U.S. DEPARTMENT OF EDUCATION

TOPIC DISCUSSION UNDER TITLE IV

OF THE HIGHER EDUCATION ACE

Monday, September 13, 1999

400 Maryland Avenue

Bernard Auditorium

Washington, D.C.

The meeting in the above-entitled matter was convened, pursuant to notice, at 8:30 a.m.

P R O C E E D I N G S

[Time noted: 8:30 a.m.]

MS. ROGERS: Are there unnecessary costs imposed on institutions of higher education by regulations that were designed to apply primarily to industrial and commercial enterprises? And are there any regulations affecting public and private colleges and universities and proprietary schools that receive less than $200,000 in Title IV funds each year that could be improved streamlined or eliminated?

Again we know that the timing of this whole session is not ideal but this will not be our only chance to interact on reg review and we appreciate your coming here this morning and your patience with us as we move forward and do our listening sessions throughout the country.

In an effort to break the issues into more manageable topics we have scheduled for listening sessions loosely following the following topics areas used in negotiated rulemaking, the guarantor and lender issues, other loan issues, program and student eligibility issues and institutional eligibility

issues.

The objectives here are to create an inventory of regulatory suggestions. For now we would like to focus the substantive discussion on duplicative and no longer necessary regulations. Other more complex issues will be discussed over the next 12 months.

We would like to solicit input on a time line and a process for further consideration of more complex issues included on the inventory of regulatory suggestions. So for those of you who would like to submit things online we do have our e-mail site ODS_regs@Ed.Gov. That's ODS, the initials O-D-S, underscore regs, at ed.gov.

PARTICIPANT: [Off mic.]

MS. ROGERS: Hopefully not.

We have already gotten quite a few suggestions from folks and we encourage you to continue to submit your suggestions on line or in written format, whatever is easiest for your.

The Federal negotiators who conducted the negotiated rulemaking sessions are going to lead

these discussions; they will act as facilitators. These people were selected primarily because of their expertise in already having been with most of the through all these topics.

Yeah, I know was a fun time. I know that's why you're back? Right. Well that's good. I mean, we really seriously do want to move into a new time of really working with you closely and trying to solicit your input and get your ideas and work towards what are going to really make our institutions operate better, what is going to be better for students, what is going to be better for our partners and our customers.

These people are not here as negotiators because we don't see these as negotiating sessions. Instead, they are sessions to brainstorm and solicit ideas and not to come to final conclusions. So you're going to need to like take off the glasses with which you looked at them before. They are truly here as solicitors and facilitators of ideas and to hear your suggestions.

For that reason you should not read too

much into what they say during these sessions. Meaning that --

[Laughter.]

MS. ROGERS: So nothing will have changed then. For that reason also they will not listen, you know, take everything that you say -- or they will take everything you say with a grain of salt. I mean, this is truly meant to stimulate discussion and to get ideas and not to put out ideas and suggest that these are the positions of the Department, per se.

We're hopeful that what will result from the sessions is that we will be distributing a list of all attendees before the end of the meeting and you are encouraged to continue your discussions with others after today and to submit any further comments on the e-mail site.

We may prepare a printed inventory of the regulatory reform suggestions before the regional sessions and if we do we will send those to each of you electronically.

A transcript of these sessions will be

available on the Web site, I'm not certain how soon after the sessions conclude, but as quickly as we can get it up. And will prepare a report to Congress in early October. I would look at this report as a preliminary report.

This is not something that we've done before so there are not really any role models to go after on this one for us. It is a new exercise for us, but we do want to try and obviously fulfill our statutory obligation and with that though I think that given the time frame that we have, it is going to be difficult to have a really, really full report.

So I think that from the Deputy Secretary or the Secretary's perspective this will be viewed as an initial report with subsequent perhaps drafts to follow or supplements to follow.

And I caveat that with just that's just a preliminary way in which we have been thinking about it. Obviously, if we get all of our work done that's great, but, you know, I do realize of the time line is rather ambitious.

Again, I want to thank you all for attending and I hope you have a great day here today. I'm going to have to excuse myself and turn it over to Larry -- Brian -- Larry. Larry.

You can tell we rehearsed this right? Thank you all very much.

MR. OXENDINE: The first thing if you would, please, you all have little tents in front of you, if you would write your name on both sides. Also the discussion is being recorded, so before you provide your comments, if you would begin with your name so we can get them on the record even though later from the tape who was saying what.

PARTICIPANT: [Off mic.]

MR. OXENDINE: If you want to be committee one, yes.

PARTICIPANT: [Off mic.]

[Laughter.]

MR. OXENDINE: What is your name on Committee 2?

PARTICIPANT: [Off mic.]

MR. OXENDINE: Oh, okay.

[Laughter.]

PARTICIPANT: [Off mic.]

MR. OXENDINE: Well, if we need any, we're in trouble.

[Laughter.]

MR. OXENDINE: If you need a caucus room we'll leave.

We had a lot of discussion during NEGREG and my famous line was, "that didn't come from '98 amendments." And there were a lot of good ideas that were put on the table that during the time we refused to take up. At the end of the NEGREG session the so-called bonus round there were a lot of ideas that were rejected for one reason or another. Some, frankly, that the Department was hoping to proceed with.

So I would assume that some of those issues you would like to take up again and have a thorough discussion of those.

But what I would like to begin with is focusing on regulations that are duplicative of other regs or requirements are provisions or regulations

and regulations that you believe are no longer necessary. I think there is probably some number of regulatory provisions that are seriously outdated as a result of reauthorization and we have not gone back through the regulations yet to try to get that entire package consistent with the reauthorization provisions.

As you well know reauthorization especially in the lender guarantee agency area created a lot of economic incentives for agencies and lenders to act any particular way.

I would like to focus on whether or not those economic incentives are strong enough to get the desired outcome so that we don't have to regulate the detail. So with that I would like to open up unless Jim -- I would like to open it up for discussion and nothing is off the table today. Anything that you want to discuss related to lenders guarantee agencies, any ideas, and I would urge you to be bold in your thinking in discussing possible regulatory provisions or elimination of regulations.

MR. MILLER: All right. Let me see if we

can -- Scott Miller with PHEAA.

As a community the FFELP organizations have tried to organize their thoughts for this session and so what I would like to do is take a second to sort of give you know how we come to -- give you a little background on sort of how we feel coming here and what we think our focus -- what our focus has been and what we think your focus should be as you sort of look towards the regulations and see if we can get into the areas that way that you would like to discuss if that's okay with you.

Actually, we have prepared text which we can give you guys and not have to go through it in excruciating detail, though is not in excruciating detail which is part of our what we would like to discuss.

Let me go through the beginning of the statement and give you an idