPANT: Wanda.

3 MS. HALL: I think one thing that we
4 have to be cautious of is that, generally, what
5 you'll see happen, the borrower may consolidate
6 all of the loans they have.

7 And so, maybe they have some loans
8 that are legitimate. Loans they don't, you know,
9 they're not going to be dischargeable. Let's put
10 it that way.

11 If they're working towards a
12 forgiveness plan, then if they consolidate, then
13 that counter is back to zero again. So, it comes
14 down to counseling as well.

15 PARTICIPANT: Jaye.

16 MR. O'CONNELL: I seem to recall, the
17 last time, that there was a pre-qualification
18 process through the Department.

19 So, if someone did not have a
20 consolidated FFEL loan, that they would be
21 advised to consolidate as a result of being
22 approved for discharge. So, I think that could

1 help with the loss of benefits.

2 PARTICIPANT: Abby.

3 MS. SHAFROTH: I don't think that this
4 is addressed in the regulations that weren't
5 delayed and didn't go into effect, but just as a
6 technical point, there have been some FFEL
7 borrowers who aren't eligible to consolidate into
8 a Direct Consolidation Loan, including those who
9 currently have a FFEL consolidation loan and are
10 current on it, are not in default.

11 Unless that was already changed and
12 I'm forgetting it, I would encourage the
13 Department to also amend those regulations to
14 permit borrowers who have FFEL consolidation
15 loans to consolidate into a Direct Consolidation
16 Loan in order to be able to access this path to
17 relief.

18 PARTICIPANT: All right. Looking for
19 any final comments on Issue number 2. We are
20 going to move towards a break after, Joseline?

21 MS. GARCIA: Sorry, I had to step out.
22 So, if I could just quickly take it back to the

1 due process of notification to the institution of
2 a pending BD claim.

3 So, I have a question to the
4 Department. So, if a school were to get notified
5 of the pending BD claim, would the name of the
6 student be given to the institution?

7 PARTICIPANT: I think right now, we're
8 here more as a listening session, so we're here
9 to hear your ideas of what you would like to see
10 in this. We're open to your feedback.

11 MS. GARCIA: Okay. So, that being
12 said, I would worry about that. If an
13 institution found out, like, who the student was
14 and, again, putting it out there, that some
15 schools are bad and some schools are good.

16 I could see some forms of intimidation
17 or reaching out to the student while this claim
18 is pending.

19 And obviously, the institution is
20 looking for their self-interest, and the student
21 could be at risk for other behaviors.

22 PARTICIPANT: Will, and then Alyssa.

1 MR. HUBBARD: In response to that, I'd
2 recommend that the Department consider having an
3 opt in option to include the name, otherwise it
4 would be anonymous as a potential concern.

5 MS. DOBSON: Without an identifier,
6 the school would have no way of which to verify
7 or provide information about timing of
8 enrollment, the information that was being
9 provided at that time, the placement rates at
10 that time, if the student changed their major,
11 when they started, did they culminate in a
12 degree, and any of those really, really important
13 things wouldn't be identifiable.

14 PARTICIPANT: Aaron, Linda, and
15 Michael.

16 MR. LACEY: Yes, it's a fundamental
17 component of due process that you can confront
18 your accuser.

19 Now, you know, there are
20 accommodations that are often made, particularly
21 in sensitive issues. I'm not suggesting they
22 should actually be able to confront the person,

1 but the reason for that is because, you know, to
2 the point that was just made.

3 And I get the sensitivity, but there
4 is no way an institution could defend itself.
5 And I understand for scumbag institutions that
6 have done wrong, this is a crappy outcome.

7 But for institutions that haven't done
8 anything wrong, there's no way they can defend
9 themselves if they don't know who it is.

10 And I think in the existing processes
11 at the Department, closed school loan discharge,
12 false certification discharge, you always know
13 who the student is because it's the only way the
14 schools can provide evidence and respond.

15 So, it would be totally consistent
16 with existent processes to supply the name of the
17 student.

18 PARTICIPANT: Linda.

19 MS. RAWLES: I'm trying not to repeat.
20 I do agree with Aaron, but you absolutely have to
21 have that as a component of due process.

22 But what you can add is an anti-

1 retaliation provision so that if either party
2 does something in retaliation, that's an
3 additional claim. So, you know, that's something
4 that people deal with all the time.

5 PARTICIPANT: Thank you. Michael, and
6 then Danny.

7 MR. BOTTRILL: The anonymous
8 complaints that our agency, and I think other
9 accrediting agencies receive are extremely
10 difficult to, again, suss out the truth of any
11 matter.

12 It just makes it impossible for the
13 institution to be able to find any relevant
14 information about the claims being made.

15 MR. FLANIGAN, JR.: I would agree with
16 Linda and Michael, and Alyssa. It would be
17 impossible for the college to amount a defense if
18 it had no idea who it's dealing with. So, you
19 have to give us the name.

20 PARTICIPANT: Okay. Dan and Aaron,
21 are you taking, thank you.

22 PARTICIPANT: Yes, I said a moment ago

1 that, all institutions face reputational as well
2 as financial risk, and I'm wondering, maybe Aaron
3 can help me out here.

4 The other thought I had, and I don't
5 know sort of which way this plays, but you know,
6 bond rating agencies certainly take a look at
7 institutions and their balance sheets and assets
8 and liabilities.

9 And I'm just wondering if institutions
10 are not notified, is that an unknown that plays
11 one way or the other with the colleges' cost of
12 capital?

13 Or, again, I raise that question
14 because I don't know. But I do know that
15 investors are very risk averse.

16 PARTICIPANT: Joseline, and then back
17 to Danny.

18 MS. GARCIA: So, I do want to say I
19 appreciate the comments and perspectives that you
20 all brought.

21 And I do also want to respect due
22 process and the schools and institutions to be

1 able to defend themselves.

2 Again, just looking out for the
3 students, I'm not a lawyer, so I don't know what
4 exactly this would look like, but brainstorming
5 ways that we can ensure that students are
6 protected, and that they do not be taken
7 advantage of during that procedure. And it might
8 be an external entity. I don't really know.

9 PARTICIPANT: Sure. That's a valid
10 concern. Thank you. Danny, you're good? Okay.
11 So, Valerie, and then Kelli.

12 MS. SHARP: I just wanted to respond
13 to Joseline, and just let her know that in cases
14 where students have filed complaints and were
15 given the names, the Department is involved and
16 watching to ensure that nothing untoward happens
17 to those students, and that both sides can
18 respond, but both sides are also protected in the
19 process.

20 And so, that is important for the
21 students to be protected, but the Department is
22 involved in ensuring that that happens throughout

1 the process. And so, I think that is happening
2 today.

3 MS. HUDSON PERRY: This, some --

4 PARTICIPANT: Quickly, just to answer
5 your question, a retaliation claim or a whistle
6 blower's claim is a lot for fearsome to a school
7 than what we're talking about here.

8 I mean, that's one of the easier
9 causes of actions to prove is a whistle blower's
10 claim. So, students, quite honestly, would be
11 protected.

12 That's the last thing a school would
13 want is to know a student brought a legitimate
14 concern and they were retaliated against as a
15 result of that.

16 So, I think there's built in
17 mechanisms already, and are jurisprudence to
18 handle that, if that helps you with your answer.

19 PARTICIPANT: All right. Kelli, and
20 then we're going to try to wrap it up on Issue 2.

21 MS. HUDSON PERRY: Just to further
22 comment on Dan's comment about assets and

1 liabilities, it's important that the institution
2 know the name of the, of the individual because
3 they're going to have to evaluate the status of
4 that claim and whether or not that claim is
5 probable.

6 So, when we get to Issue Paper 3, and
7 we talk about whether or not there's any
8 financial liability for that institution, we then
9 need to be able to determine whether or not that
10 should be recorded on the financial statements of
11 the institution as a potential liability.

12 So, it would be almost impossible to
13 not know who that student was so that we could
14 determine that probability.

15 PARTICIPANT: Lodriguez.

16 MR. MURRAY: Representing the minority
17 students, the institutions that they serve, I
18 have to say that an institution would have to
19 have a lot of moxie to try to intimidate a
20 student after they've initiated a claim with the
21 Department of Education.

22 And you've got realize what's at stake

1 for the institution. It's more than just their
2 reputation. Institutions want to continue to
3 have a relationship with the Department of
4 Education, without which, they won't exist.

5 And so, intimidating a student after
6 they bring a claim and initiating the kind of
7 thing that some around the table are apprehensive
8 of is just almost unconscionable.

9 It's just the biggest snowball an
10 institution could ever find themselves in. And
11 so, I understand some of these concerns.

12 We're representing both institutions
13 and students, and we're very sensitive to your
14 needs.

15 But I want to assure you that if
16 you're looking for something that's evenly
17 weighed, where institutions can defend themselves
18 if they have a leg to stand on, and students can
19 voice their concerns, which are legitimate
20 concerns because they're the reason why we're
21 here today, then you've got to allow some kind of
22 an avenue for this to move forward and the names

1 to go forth, because schools, real good schools,
2 are just never going to engage in the kind of
3 thing that you're concerned about.

4 PARTICIPANT: Okay. We'll hear from
5 Will.

6 MR. HUBBARD: It'll be one second.

7 PARTICIPANT: Briefly, if possible.

8 MR. HUBBARD: It'll be very, very
9 quick. So, the point that was made, and which I
10 fully appreciate, is that good schools would
11 never do that, bad schools will always do that.

12 MR. MURRAY: Short reply. No one that
13 wants to continue the relationship that's
14 necessary with the Department of Education would
15 ever engage in that kind of thing, whether you're
16 good or bad, because good and bad are looking for
17 the same thing in their --

18 PARTICIPANT: Thank you, folks.

19 MR. MURRAY: -- relationship with the
20 Department.

21 PARTICIPANT: Thank you. All right.
22 I believe we are wrapping it up on Issue 2.

1 Anything left in the questions that the
2 Department feels need an answer?

3 PARTICIPANT: No.

4 PARTICIPANT: You're good on Issue 2?

5 PARTICIPANT: We're fine. Thank you.

6 PARTICIPANT: Okay. We are going to
7 take a 15 minute break. It is now 3:00. Please
8 come back at 3:15. Nice work, everyone. Thank
9 you for the progress.

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

13 PARTICIPANT: Okay. So, getting
14 started again, just to congratulate the parties
15 on the process made this afternoon, and to note
16 that, conceivably, if we get five questions
17 addressed this afternoon, then we are halfway
18 through the Issues. With that in mind, can we
19 have the Department start to address Issue 3,
20 summary?

21 PARTICIPANT: Yes. So, the issue here
22 is financial responsibility and administrative

1 capability.

2 So, under the Higher Education Act,
3 the secretary establishes standards for financial
4 responsibility and administrative capability that
5 institutions need to meet in order to participate
6 and receive Title IV funding.

7 We've mentioned here that if an
8 institution violates these requirements, the
9 secretary may, what refer to as an LS&T, limit,
10 suspend, terminate, and/or otherwise set
11 conditions on the institution's participation in
12 the programs.

13 So, for the current regulations that
14 we have in 685.206, borrower defense discharges
15 are granted when a borrower can show that an
16 institution committed a violation of applicable
17 state law.

18 When we discharge those loans, the
19 taxpayer is the one who pays on those loans.
20 That then brings up the issue of where we should
21 hold the institution liable for recovery of those
22 funds. So it's, should we do that? If so, how?

1 We've already had some discussion
2 around the idea of reputation, and what the
3 allegation of a claim could do to an
4 institution's reputation.

5 We want to be mindful of issues that
6 could increase the likelihood of an institution
7 to close, especially to close rapidly.

8 We also want to consider the idea of
9 schools that are having difficulty already, may
10 then have difficulty repaying liabilities for
11 claims.

12 So, we want to keep those things in
13 mind, and then say, what should we, as the
14 Department, do? How do we handle the issue of
15 financial responsibility?

16 In the past, when we regulated this
17 issue, we talked about the idea of posting
18 surety. So, typically, that's done in the form
19 of a letter of credit.

20 We also talked about the idea of
21 offset. There are other strategies that we could
22 talk about, so we'd like to know, is that

1 something that the Committee feels is worth
2 pursuing? Again, if so, how?

3 So, questions for consideration, I
4 think 1 and 2 kind of come together for us. The
5 first one is under what conditions, or to what
6 extent, should institutions incur liability for
7 reimbursement of borrower defense claims?

8 And the second one is should the
9 Department require the posting of surety by
10 institutions determined at risk for closure,
11 and/or, I'll say significant borrower defense
12 claims? If so, what metric should be used when
13 you're making these determinations?

14 PARTICIPANT: Does anyone want to
15 start us off?

16 MR. FLANIGAN, JR.: I do.

17 PARTICIPANT: Danny?

18 MR. FLANIGAN, JR.: I have a question
19 for the Department. There are some financial
20 responsibility ratios that higher education has
21 to its advantage now, and for its use.

22 Those ratios are being looked at,

1 probably redefined by the Subcommittee on ratios.

2 So, my question is if we come up with some
3 metrics based on how institutions should be
4 judged and looked at, or penalized, or sureties
5 raised, and et cetera, are we looking at the old
6 standards of financial standards, or are we
7 looking at the new standards, which we've never
8 seen yet?

9 MS. WEISMAN: I can clarify that.
10 Keep in mind that, first of all, anything the
11 Subcommittee does is a recommendation.

12 So, everything that they do is
13 reported out in some way, here. This Committee
14 is the decision making body. They are not a
15 decision maker.

16 So, also to clarify, they are not
17 really looking at the same things we're looking
18 at.

19 So, we'd ask you to look at the effect
20 on a composite score as it stands today with the
21 understanding that they are looking strictly at
22 FASB standards, the Financial Accounting

1 Standards Board.

2 So, they're not looking at the things
3 that relate back to borrower defense. They are
4 looking at some very unique situations that
5 affect the composite score.

6 But I think anything we do here would
7 not have overlap on those things. If that were
8 to occur, we could certainly review that again,
9 but I think that the decisions that we need to
10 consider here, or the questions that we need to
11 consider here are unique enough that we can get
12 some feedback now.

13 But again, we can always revisit if it
14 yields, if the Subcommittee issue work yields
15 some additional questions for us.

16 PARTICIPANT: Okay. Kelli, Dawn, Dan,
17 Michael.

18 MS. HUDSON PERRY: To kind of echo
19 what I had said earlier about kind of a two
20 pathway approach, I think there needs to be
21 consideration, obviously, if a school is closed,
22 and the reason for that, the fact that that

1 school closed.

2 However, with that, if an institution
3 is found to be misrepresenting something where
4 the discharge is appropriate, I do think that the
5 institution should be held liable for the
6 discharge of those loans.

7 However, the institution needs to be
8 able to participate in that process, and not go
9 so far as an appeal, because hopefully they're
10 included at the process from the very beginning,
11 but if they're not, they need to be able to
12 appeal that process to make sure that their claim
13 or their defense is part of that record before
14 that discharge actually happens.

15 Tying this borrower defense issue to
16 financial responsibility, as the way that the
17 current rule is written, is difficult, because
18 with the current ratios that are calculated in
19 their current format, and I understand the
20 Committee's going to talk about the new FASB
21 requirements, as it relates to those.

22 There's issue with the calculations as

1 they currently exist in the fact that the
2 Department is not being consistent in their
3 interpretation of those across schools, and also,
4 from the perspective of -- there's not clear
5 interpretation of what the accounting rules
6 actually say.

7 So, for example, you have schools out
8 there that will pass the financial responsibility
9 ratio and probably are not financial responsible,
10 and you also have schools out there that are
11 failing that financial responsibility ratio who
12 are not at risk of closure, and won't be.

13 So, to tie these two together, I think
14 there needs to be a very clear distinction of the
15 difference between whether or not a student, or
16 an institution is considered financial
17 responsibility based on that score, and what
18 surety the institution would be expected to
19 provide, based on borrower defense.

20 Because, at the time, you don't know
21 what the potential liability is. So, to ask an
22 institution to provide surety, in what amount?

1 You know, it's going to be different
2 for all institutions. You could have some
3 institutions where I think the 2016 rule had a
4 materiality threshold of \$750,000.

5 For some schools, that's not material.
6 For others, that's very material. So, without
7 having a hard number to say, this is your
8 potential liability, as it relates to borrower
9 defense, providing surety behind that is very
10 difficult to quantify.

11 MS. ROBINSON: So, Kelli just echoed
12 my sentiments, but I want to add one other thing.
13 When we talk about the rule, the rule fails to
14 establish clear standards for how the relief and
15 recovery will be calculated, and that's going to
16 lead to significant inadequacies, inequities, if
17 borrowers and institutions are treated
18 differently. So, I would like for the Department
19 to respond.

20 MS. WEISMAN: I think we're at the
21 point where we're trying to gather information
22 from you, so we'd like to hear what you would

1 propose as an alternative to that from happening.

2 MS. ROBINSON: I would like to take
3 some time to think about that and come back and
4 answer, but one alternative that I do think that
5 we can look at when we talk about fairness is, if
6 you're going to have an institution be held
7 liable for a claim, then we really need to start
8 looking at the rules and the tactics, and maybe
9 tactic is the wrong word.

10 But we need to come up with something
11 that's uniform, and I think we also probably
12 should have two different avenues and I don't
13 want to call anyone out, but I think for privates
14 and HBCUs, you might look at one list of
15 standards, and then for for-profits, look at
16 something else.

17 PARTICIPANT: Dan.

18 MR. MADZELAN: A long time ago, I
19 worked at the Department of Education, and my
20 first boss came to Washington to get the National
21 Defense Student Loan Program, now the Perkins
22 Loan Program, up and running.

1 And he told a story that after a
2 couple, three years, they realized, we have a
3 loan program and there's got to be repayments of
4 those loans, and we don't know anything about
5 that, and we don't know anything about what we
6 should expect from borrowers. Let's go ask some
7 people who do know. So, they met with some
8 bankers.

9 And so, they explained the program to
10 the bankers, and the bankers said, let's get this
11 straight. You're lending money to 18 year olds
12 with no employment history, no credit history, no
13 collateral, no cosigner?

14 Yes, that's right. Any default rate
15 less than 100 is good. So, and now, today, we
16 have a program that is also an entitlement.

17 Colleges and universities, except in
18 some limited cases, a case by case basis, cannot
19 say no. You are in an eligible program. You are
20 otherwise eligible, not in default. You fill out
21 a FAFSA, all that kind of stuff. Here's your
22 loan.

1 So, now I think what the Department is
2 looking for some information on, is whether or
3 not, in this regulation, we should establish some
4 sort of risk sharing scheme.

5 Colleges and universities cannot limit
6 lending. One of the things that the Department
7 can do is perhaps a more vigorous job on the
8 front end, some of their gate keeping activities
9 to identify colleges that maybe are not up to
10 standards.

11 But instead, what is being proposed,
12 I won't say being proposed, what is here for
13 discussion is, again, as I say, some kind of risk
14 sharing scheme, to have colleges and universities
15 cover some portion of successful borrower defense
16 claims.

17 Well, with any risk sharing scheme,
18 you have to be prepared to address two issues.
19 If you're not careful in the construction of,
20 well, you need to address the issues so you can
21 be careful in the construction of your scheme.
22 Number one, it'll raise prices for colleges.

1 Somebody's got to pay.

2 If the college is paying something to
3 the Department of Education, that's one. The
4 other one is, a response from a college that is
5 likely is limiting access.

6 So, again, somebody has to pay, either
7 in a dollar and cents way, or in a reduced
8 opportunity way.

9 So, again, these are the kinds of
10 issues that, over the recent past, that the
11 relevant congressional committees have been
12 struggling with, as well.

13 My last comment is, in the Issue Paper
14 there's a statement that excessive borrower
15 defense claims may be an indication of an
16 increase in the likelihood of an institution
17 closing.

18 And of course, that's what our
19 financial responsibility standards are about, to
20 help prevent the sudden and precipitous closure.

21 I'm just wondering if anyone has any
22 evidence that a borrower defense claim, or

1 something like that, is an indication that a
2 college or university is in immediate danger of
3 closure.

4 And I say "something like that"
5 because we know there have been instances where
6 there have been some what we call, well, the
7 private label loans, non-federal student loans,
8 where institutions have been effectively
9 guarantors and, you know, writing off --

10 PARTICIPANT: Dan, just because of the
11 time that's elapsing, can we get a direct answer,
12 either to Question 1 or to 2? Under what
13 conditions or to what extent, or should the
14 Department require the posting of sureties?

15 MR. MADZELAN: I think, unless the
16 Department can come up with a scheme that ensures
17 non-negative outcomes in terms of price and
18 access, that is something that they should not
19 pursue.

20 PARTICIPANT: Michael.

21 MR. BOTTRILL: So, with regard to
22 Bullet number 2, more than one, you had Annmarie,

1 mentioned that the posting of surety that you
2 used, the Department uses now, is in the form of
3 the letter of credit.

4 And I don't have any experience with
5 any other kind of surety that I've seen the
6 Department use.

7 So, by putting that forward, I'm
8 assuming that you're looking potentially at
9 opening up to other kinds of sureties, like a
10 bond or some other kind of opportunity.

11 And where there can be some difficulty
12 with that goes to the point that, I think Kelli
13 made, which is that the current metric that's
14 used for financial responsibility needs some
15 work, and I'm glad that that's going to happen
16 through the Subcommittee and through this
17 Committee.

18 And it also seems to be fairly binary.
19 If you're below the 1.5 composite score, you move
20 into, you know, the heightened cash monitoring.

21 And whether you're at 1.4 or -0.5,
22 there may be some degree, and there's some

1 gradation to the percentages that you may have to
2 pay, or some gradation to whether you're going
3 to, immediately into HCM2, but maybe there could
4 be some thought about additional gradations
5 within that composite score so it doesn't feel as
6 binary or as limited as it, as it may be.

7 And I, well, what I think that we see,
8 because we use the composite score as an
9 accrediting agency because it, to parallel with
10 the Department and not create an additional
11 burden.

12 And essentially, we see institutions
13 "managing to the composite score". So, they, you
14 know, move money in ways that, you know, give
15 them the best opportunity to make that.

16 And it's not always a great indicator
17 of the full financial health of an institution.
18 And we've seen, on more than one occasion,
19 precipitous closures from institutions that just,
20 three or four months earlier, had reported, you
21 know, greater than 1.5 composite scores and we
22 completely missed it because we just didn't see

1 the financial stress that was there.

2 So, again, I'm happy that that's going
3 to be looked at. The last thing that I'll say is
4 maybe there's more opportunity for the limit, as
5 opposed to just suspend and terminate.

6 And I think that, again, this goes
7 back to my idea around gradation and
8 differentiation, which is one of the things that,
9 in the accreditation community, we've been
10 talking a lot about differentiation and
11 accreditation.

12 And so, that's not so binary, and I'm
13 not fully convinced that we'll get there fully,
14 but it's something that we're talking about.

15 Maybe there are ways, and I know it's
16 difficult because it's an entitlement, and I know
17 that folks around the table have already said,
18 well, you can't limit a student.

19 But maybe there are limit actions on
20 the institutions to the extent of how much more
21 liability, how many more loans can be given out
22 at that institution when some kind of distress

1 has been identified, when some kind of deficiency
2 has been identified, or when some other kind of
3 concern from the Department's perspective has
4 been brought to light.

5 PARTICIPANT: Aaron?

6 MR. LACEY: Yes. So, you know, and I
7 think a lot of the folks in the room already know
8 this, but the Department already has pretty broad
9 authority under existing regulations to require
10 reporting and letter of credit where they see a
11 financial responsibility risk.

12 I mean, I have clients now that I work
13 with that provide the Department on a bimonthly
14 basis with cash flow analyses, pro forma
15 financial statements, by student, by program, by
16 campus enrollments.

17 You know, I think that the amount of
18 reporting and attention to institutions that are
19 potentially distressed, on the part of the
20 institution, on the part of the Department has
21 increased in recent years, which is probably a
22 good thing.

1 But where I'm going with this is, you
2 know, I don't, I don't think that there is a
3 great need at this point to expand or develop in
4 the regulations a series of instances or events
5 or anything along those lines that would specify
6 a reporting, you know, a certain, in other words,
7 I think you've got that authority.

8 And I think that the discretion to
9 exercise that authority, at present, without
10 boxing yourself in with certain regulatory
11 triggers or what have you, is probably
12 preferable.

13 I could understand the Department
14 wanting internally to develop more protocols and
15 think more further about, or think further about
16 exactly what types of situations would warrant
17 further reporting, but I don't think that needs
18 to be in the regulation. If anything, again, I
19 think it boxes the Department in.

20 So, this is to 2. With regard to
21 sureties, you know, I know there was some
22 conversation the 2016 round, and it looked like

1 in the, in those regulations that were developed
2 about affording institutions alternatives to the
3 traditional letter of credit.

4 I think that's great. I encourage the
5 Department to consider other forms, and that
6 could be cash and escrow, there are insurance
7 products that are being developed. That could be
8 bonds.

9 But I think all of that is good, as
10 long as the Department is getting the security
11 that it needs. But it does give institutions
12 more flexibility to try to provide the Department
13 with the comfort that it needs.

14 I think you have to be really careful
15 about requiring whatever form of surety you might
16 think is necessary prior to, in the example of
17 borrower defense claims, there being actual
18 determinations that the borrower defenses are
19 valid.

20 That it can be, if you go and require
21 some sort of letter of credit or surety in the
22 amount, and this can be, you know, hundreds of

1 thousands of dollars, depending on the amount of
2 Title IV an institution pulls down, which is
3 typically how it's calculated.

4 That can be an enormous penalty that
5 you're, you know, and burden that you're putting
6 on the institution.

7 And I believe that, prior to, if
8 you've got a bunch of borrower defense claims
9 that have been lodged against the institution,
10 until those are adjudicated and a determination
11 is made, I could understand heightened reporting
12 requirements, because I know you want to
13 appreciate the risk.

14 But I think actually requiring that
15 the, that the institution post that surety would
16 be a penalty being placed upon the institution
17 before anything had actually been determined.

18 PARTICIPANT: And I believe the
19 Department had wanted to respond.

20 PARTICIPANT: Just a very brief
21 response. I want to clarify that we did, in the
22 2016 regulations, kind of leave the door open for

1 the idea of alternatives to letters of credit.

2 The feeling was that, first of all, we
3 wanted to be flexible in terms of something that
4 was not available at the time might possibly
5 become available later.

6 And as Aaron mentioned, he said he
7 believed that there might be insurance products
8 that were in development or that might be
9 available.

10 Right now, we're not aware of, also,
11 Michael had brought up the issue of bonds. We
12 are not aware, currently, of any bond product
13 available.

14 We met with some people in that
15 industry, and they were interested in what we
16 were looking for, but we're not aware, currently,
17 of anything that exists.

18 So, I think that one of the things
19 we're open to is the idea of, you know,
20 considering alternatives.

21 The idea of having cash reserves, we
22 had talked previously about the idea of offset.

1 There are things that are possible.

2 But again, there are some things that
3 we might be open to, but we just aren't aware of
4 the product being available. So, keep that in
5 mind.

6 If you have suggestions on things
7 you'd like to see, certainly let us know, and
8 keep that in mind as we go down the path of
9 pursuing language.

10 The other thing I would like to remind
11 everyone, again, is that, and I don't want to
12 repeat too much, but the idea of the
13 Subcommittee, just to please keep in mind and
14 refer to those Issue Papers if you have
15 questions. But their scope is limited to those
16 discussions.

17 So, they would not be revisiting and
18 recalculating the score, looking at those kinds
19 of issues.

20 They are looking at the FASB
21 standards, the Financial Accounting Standard
22 Board, the changes that they've had in their

1 standards.

2 So, they will be bringing things back
3 to you here for that discussion, so we will have
4 a full discussion of those issues, especially
5 during the second and the third sessions.

6 PARTICIPANT: Okay. Kelli, Michael,
7 Danny.

8 MS. HUDSON PERRY: While not in favor
9 of this concept of the, of the surety, the one
10 thing that I will say and I haven't heard
11 mentioned is the concept of the use of
12 unrestricted endowment as something that a school
13 could possibly put up as collateral.

14 PARTICIPANT: Michael?

15 MR. BOTTRILL: So, while not all,
16 many, maybe even most of the precipitous closures
17 that my agency has experienced have been linked
18 to financial soundness, or you know, more
19 specifically, the lack thereof.

20 And so, I appreciate the Department's,
21 you know, position to try and be able to identify
22 that.

1 But Aaron, to your comments, if the
2 number of claims reach some point that puts the
3 institution ,or potentially puts the institution
4 in such distress that it, that there is a
5 likelihood that it would close, should those,
6 should the institution be found liable, then I
7 think it's reasonable for the Department to have
8 some kind of threshold to, again, limit, or
9 letter of credit or some kind of surety with
10 regard to that.

11 And so, the way that you use
12 percentages, you know, if the, if the number of
13 claims exceeds 10 percent of the Title IV, you
14 know, distributed the previous year, like you do
15 with the letter of credit requirements, that
16 might be a metric that you could, you could look
17 at.

18 You know, some percentage that, if it
19 gets to be so high that there is a, that there is
20 a concern, that should the institution be found
21 liable for those, there is a likelihood of
22 closure, and precipitous closure.

1 PARTICIPANT: Danny and Walter.

2 MR. FLANIGAN, JR.: I like the idea of
3 being able to put cash and reserves or quasi-
4 endowment up as a surety if the Department so
5 needs one.

6 But I have another question, and I
7 keep coming back to this. The way the Department
8 interprets the financial standards is different
9 from the way the Financial Accounting Boards
10 account for those standards and interpret those
11 standards.

12 Are you trying to move to interpret
13 the standards in the same way of the Financial
14 Accounting Standards Board, or are you going to
15 continue to interpret them differently from the
16 Financial Accounting Standards Board?

17 PARTICIPANT: Based on the work that
18 we've outlined for the Subcommittee, I don't
19 think our plan right now is to revisit any of
20 those other standards.

21 So, I would not look for the way we've
22 characterized issues related to financial

1 responsibility to change at this time.

2 PARTICIPANT: Okay.

3 PARTICIPANT: Walter?

4 MR. OCHINKO: I just wanted to make a
5 point about endowments. Not all sectors have
6 endowments.

7 So, the other point I wanted to make
8 is that when we were discussing financial
9 responsibility and the triggers during the last
10 negotiations, I think one of the points in favor
11 of the triggers was that they acted as a
12 deterrent.

13 So, it's not just that, you know, you
14 would actually have to have a surety bond or some
15 kind of financial commitment on the part of the
16 institution, but that it would deter bad behavior
17 on the part of institutions, and I think that's
18 an important goal to keep in mind.

19 PARTICIPANT: Any additional, any
20 additional thoughts on Items 1 and 2?

21 PARTICIPANT: Barmak. Barmak.

22 PARTICIPANT: Barmak?

1 MR. NASSIRIAN: I missed part of the
2 conversation, so I apologize if I'm out of order
3 or whatever.

4 But with regard to 668.15, leaving
5 aside the issue of, I don't know why the
6 Department wants to track contingent liability
7 associated with future successful borrower
8 defenses to standards of financial
9 responsibility.

10 I would think the Department's
11 interest is to ensure that all participating
12 institutions are financially sound on the basis
13 of the totality of their circumstances.

14 And I think, you know, intellectually,
15 I think what happened 20 some years ago was that
16 we got so mesmerized with precipitous closures,
17 that if you look at the metrics that are in
18 current regs, they're all focused on liquidity
19 and short-term cash flows.

20 And I think the lesson we may want to
21 take away from the crises of the, of our more
22 recent vintage is that financial soundness

1 transcends just a current ratio and the absence
2 of prior bad triggers.

3 So, I would suggest what you really
4 may want to look at is something along the lines
5 of what, I think Michael was hinting at.

6 Some ratio analysis that focuses, in
7 the case, but depending on sector, on either
8 adequate capitalization, vis-a-vis loan volume,
9 or available resources in the case of a non-
10 profit, vis-a-vis the liabilities that are
11 generically created. I think that's one of the
12 problems we have.

13 You can, you can, you can pass the
14 current ratio test through manipulation of
15 resources, and very quickly strip out the
16 operation and become insolvent in three months.
17 I mean, that's what happened.

18 Corinthian, if my, it was either
19 Corinthian or ITT. I recall very vividly that I
20 could've bought it, like, you know, the equity in
21 my home was less than the market cap, like, two
22 weeks before collapse.

1 And that's one of the problems, I
2 think, with the, with the standards we now have.
3 I don't know that that has anything to do with
4 borrower defenses. I think that's just a matter
5 of bringing the 668.15 up to date.

6 And then, I think the concerns that my
7 colleagues in the for-profit and the not,
8 nonprofit sectors have raised, that financial
9 accounting standards have changed and the
10 Department has just not caught up with them. I
11 think that's accurate too.

12 PARTICIPANT: Okay. Additional
13 comments from the Working Group on Items 1 and 2?
14 Okay. And we do understand that it is extremely
15 hot in here. We hope that's not quelling
16 conversation. The thermostat is not set to the
17 current temperature, and we have sent someone out
18 to hopefully address the issue.

19 Do you want to open up Item 3 for us,
20 Annmarie? Or do you have any further questions
21 on 1 and 2?

22 MS. WEISMAN: So, I think we are

1 interested in hearing a little bit more about
2 Bullet Point one. I think that we didn't quite
3 get as much as we were hoping for there.

4 So, if anybody has additional thoughts
5 on Bullet Point number 1, we would certainly
6 invite you to let us know about that, as well as
7 Bullet Point number 3, which is should the
8 Department take additional steps to protect
9 taxpayer interest? And I'll elaborate there and
10 say, if so, then what, specifically?

11 We're looking for, again, this is,
12 this is really our listening session where we
13 hear from you, what your concerns are, what your
14 reactions are to these papers.

15 So, we're looking for as much detail
16 from you as we can get on these. Again,
17 especially on Item number 3 and 1.

18 PARTICIPANT: As a public institution,
19 I'm fairly insulated from the financial
20 standards, but is this the section under which
21 you would potentially consider those triggers for
22 the letters of credit, or do we not have to talk

1 about those? Because nobody's really saying --

2 MS. WEISMAN: You can certainly, you
3 can have a discussion about that.

4 PARTICIPANT: And you know, from the
5 school perspective, broadly, I think we should
6 have a conversation about that because what we
7 ended up with was something that was kind of not
8 ideal for access institutions, for one thing.

9 I think, should the Department utilize
10 letters of credit to protect taxpayer interest,
11 that it should be carefully delineated to not
12 capture schools whose mission puts them at risk
13 of meeting the letter of credit just by the very
14 virtue of student that they are serving.

15 PARTICIPANT: Linda, and then Aaron.
16 Do you want to sit down?

17 MS. RAWLES: No, thank you. Just a
18 suggestion, depending on what other process is in
19 place or what other standards, I think this also,
20 you should have a placeholder for possible
21 defenses, affirmative defenses to liability by
22 institutions.

1 Perhaps there is where we talk about
2 whether they have a robust compliance program.
3 There was no intentionality or even reckless
4 disregard. They make a good faith effort to
5 have, you know, information out for students.

6 I don't know what all of them would
7 be. It would be a nice discussion to have, but I
8 think that we should consider affirmative
9 defenses to liability.

10 MR. LACEY: Yes, I mean, I, speaking
11 to the triggers, I think the idea of listing a
12 list of events and tying those automatically to
13 the posting of some sort of surety or in the
14 final rule that came out in '16, you know, to
15 some sort of automatic and interesting
16 recalculation of the composite score, which we
17 seem to all agree needs work, I think is a bad
18 idea.

19 I just think it's very problematic and
20 it hems in the Department, in a sense, because it
21 forces automatic behaviors.

22 But I think, you know, it seems like

1 the real concern here is, and the real fear,
2 given past events, is that you could have a
3 situation where you've got a school that's in
4 serious financial stress, or there's a problem
5 and the Department wouldn't know.

6 You know, the point I made earlier, I
7 will reiterate, even though I'm not supposed to,
8 and that is the Department has the total power
9 and authority to do that now. I mean, it has,
10 and it is doing it now.

11 I think if you wanted to develop, I
12 would say, not in the regulations, but in the
13 sub-regulatory guidance, but even in the regs, a
14 list of events that, if they occur, they have to
15 be reported to the Department. I mean, that
16 makes sense.

17 And then, the Department is
18 formalizing and saying, if anything, if these
19 things occur, we want to know.

20 But I wouldn't tie them to an
21 automatic outcome, understanding that the
22 Department has the authority, under financial

1 responsibility, that if it sees something that
2 gives it concern about the institution's
3 solvency, and by the way, it doesn't even have to
4 go through the composite score.

5 I mean, today, if the Department
6 thinks an institution's in risk of closure
7 because their accreditor is taking an action, for
8 example, or something along those lines, they can
9 put them on HCM1. They can go ahead and proceed
10 to a surety.

11 So, these tools are in the tool bag,
12 and I would, I would encourage that the
13 Department resist putting together a bunch of
14 automatic triggers, or boxing itself in. I think
15 it has that authority already.

16 PARTICIPANT: Lodriguez?

17 MR. MURRAY: Just to give this
18 thought, injected, speaking of the automatic
19 triggers, I want to speak from the perspective of
20 the minority-serving institutions, specifically
21 private colleges and universities, and even more
22 specifically, private historically black colleges

1 and universities.

2 Having to pledge those letters of
3 credit based on those triggering events may not
4 even relate to the financial condition of the
5 institution.

6 And we believe that having the
7 triggering events, they're already building upon
8 even more flawed standards previously existing at
9 the Department.

10 We believe that because of the status
11 of the students that we have, oftentimes first
12 generation college students, et cetera, that
13 private historically black colleges and
14 universities can be in a more precarious
15 financial position.

16 And having to have these letters of
17 credit come up can put the schools in a position
18 where they are having problems with investors.
19 They're having problems with their Board.
20 They're having problems moving forward, and it
21 has unintended consequences on institutions
22 simply because they have to put forth those

1 letters of credit.

2 We think that is, and when you talk
3 about the triggers, that's just something that
4 we, as a subgroup of the MSIs, just really have
5 to make sure that everyone understands that it's
6 very problematic for us.

7 It may not be problematic for other
8 institutions, but private historically black
9 colleges and universities foresee this being a
10 huge issue for us moving forward if it stays in
11 any way, shape, form, or fashion near the
12 regulation.

13 PARTICIPANT: Walter, then Michael.

14 MR. OCHINKO: Sure. I don't really
15 know or understand the history of this, but I
16 just wanted to point out, just because the
17 Department of Education already has these
18 financial standards and can, you know, require
19 surety bonds doesn't mean that they always do.
20 And I would just point out in the case of
21 Corinthian, there was no surety bond.

22 So, the Department is on the hook for

1 all of the money that has to be refunded under
2 defense to repayment.

3 PARTICIPANT: Okay. You're still,
4 your name's still technically up.

5 MR. BOTTRILL: Technically.

6 PARTICIPANT: Okay, thanks.

7 MR. BOTTRILL: I mean, we may have the
8 cart a little bit in front of the horse here
9 because, I think, again, there's, we might
10 actually have consensus that the financial, you
11 know, composite score needs some work. I won't
12 ask for a temperature check. I think it's warm
13 enough in here as it is.

14 (Laughter)

15 MR. BOTTRILL: So, you know, having
16 said that, and not wanting to harm institutions
17 that are falling below the 1.5 composite score
18 because of other considerations or an inability
19 to meet some of the ways to manage that
20 appropriately.

21 I would still look for ways that, when
22 an institution has reached a level of financial

1 distress, HCM2 and reimbursement is one way of
2 limiting access, but it's still full access.

3 And what I'm suggesting is a different
4 approach of, again, a graded approach to access
5 to full eligibility, not dissimilar to the way
6 that it's used when you trip the measures for
7 default rates and you go, you know, 40 percent,
8 and then you can only be Pell eligible and you
9 can't be eligible for a loan.

10 Maybe there's another way to limit
11 access to it to put more taxpayer dollars on the
12 hook, and more student debt when the situation is
13 dire enough that we, that the Department has
14 concerns that that money is not being well-
15 distributed.

16 PARTICIPANT: Kelli, Valerie, then
17 Robert.

18 MS. HUDSON PERRY: I'm afraid to talk
19 into it.

20 (Laughter)

21 MS. HUDSON PERRY: Just because I've
22 heard some echoes around the table of the fact

1 that the current responsibility ratios need some
2 work, I know that we've tasked the, or you've
3 tasked, the Department has tasked the
4 Subcommittee with looking at new financial
5 accounting standards, specifically one for
6 financial reporting and one on leases, which I
7 think in potentially looking at the changes to
8 the financial reporting one will address some of
9 the others.

10 But there are FASB changes that have
11 occurred over the last 20 years that also have
12 not been addressed.

13 So, I would like to ask the Department
14 that when the Subcommittee does start to talk
15 about these, if there's not a way to address
16 those changes as well within one of these Issue
17 Papers, that they be allowed to look at those
18 FASB changes as well, as they specifically relate
19 to that calculation.

20 PARTICIPANT: Valerie, and then
21 Robert.

22 MS. SHARP: As I listen to everyone

1 discussing the issues today, I think we all can
2 agree on a point, and then we get stuck and the
3 next point. And so, maybe I don't have a
4 solution.

5 I'm asking maybe if the Committee
6 could start to brainstorm solutions. And I've
7 heard a few ideas around the table, but I think
8 that all of the table can agree that those bad
9 apples who have a blatant disregard for students
10 and the taxpayers and everybody involved, have
11 and should have some liability for that blatant
12 disregard of everyone around the table.

13 But where it becomes tricky is in
14 trying to set some type of liability for those
15 institutions who have had a blatant disregard for
16 the rules and for students, and even the
17 government money that is involved.

18 That, now, we are capturing within
19 that net, institutions who were maybe, did make
20 an innocent mistake, but still harmed a student,
21 or you know, those types of things.

22 So, how do we protect a taxpayer and

1 the students who have had a, have committed
2 grievous fraud, but also provide some type of
3 different standard or, I don't know what the
4 process is.

5 As I'm sitting listening, I'm
6 thinking, we have to have something to protect
7 the taxpayers from maybe a Corinthian and the
8 millions that are involved there.

9 But the other claims that may put a
10 small school at tremendous risk, or those who are
11 serving students who are minorities or first
12 generation, we don't want them to lose their
13 access.

14 We do not want those schools to have
15 a purpose to be forced to close because of
16 financial pressures over a small amount of claims
17 that weren't fraudulent on purpose, that just
18 happened.

19 So, how do we, is there any way even
20 to differentiate that in our discussions and in
21 the regulations that we put in place, because we
22 are talking about two very different types of

1 issues, and we don't want to cause undue stress
2 to small institutions who are serving a public
3 that maybe everyone else isn't and forcing them
4 out of the market that desperately needs them.
5 But we do want to hold accountable those who are
6 committing fraud against our students.

7 PARTICIPANT: And I, and I think, just
8 from the facilitator's perspective, that is the
9 question that we're here to, here to answer, and
10 hopefully the Working Group can provide those
11 methods of distinction, or at least suggestions
12 for it.

13 MS. SHARP: Just say, I think one
14 thing is, you know, we just talk in generalities.
15 I'd like to see us kind of parse that out a
16 little bit more is maybe why I made the
17 statement.

18 PARTICIPANT: Robert.

19 PARTICIPANT: Thank you. I have the
20 answer. No.

21 (Laughter)

22 PARTICIPANT: Echoing a little of what

1 I've heard, but putting, I guess, a little bit of
2 a twist on it, maybe from a state perspective and
3 my vantage point and working in state systems,
4 and now for a national organization representing
5 states.

6 It's no mystery here, and it's not an
7 unknown fact, that we have had persistent equity
8 gaps for years and years in our nation.

9 Our first generation low income
10 minority underserved populations do not succeed
11 and are not accepted as high of rates,
12 particularly success-wise, even when they have
13 better economic, I mean academic qualifications
14 when they enter college.

15 There are these persistent gaps that
16 we have to address, and I think this ties in in
17 meaningful ways in this conversation that we're
18 having today.

19 Most of these students end up in lower
20 resourced institutions that don't have as much
21 bandwidth, and they struggle more anyway.

22 And we're starting within the academic

1 side of the house to see some paths forward that
2 seem to be getting traction around intrusive
3 advising, degree maps, the way we're changing
4 developmental education.

5 And some of these different issues,
6 and the difference we're making here, tie in
7 directly to taxpayer interests and making sure
8 that we're not ignoring this population and we're
9 getting them through the educational pipeline.

10 Dan mentioned yesterday, the triad
11 that exists, this whole idea of the federal
12 interest for the taxpayers, and you have the
13 regional and specific accreditors that exist, and
14 then the state systems and interests.

15 And frankly, we have to have better
16 communication and better dialogue on a regular
17 basis between these three entities if we're going
18 to develop any type of system or approach that
19 works for all of us.

20 That's how we're going to protect
21 these students who need it the most. These
22 institutions can't face situations to where they

1 no longer exist because of some of these
2 financial pressures and strains that exist, but
3 have to be held also to adequate approaches and
4 what we know to be best practices.

5 So, furthering these conversations is
6 a part of this, the ability to protect taxpayer
7 investment due to best practices that are taking
8 place, I think, should be a part of any solution
9 that we discuss here.

10 PARTICIPANT: Okay. And looking
11 forward, both a Questions 1 and Questions 3,
12 specifically with Question 1, can the Working
13 Group identify any specific conditions the
14 Department should be considering as they look
15 towards language in the future?

16 Or with Question 3, steps or criterion
17 that would facilitate or necessitate an
18 additional layer of protection for the taxpayer?
19 Alyssa?

20 MS. DOBSON: I just, I think we're
21 having trouble identifying them because very
22 different schools can have the same looking

1 criteria.

2 And so, I think Aaron probably said it
3 best when, instead of the Department trying to
4 find definitive benchmarks, you know, using their
5 own authority, if it, if it sounds like a duck,
6 walks like a duck, that kind of thing, and that
7 would avoid encapsulating the institutions who
8 may look but aren't actually the bad actors in
9 the game.

10 And so, I think the reason why we're
11 having a hard time coming up with those criteria
12 is because they just don't exist.

13 PARTICIPANT: We have to get better,
14 overall, as a nation too, in measuring what
15 actually is taking place in higher education,
16 what is being learned.

17 Aaron commented earlier about widgets
18 and, you know, we can look at credits, and we can
19 look at these degrees and this credentialing,
20 what learning is actually taking place?

21 For some of our institutions that
22 accept students maybe with lower academic

1 standards coming in, perhaps they're quite value
2 additive in what they provide, and we have to get
3 better at measuring learning, and I think this
4 could tie in with a lot of this as far as
5 taxpayer's interests and examining what actually
6 happens within that often black box of higher
7 education. So, I hope this is something we could
8 consider moving forward as well, value additive.

9 PARTICIPANT: Kelli.

10 MS. HUDSON PERRY: One of the other
11 reasons that I think it's difficult to, in
12 speaking with, you know, should the Department
13 take additional steps to protect the taxpayers, I
14 think it goes back to the concept of, how do you
15 identify the bad actors? Right?

16 So, without knowing who the bad actors
17 are around the table and, you know, why types of
18 claims are coming for discharge and reasons why,
19 are there, are there rules or are there, you
20 know, mechanisms on the forefront to put in place
21 so that those bad actors can't do what they're
22 doing?

1 So, I don't, I don't know if we have
2 enough information to actually give a great, at
3 least I don't think I have, to be able to give a
4 great recommendation, because I don't know who
5 they are and I don't know what rules they're not
6 following or what rules you could potentially put
7 in place so that they don't become bad actors.

8 PARTICIPANT: Wanda, and then Abby,
9 and then back to the Department. But I would ask
10 that if you're going to offer something, please
11 offer something specific and concrete. We do
12 need to move on.

13 MS. HALL: This is pretty concrete,
14 and it's a dirty word, but we did talk about this
15 last time a little bit.

16 You know, additional steps to protect
17 taxpayers, I mean, there are program reviews and
18 audits that are performed.

19 And when you're performing a program
20 review, there's things that you look at, and
21 maybe that needs to be increased a little bit. I
22 mean, as I said, it's a dirty word.

1 We see it, you know, we have program
2 reviews as well. We have SSAE 18s. We've had
3 stations, and all of that stuff looks at, you
4 know, our administration of the program, our
5 capabilities from a servicer's side, for sure.

6 PARTICIPANT: Abby, then Karen.

7 MS. SHAFROTH: So, I'll try to speak
8 to point. Bullet 1 and Bullet 3, on Bullet 1,
9 under what conditions and to what extent should
10 institutions incur liability for reimbursement of
11 borrower defense claims, Linda asked me to make
12 the point again when we got to this issue that
13 there should be a, that I believe there should be
14 a separation of determination of liability, or a
15 determination of relief for the student and
16 determination of liability for the school. So, I
17 am. I still, sorry --

18 PARTICIPANT: That's okay.

19 MS. SHAFROTH: Oh, okay.

20 PARTICIPANT: Go ahead.

21 MS. SHAFROTH: No, I don't want to
22 mischaracterize you. So, I would just say that,

1 you know, the Department could create some
2 conditions under which it determines that it
3 makes sense to seek recoupment from the school
4 after a student is, has their student loans
5 forgiven through the borrower defense process.

6 And it may be that, you know, it
7 doesn't make sense to go through that process if
8 there's just one individual borrower defense
9 claim that has been approved for that school,
10 that it's not worth the Department's time and
11 that it's not a good use of taxpayer resources to
12 seek recoupment from the school in that instance,
13 but that if there is a, you know, evidence of
14 widespread misconduct where there are, you know,
15 a large number of successful borrower defense
16 claims relating to the same institution, then it
17 does make sense.

18 Or if there's evidence from a state
19 attorney general's investigation of that sort of
20 misconduct, then maybe it does make sense in
21 those circumstances. So, those are just a few, a
22 few possible ways to approach Bullet Point 1.

1 In terms of Bullet Point 3, and should
2 the Department take additional steps to protect
3 taxpayer interests, I was going to make a similar
4 point to Wanda, just that the Department has an
5 enforcement unit.

6 Being really proactive and
7 investigating misconduct at, or allegations of
8 misconduct, or other evidence of misconduct of
9 institutions, to try to deter and stop that
10 misconduct before it impacts more borrowers and
11 sets up more potential claims for borrower
12 defense relief. It seems like a really important
13 piece of protecting the taxpayers and protecting
14 student borrowers.

15 PARTICIPANT: Okay. And as usual,
16 Colleen, kind of the end of the discussion has
17 gotten some more, some more tags up, so we will
18 go through them. Karen, Walter, Jaye, and then
19 back to the Department.

20 MS. PETERSON SOLINSKI: So, I'm really
21 speaking to the third bullet, and which is, how
22 do you protect taxpayer interests for the future.

1 And yes, it's a little bit of a
2 crystal ball exercise to try to figure out which
3 institutions in the future might give rise to
4 borrowers defense claims.

5 I can tell you, it's not financial
6 ratios. Why? Because we have about five
7 institutions go, unfortunately, over the edge
8 every year, often with very low composite
9 financial ratios. What are they? They're small
10 religious institutions, minority serving
11 institutions.

12 It's unlikely, I think, that they're
13 going to give rise to borrowers defense claims.
14 I would be surprised if they did. They're
15 financially risky, but they're not at risk of
16 misrepresentation or fraud. That's a different
17 kind of issue.

18 And so, I think we have to look at the
19 ones that have gone through this already, like a
20 Corinthian, like an ITT.

21 I know about one of those cases, and
22 I know that they were indicia, Barmak is right.

1 They were indicia that we might have seen, and
2 hindsight's 20/20, right?

3 But there were indicia that we might
4 have seen, had we all been looking more
5 carefully, not only at the kind of things you're
6 talking about, market cap, but also a program
7 reviews and all of that data.

8 And so, I think, before we task a lot
9 of small institutions with higher letters of
10 credit when they're not really the risky ones
11 we're trying to get at, we ought to be looking at
12 our history here.

13 What could we have done differently in
14 the cases that we did have? What were the things
15 we should have seen and flagged?

16 I know some of them because I know a
17 little bit about those cases. I won't say them
18 here, but I know some of those indicia that we
19 could have seen, and where we might have imposed
20 some kind of letter of credit or other kind of
21 surety that would have protected taxpayers for
22 the future.

1 PARTICIPANT: Walter. Walter.

2 MR. OCHINKO: Yes. I agree with the
3 comments that Karen made. And I just want to
4 point out, I don't remember all of the triggers
5 that were in the borrower defense rule that was
6 promulgated in November last year, but I do
7 remember two of them, and I think they really go
8 directly to this whole issue of, how do we
9 identify bad actors?

10 One of them, I think, is one that my
11 colleague mentioned, and that is, you know,
12 either lawsuits, investigations, or settlements.
13 Particularly settlements.

14 I mean, I distributed a list this
15 morning. A lot of these schools are still, you
16 know, participating in Title IV, and they have
17 settled with the Department of Education.

18 I think another trigger that was
19 identified was, you know, exceeding the 90
20 percent ratio.

21 There's a cap on the amount of Title
22 IV revenue that a school can get from the

1 Department of Education. And schools that exceed
2 that, I think, were, would have set off one of
3 the triggers. And I'm sure there are others. I
4 just don't remember what the other triggers were.

5 PARTICIPANT: Okay. Linda, and then
6 back to the Department to wrap it up.

7 MS. RAWLES: If we're going to look at
8 settlements, we have to look at incentives.
9 Again, you know, many people do settle lawsuits
10 for lots of reasons other than culpability.

11 And if you do look at settlements,
12 you're going to have an incentive not to settle
13 and we're all going to be in a lot more
14 litigation. So, I think you have to be careful
15 with that. That's all I wanted to say.

16 PARTICIPANT: Okay. Noting that we do
17 have some administrative matters to kind of take
18 care of at the end of the day here, I want to
19 turn it back to the, to the Department, just to
20 kind of finalize Issue 3.

21 Are there any points, obviously,
22 specific suggestions or proposals are accepted

1 and encouraged, that the Department would like
2 the Working Group to consider this evening, you
3 know, as some homework, before we go onto Issue 4
4 tomorrow morning?

5 PARTICIPANT: I think that we probably
6 have what you have in mind right now, but if you
7 do think of other things, I'd be certainly happy
8 to reopen this discussion in the morning if there
9 are further areas that you think about overnight.

10 I know this is probably all you want
11 to think about all day and all night, but
12 seriously, if things do come up, if you think of
13 some specific issues that you feel you didn't get
14 a chance to raise today, I'd be happy to circle
15 back on this one tomorrow morning.

16 I think that, while it may appear that
17 we have not paced the conversations as well as we
18 could, in looking at the issues, we do feel that
19 Issues 1 through 3 were the ones that would take
20 the most amount of time and the most significant
21 discussion.

22 Not to minimize the other issues, but

1 I think that the point was made earlier that, you
2 know, by getting through this paper today, we're
3 getting through about half of the issues.

4 So, I think that we are on track, and
5 I appreciate the contributions that you've made.
6 I appreciate the thought and the significant
7 effort that you've made to cover the territory
8 that we've covered already, and look forward to
9 doing more of that tomorrow.

10 That said, I do know that we have some
11 other administrative issues, some kind of
12 housekeeping issues as well, and I want to make
13 sure that we have time to devote to that, as well
14 as public comments. So, I'll hold any other
15 further comments until tomorrow.

16 PARTICIPANT: Okay. I believe,
17 yesterday, I believe, yes, that was yesterday,
18 Ashley Harrington had raised the question of
19 making a petition for a member for the
20 Subcommittee.

21 She touched base with me today just to
22 make sure we could make time for that. So, we

1 will open the floor to you, Ashley.

2 MS. HARRINGTON: Thank you. So, I
3 actually have two individuals that I would like
4 the Committee to consider adding to the Financial
5 Responsibility Subcommittee. Two experts that I
6 think could really add to that conversation.

7 Representing constituencies that I don't
8 think are represented or are not represented
9 currently, which is in this list, minority-
10 serving institutions and consumers and students.

11 So, I have two people, and I'll let them
12 speak for themselves. Dr. Julianne Malveaux and
13 Blake Harden.

14 They are both here, and they'll
15 introduce themselves, and then I hope that the
16 Committee will seat them on this Subcommittee.
17 Thanks.

18 PARTICIPANT: Yes. And just a note on
19 process, so we can have both individuals come up,
20 provide us an introduction, some background, why
21 they want to be on the Committee, and then the
22 Working Group can ask questions, and we'll take a

1 consensus vote. Michael, question before?

2 MR. BOTTRILL: I have a quick question.

3 In determining who or the types of groups that
4 are going to be represented on that Committee, is
5 there a specific reason why that these particular
6 areas were left off, or is there more discussion
7 around the fact that, it's my understanding that
8 this Committee is really just to discuss changes
9 in accounting principles and rules and how they
10 affect the current composite scores and come up
11 with recommendations for future.

12 So, therefore, it's really, it's not
13 that they're creating new policy, they're just
14 simply providing context for changes in FASB. Is
15 that correct? Is my assumption correct there?

16 PARTICIPANT: Your assumption is
17 correct. The goal of the Subcommittee is to make
18 recommendations to this Committee.

19 So, anything that they discuss is really
20 just to conserve the time of this Committee to
21 take issues that we thought were very specific to
22 one industry where we needed to ensure that we

1 had the people with the expertise to discuss
2 those issues.

3 Generally speaking, we would expect the
4 members of the Subcommittee to have an accounting
5 background or something very related to that.

6 So, we were interested in keeping the Work Group
7 fairly small.

8 Again, we did not dedicate significant
9 resources to that because it wasn't something
10 that we initially set out to do. It was
11 something that kind of grew out of the
12 conversation.

13 When people heard that financial
14 responsibility was going to be discussed, it's,
15 oh, let's take an opportunity here.

16 We cannot revisit the entire composite
17 score and how that's calculated. That would be a
18 significant effort, and that would need its own
19 process. That would have its own rulemaking
20 session apart from this one.

21 We felt that those issues were far too
22 significant, would take far more time than we had

1 to devote within this Committee.

2 So, we gathered a set of individuals
3 that we thought met what we thought was
4 reasonable, in terms of getting together a small
5 Working Group.

6 But again, knowing that they were only
7 set out to making recommendations and that all of
8 that full discussion then about those
9 recommendations would occur here in this
10 Committee in Sessions 2 and 3.

11 So, also, to clarify, the Subcommittee
12 is going to meet this Thursday and Friday, and
13 then, they will meet prior to our second session
14 that we have here with the full Committee.

15 So, they'll have two opportunities to
16 meet for a couple of days each before we come
17 back together again.

18 And hopefully, they'll have some initial
19 thoughts for us then to be able to share with us,
20 but that we could then have the full discussion
21 at that time as well.

22 PARTICIPANT: Kelli.

1 MS. HUDSON PERRY: Just quickly, when
2 the two individuals introduce themselves, I'd
3 just like to ask that they provide their
4 credentials as it relates to understanding the
5 accounting literature as it exists.

6 PARTICIPANT: Do we have the
7 individuals? If, I guess, one of the individuals
8 wants to come up first, and then we'll have the
9 second individual come up.

10 DR. MALVEAUX. Well, good afternoon.
11 I'm Dr. Julianne Malveaux. I am President
12 Emerita of Bennett College for Women. It is the
13 oldest historically black college or university
14 that serves women.

15 People know Spelman a little bit better,
16 but we are older and have an equally
17 distinguished history.

18 I was president from 2007 to 2012. And
19 I'm especially concerned about how the rules will
20 impact historically black colleges and other
21 minority-serving institutions.

22 My background is that I have a Doctorate

1 in Economics from MIT. I do not have an
2 accounting degree, and I don't want one.

3 But I think that the background that I
4 have makes it possible for me to be a contributor
5 to the conversation. It is something that I am
6 deeply concerned about.

7 I would note that I did apply earlier
8 for the full Committee and was not accepted, but
9 I remain very interested in these issues and I'm
10 happy to take any of your questions.

11 PARTICIPANT: So, just because the, I'm,
12 so the Subcommittee is designed to be a Working
13 Group to talk about the, specifically, the
14 changes in the ASU.

15 So, if you're not an accountant and you
16 don't necessarily understand those, what, can you
17 explain a little bit more as far as what
18 contribution you feel you would make?

19 DR. MALVEAUX: The fact that I'm not an
20 accountant doesn't mean that I don't understand.
21 I think that's a little bit presumptuous, with
22 all due respect.

1 Essentially, having worked in and
2 administered, having had financial aid people and
3 other lending people report to me, I do think
4 that I can look at these issues and bring
5 something to the table.

6 Just in listening for the past few
7 minutes as I heard people talk about some of the
8 loan issues and which institutions are the
9 Corinthians, as opposed to which are the, let's
10 say, Morris Brown College.

11 And a very big difference in those kinds
12 of colleges and the kind of challenges that they
13 face. I think that that's the kind of texture
14 and context that I would bring to the
15 conversation.

16 PARTICIPANT: Thank you for your
17 information there, and your background is
18 extremely impressive.

19 So, thanks for volunteering for the
20 position, but I think the concern here, and
21 again, please correct me if I'm wrong here, is
22 this specific Subcommittee is specifically

1 looking at changes in accounting structure.

2 And I'm assuming that most of the
3 people, and again, I haven't taken a look in
4 detail, but I'm assuming that most of the people
5 on that Committee are either accountants or CPAs,
6 and have a significant understanding of those
7 particular principles and how they're going to be
8 applied. And that's where it ends, as far as I
9 know.

10 And then, that, just that simple data,
11 right, data is brought to the group, to be able
12 to look at and interpret. Is that correct?

13 PARTICIPANT: Yes, I can definitely say
14 that is correct. And I think that, again, we do
15 not have a representative from each of the
16 constituencies that we have here, but the thought
17 is that the Subcommittee, again, is reporting
18 back to this full Committee.

19 So, because this is the decision making
20 body, all parties are being considered, and all
21 constituencies does have a voice because the body
22 that is the Subcommittee is only making

1 recommendations to this full Committee.

2 PARTICIPANT: Joseline?

3 MS. GARCIA: I don't have a question to
4 you, per se, but more so to the group. Who here
5 has a master's in public policy? Like, raise
6 your hand if you do.

7 Okay, no one, but we're talking about
8 policy. So, I don't think that folks who want to
9 be in the Subcommittee need to be accountants to
10 be a part of that conversation because those of
11 us who are on this Committee, we obviously don't
12 have a master's in public policy.

13 PARTICIPANT: Ashley, and then Danny.

14 MS. HARRINGTON: So, first I would like
15 to say, I think Dr. Malveaux is communicating
16 that she is very familiar with these standards,
17 having ran a college for five years, having all
18 of these kind of parts report to her, having
19 dealt with all number of reports and standards,
20 she is very familiar and can contribute to all of
21 these things, and is able to do so and willing to
22 do so.

1 But I think the other thing is, though
2 all of the recommendations have to come back to
3 this Committee, I think we've been talking about
4 this since yesterday.

5 Transparency is extremely important in
6 this process, and because this Subcommittee,
7 we've already said, is not going to be public,
8 and all of the voices cannot be represented.

9 And yes, every Committee member can go
10 to those, can go to those meetings. I,
11 personally, as the consumer advocate
12 representative, don't have time to go to all of
13 those meetings, and will not be able to.

14 And I'm sure there are other people at
15 this table who will not be able to go to all of
16 those meetings.

17 And so, I think having as many voices at
18 that table that represent the constituencies that
19 are, that have a stake in these issues, is
20 important.

21 And even if they are just making
22 recommendations, the people have to be at the

1 table to create the correct recommendations, and
2 to create a full set of recommendations.

3 PARTICIPANT: Okay. Danny, Will, Linda,
4 and then I want to get to our other, our other
5 candidate, just to, just to continue moving
6 things along as the facilitator, so we can ask
7 questions for the other candidate, and then reach
8 a decision as a Working Group.

9 And then, we can go onto the other
10 agenda items that we have for the rest of the
11 day, administrative things, and still have time
12 for Working Group, or public comment.

13 MR. FLANIGAN, JR.: Okay, good. Can you
14 hear me? I am the vice president of a very small
15 college called Spelman College, and I've been the
16 vice president and treasurer for probably 15 to
17 20 years.

18 I've had a chance to work with the good
19 doctor. She's up a Bennett College, which is one
20 of our competitors, and I will tell you, when we
21 have a had a chance to converse and to have
22 conversations about finances and accounting and

1 ratios and other stuff, she may not be an
2 accountant, but she's very conversing in the
3 conversation.

4 And so, I think she would bring value to
5 the Committee. I think, she's not an accountant,
6 but I think her words and her wisdom would be
7 welcome. Thank you.

8 DR. MALVEAUX: Thank you. And we're not
9 competitors. We're sister schools.

10 MR. FLANIGAN, JR.: Yes.

11 (Laughter)

12 MR. BANTLE: Will, but can you turn your
13 mic off?

14 MR. HUBBARD: I'll keep it brief. The
15 question I would propose to the audience is, and
16 to the Committee, really, is what risk is there
17 in including a mind who accomplished an economics
18 degree from MIT? What risk?

19 MR. CARUSO: Okay. Thank you for all
20 the questions. Thank you, oh, Linda, sorry.

21 MS. RAWLES: This is a bit of an awkward
22 situation because I mean no disrespect to your

1 credentials at all. I'm sure you're everything
2 that you say.

3 But all the constituencies here could
4 bring up equally qualified people. Unless there
5 is, you know, an additional add to the Committee,
6 if one constituency is adding another person to
7 the Committee, I ask that we all have an
8 opportunity to bring people up and add someone to
9 the Committee.

10 MS. HARRINGTON: And I would say, under
11 the protocols, every member of the Committee does
12 have that opportunity to bring forth an expert
13 and have them voted on by the Committee, and I
14 would be happy to, as speaking for myself,
15 consider your expert.

16 MS. HARRINGTON: I believe in the
17 protocols, it said they could be brought in for
18 the financial, for Financial Responsibility
19 Subcommittee, and within the Federal Register
20 notice that they could be brought in. It didn't
21 say when they had to be brought in and at what
22 point. So --

1 MR. BANTLE: Just a facilitator's note,
2 this was a conversation that I do recall from
3 tomorrow, or from yesterday. Not tomorrow.

4 (Laughter)

5 MR. BANTLE: It's been a long day. From
6 yesterday, and we did keep the option open for
7 this Financial Responsibility Subcommittee, you
8 know, for these two days before the Committee
9 does start. So, by the discussion yesterday,
10 that would be open tomorrow as well.

11 MS. RAWLES: I think, maybe I should've
12 been a little clearer. My point is that, unless
13 there is a specific value add to the expertise
14 that the Committee is considering, this is going
15 to open up a door that I don't think we're all
16 going to want to go down because it's going to
17 force other constituencies to do the same thing,
18 and I think we're going to get off track.

19 MR. BANTLE: Okay. I want to, Michael.

20 MR. BOTTRILL: Just in conclusion to
21 this, for me, you know, it is a bit of an awkward
22 situation because, again, I'm sure your

1 credentials are fantastic. I'm not, I'm actually
2 positive they're fantastic, and congratulations
3 on those. And I'm sure there is a great value
4 add that you could bring.

5 And to your point, Will, there is, there
6 is no particular risk, to say, to add to another
7 person.

8 But what I find is it's just breaking
9 protocol, for the most part, in terms of the fact
10 that a Subcommittee has been created.

11 If, and there's an implication, it
12 seems, that you don't feel there's enough
13 representation from your particular constituency
14 within that Subcommittee.

15 So, again, I'm struggling with why
16 that's felt, and why do we all feel that there
17 has to be, in a Subcommittee talking about some
18 financial implications in terms of changes in
19 FASB, why is it that we all feel we have to have
20 some form of a voice there to have transparency?

21 And that's the part that I'm struggling
22 with, that your comment was about lack of

1 transparency if you don't have your own
2 representative on a Subcommittee talking about
3 changes in accounting principles.

4 MR. BANTLE: Okay.

5 MS. HARRINGTON: My point was about --

6 MR. BANTLE: Just --

7 MS. HARRINGTON: -- transparency in
8 general, and the fact that we voted to not have
9 that Committee be, in and of itself, public,
10 Subcommittee, in and of itself, public.

11 This is something that was noticed and
12 commented and nominations were requested. And I
13 would also like to point out that your
14 constituency group does have representation on
15 the Financial Responsibility Subcommittee.

16 MR. BANTLE: Okay. I understand there
17 are still some name tags up. We do have a lot to
18 get through for the rest of the day.

19 Dr. Malveaux, I want to thank you for
20 introducing yourself. We'll go onto the next
21 candidate, and then we can, we will, we will get
22 to a consensus check from the group.

1 DR. MALVEAUX: Okay. Thank you very
2 much for your consideration.

3 MR. HARDEN: Hi, my name is Blake
4 Harden. I'm admittedly less distinguished than
5 Dr. Malveaux.

6 (Laughter)

7 MR. HARDEN: But I formally served as a
8 policy advisor with the Department for just under
9 five years, and I was working on institutional
10 accountability and other oversight issues,
11 largely representing the issues of consumers and
12 taxpayers.

13 I've done a number of projects related
14 to the financial composite score and other
15 related regulations in the scope of financial
16 responsibility, the financial responsibility rule
17 and administrative capability.

18 More recently, I have been engaged in a
19 research project to understand the history of
20 financial responsibility rules and the particular
21 impact of all of the ASUs in the last two decades
22 on that rulemaking, the present rulemaking.

1 As far as my financial background, apart
2 from the work that I did at the Department, and
3 working with a number of financial experts there,
4 I have a financial background participating in
5 the management of two businesses, and I also a
6 degree from the University of Pennsylvania, and
7 took courses in the insurance and risk management
8 division of that school.

9 MR. BANTLE: Okay. I would like to open
10 it up to the Working Group for questions.

11 PARTICIPANT: My question is very
12 simple, regard value add, would you say that you
13 have both experience in the public and private
14 sectors that pertains to the direct topics of the
15 Committee, the Subcommittee?

16 MR. HARDEN: Yes, I do. On the topic of
17 private businesses, I haven't been involved in
18 private for-profit education or the institution
19 side, but I have worked inside a for-profit
20 business, which is also subject to FASB
21 standards.

22 MR. BANTLE: Aaron?

1 MR. LACEY: What do you think about the
2 composite scores?

3 (Laughter)

4 MR. HARDEN: Well, I mean, I think it's
5 very clear that the composite score needs to be
6 updated to reflect the new FASB updates.

7 I think it's hard to say without
8 additional analysis about, you know, changes to
9 the weightings and the ratios that were
10 ultimately chosen in the '97 regulations. I
11 think that ultimately is outside the scope of the
12 Subcommittee.

13 But you know, the financial composite
14 score's served its purpose, at least for a number
15 of schools over the past two decades, albeit, you
16 know, there have been failures, most notably, one
17 a few years ago.

18 PARTICIPANT: Since we asked our other
19 candidate, we'd like to ask you also your
20 background. You said you had a degree from
21 University of Pennsylvania, but could you tell us
22 the subject matter of that degree?

1 MR. HARDEN: Yes, I studied political
2 science with a focus on public policy. I
3 completed two, or was awarded two fellowships
4 while I was at Penn, also related to public
5 policy and analyzing the administration of the
6 University itself.

7 MR. MURRAY: You mentioned you were at
8 the Department for five years. Which five years
9 were you at the Department?

10 MR. HARDEN: That was the past five
11 years prior to January 2017.

12 MR. BANTLE: Okay. Any additional
13 questions? Okay. Thank you very much, and I
14 thank the Committee for their questions.

15 At this point, per the protocols, we
16 have to do a show of thumbs, and for Subcommittee
17 members to be added, it has to be by a consensus
18 of the Working Group. Aaron, did you have a
19 comment?

20 MR. LACEY: Well, I guess my question
21 is, do we want to make a determination on these
22 individuals before we've heard folks who might be

1 presented by other individuals?

2 I mean, I don't have anyone to present,
3 but I don't know if other folks do have someone
4 to present.

5 Wouldn't it make sense to be making a
6 decision on the composition of the Subcommittee
7 all at once, as opposed to making a decision on
8 folks now, and then people later, because that
9 could change the mix?

10 MR. BANTLE: I would open that up to the
11 Working Group. We are in uncharted territory.
12 Obviously, additions to the Subcommittee would
13 have to be provided by tomorrow, as the
14 Subcommittee starts working Thursday morning, and
15 we would obviously have time, have to have time
16 for all parties to make, you know, adequate
17 considerations prior to taking consensus check.

18 MR. LACEY: Well, for my part, my
19 recommendation would be that we wait until anyone
20 who's going to be proposed to be on the
21 Subcommittee, all those proposals have been made,
22 and then we make a decision on the composition of

1 the Subcommittee all at once.

2 MS. WEISMAN: Do we anticipate people
3 having others to propose? Because I think, just
4 to restate where we were earlier, our intention
5 was for the Subcommittee to be a very small
6 Working Group.

7 We have a very small room reserved. We
8 have made many attempts to secure other space at
9 no cost, and have been unable to do so.

10 So, our intent was to keep it a very
11 small Working Group who would, again, come back
12 and report everything that they wanted to
13 recommend to this Committee.

14 PARTICIPANT: Okay.

15 MR. MURRAY: I agree with Aaron that
16 maybe we could wait until tomorrow and do this
17 vote.

18 I also want to state for the record that
19 we did have a very explicit conversation about
20 the fact that my colleague expected to offer an
21 additional individual or individuals for this
22 specific Subcommittee at length yesterday, where

1 questions were asked, they were answered.

2 And so, this was a very public exchange,
3 and I think that we all knew that my colleague
4 was going to offer individuals for the
5 Subcommittee.

6 And so, just in case, now that we've had
7 this extensive discussion, anyone would like to
8 offer anyone, I think it would be best if we
9 delayed the vote until tomorrow, giving anyone
10 else an opportunity, even though this is supposed
11 to be a very small group, give all of my
12 colleagues their opportunity, and maybe
13 overnight, we can all remember that discussion
14 and evaluate the individuals that are proposed or
15 could be proposed on the merits that they come to
16 us with.

17 MR. BANTLE: Okay. Just a little
18 facilitator prerogative here, unless I hear an
19 objection to waiting to tomorrow, we will do
20 that, and then we will use our limited time to go
21 through a few items very quickly, and then
22 provide time for public comment.

1 So, that being said, if any other
2 Working Group members do have petitions for
3 Subcommittee members, please, I'd let the
4 facilitators know as quickly as possible, so just
5 we can, we can take care of that. Michael?

6 MR. BOTTRILL: Point of context on that.
7 So, if, as you've pointed out, apparently I have
8 representation on the Subcommittee already,
9 shouldn't we then, if the concern is around
10 transparency and having your particular, oh,
11 whatever, you know the word I'm trying to say.

12 If that's the concern about transparency
13 and the group that you represent, and if they're
14 already represented, shouldn't we limit that to
15 any areas that are not being represented, and
16 there's a concern there, rather than just anybody
17 bringing forth another person?

18 MR. BANTLE: I would open it up to the
19 Working Group, although I would say, as a
20 facilitator, I think that could be evaluated at
21 the time of the consensus check.

22 That would be a factor that would,

1 people would, Working Group members could
2 consider when casting their vote.

3 Okay. It is 4:50. We want to leave 10
4 minutes for public questions, or public comment.
5 But we do have a couple items just to run through
6 quickly for the, that I wanted to run by the
7 Department.

8 We had a couple information requests
9 today. Could we just get a quick status update
10 on that, and then, I know there was a request for
11 Mr. Manning's remarks, a status update on that as
12 well before we go to public comment.

13 MS. WEISMAN: We made note of a couple
14 of data requests. We have made those requests to
15 the appropriate offices within the Department,
16 and we are waiting for word back on the answers
17 to those questions.

18 Regarding Mr. Manning's remarks, we will
19 be posting those to our website. That addresses
20 this rulemaking effort.

21 So, I don't know, necessarily, if we'll
22 have paper copies to give out to everyone, but

1 they will definitely be on the website.

2 I know we've been asked for both, and
3 so, I'm waiting to hear back on that as well.
4 Unfortunately, as we go to break, I end up
5 talking to numerous people, and so I don't always
6 get to circle back with everyone on my list.

7 So, it's not that we did not hear the
8 concern. They are all in progress. And again,
9 we will be posting those at a minimum, and that
10 way they'll be available for everyone to see.
11 And I do appreciate the requests, but we are
12 working on all of them.

13 MR. BANTLE: Yes. And just as a
14 facilitator with information requests, process
15 requests, and other requests, we are keeping a
16 tab. I am keeping track of that on the side.

17 PUBLIC COMMENT

18 MR. BANTLE: So, with that, I would like
19 to open up the floor to any public comment. As
20 we did yesterday, could we get a show of hands,
21 just so we have numbers? Okay. Come on up.

22 MS. GOLDSTEIN: Hi. I'm Alexis

1 Goldstein. I work at Americans for Financial
2 Reform.

3 We're a coalition of over 200 faith
4 groups, consumer groups, consumer advocacy
5 organizations that work for a safer and fairer
6 economy.

7 I was here for the last negotiator
8 rulemaking on borrower defense. Quite frankly, I
9 am astonished that we are doing this again.

10 I'm hearing a lot of the same arguments.
11 I'm hearing people re-litigating a lot of the
12 same points. This whole exercise strikes me as
13 an extraordinary waste of time and money.

14 But all that being said, we are where we
15 are. I wanted to bring the voices of some
16 students to this room.

17 I've heard a lot today. I've heard a
18 lot of martyrdom. I've heard a lot of victimhood
19 from the representatives of for-profit colleges
20 and other institutions around this table today
21 talking about these poor schools and how we're
22 trying to do so many horrible things to these

1 poor schools, and we can't box them all in.

2 And I'm hearing a lot of suggestions to
3 create this process by which students have to go
4 up against their institution before they can
5 bring a grievance, before they can file a claim
6 with the Department, with the government.

7 And that's, quite frankly, a rigged
8 game. We see that in forced arbitration, which
9 is an area that my organization works in a lot.
10 That's a rigged game too. Most consumers do not
11 get anything when they go to arbitration.

12 I know that that's a thing that we will
13 discuss at a future date, at this negotiated
14 rulemaking.

15 But I don't see how a student who is
16 almost never going to be an attorney, going up
17 against an institution that has millions in
18 dollars, tons of legal counsel, tons of legal
19 expertise, is ever going to have a fair shot if
20 they have to adjudicate that before they can
21 bring in a complaint to the Department of
22 Education. That just seems entirely unfair to

1 me.

2 I also just want to read some quotes
3 from a new report that came out today from the
4 offices of Senators Durbin and Warren. These are
5 some students who, you know, who couldn't come
6 today.

7 Last negotiated rulemaking, a lot of
8 students that I had talked to had some hope that
9 the Department of Education was actually going to
10 discharge their debt.

11 We know now that there's 95,000 students
12 who are still waiting for relief. This current
13 administration has discharged none of their
14 debts.

15 There's thousands of applications who
16 have been approved. The Department is sitting on
17 them.

18 You all are talking here in this
19 negotiated rulemaking about potentially doing
20 partial relief instead of full relief.

21 These are people whose lives have been
22 ruined, and I want to bring some of their voices

1 to you today.

2 So, this is Amy Schneider. She attended
3 the Illinois Institute of Art. This is an EDMC
4 school.

5 She says, this school defrauded me,
6 plain and simple. In class, we did not learn the
7 schools we were supposed to be learning.

8 Despite being on the Dean's List and
9 graduating with honors, Amy found it nearly
10 impossible to find a job upon graduation.

11 Employers didn't see it as a reputable
12 institution. If it is on my resume, it looks bad
13 or they don't care. The degree has never opened
14 up any gainful employment.

15 She is saddled with debt, even though
16 she was told that they would get grants and they
17 wouldn't have any loans. \$76,000 was the tuition
18 they quoted, but she ended up with loans over
19 \$100,000.

20 She said, they just took us out of
21 classes and had us sign things. My loans ran
22 out. They had my mom come in and write a check

1 for \$5,000, end quote.

2 Since graduating, Amy has recalled being
3 harassed by Navient about her student loans.
4 They would quote, robo-call me all hours of the
5 day, sometimes 20 times a day. They called my
6 grandparents in Florida who have nothing to do
7 with my loans, end quote.

8 Amy's financial struggles have caused
9 her significant distress. She and her mom fight
10 a lot. She got really depressed and she says
11 quote, I thought maybe I am better off dead, end
12 quote.

13 Then there's Heather Beckstead who's
14 from Arizona. She attended the Art Institute of
15 Phoenix. Again, an EDMC school. She has \$67,000
16 in federal debt, and \$21,000 in private debt.
17 She says quote, I was defrauded, I was lied to, I
18 was promised something I didn't get. My
19 government should care about that. I want to
20 feel that my government has my interests in mind,
21 but it does not feel that way now, end quote.

22 The Art Institute did not provide

1 students the resources necessary to succeed.
2 Heather writes quote, there were not enough tools
3 to be successful. I would show up to class,
4 there would not be enough computers. I went a
5 whole semester fighting for a seat at a computer.

6 All of the tools were old. They were
7 outdated, they were broken, and they did not make
8 any attempts to fix them. Some teachers had work
9 experience in the field, but their knowledge was
10 very limited, not as qualified as we were led to
11 believe.

12 A lot of the times, students teaching
13 the, taught the class, students taught the class
14 or we watched tutorial videos on YouTube.

15 And finally, this is Nino from
16 California. He attended ITT Tech. He said quote
17 the whole education was basically a scam. It
18 ruined my life and I wasted two and a half years
19 of my life.

20 They didn't even say I would be in debt
21 after graduation. At the beginning, they told me
22 not to worry about having a loan, because I was

1 eligible for the highest financial aid.

2 Nino has \$29,000 in debt. He attended
3 ITT because he wanted to pursue a bachelor's
4 degree in computer network systems, and upon
5 graduating, ITT told him it was guaranteed that
6 he would have a job. He quote, won't be in debt,
7 end quote and, the credits would transfer to most
8 universities, none of which was true for Nino.

9 These are three students. There are
10 thousands of students with stories like that. I
11 know a lot of them.

12 I know a lot of them who have been
13 waiting for their debt cancellation for over a
14 year, sometimes two years.

15 They're waiting for this Department to
16 act. This Department has not acted. We now know
17 that there are 95,000 applications that are just
18 sitting there in limbo.

19 These are people whose lives are ruined,
20 whose credit is ruined, who cannot move on, who
21 cannot take out other lines of credit because
22 they have exhausted it, and if I seem

1 exasperated, it's because I am exasperated
2 because these are my friends. These are my
3 colleagues.

4 They are not people just trying to scam
5 you. They are not trying to pull one over on
6 you.

7 They are people who tried to better
8 themselves, improve the life for their family,
9 and they can't because they're stuck. And
10 they're stuck in debt that this Department has
11 the power, has always had the power to discharge
12 the debts of, and you sit and you wait and it is
13 frozen.

14 And I am, I am so frustrated with this
15 process. I understand we have a negotiated
16 rulemaking to do. We will do it. We will
17 continue to do it.

18 I appreciate everyone's perspectives.
19 But peoples' lives are on hold, and this
20 Department has the opportunity to stop having
21 their lives on hold and give them full relief,
22 not partial relief. And I beg you to do so.

1 These are people who just wanted to make
2 a life better for themselves. We, they believe
3 what we told them. Education is the path to a
4 better life. And that is not their experience.

5 Their experience is that it has made
6 their life worse, and that they wish they never
7 went there, and they take these schools off of
8 their resume.

9 Many of these schools, which are still
10 open, by the way, I am not just talking about ITT
11 and Corinthian. Art Institution is still a
12 functioning institution. There are a lot of
13 other schools out there just like that.

14 So, again, I implore the Department of
15 Education to discharge these debts as soon as
16 possible. These students have waited entirely
17 too long to move on with their lives. Thank you.

18 MR. BANTLE: Any additional public
19 comment at this time? Okay. Hearing none, it is
20 4:58. As usual, we are trying to be respectful
21 of your time.

22 So, I want to wish everyone a great

1 evening. Thank you very much for your
2 perspectives today, and please use the additional
3 last two minutes that we're giving you to review
4 Issue Papers 4 through 8 for tomorrow morning.

5 (Laughter)

6 MR. BANTLE: Thank you very much.

7 (Whereupon, the above-entitled matter
8 went off the record at 4:58 p.m.)
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C E R T I F I C A T E

MATTER: Borrowers Defenses and Financial
Responsibility Negotiated Rulemaking
Committee 2017-2018

DATE: 11-14-17

I hereby certify that the attached transcription of page 1 to 395 inclusive are to the best of my professional ability a true, accurate, and complete record of the above referenced proceedings as contained on the provided audio recording; further that I am neither counsel for, nor related to, nor employed by any of the parties to this action in which this proceeding has taken place; and further that I am not financially nor otherwise interested in the outcome of the action.

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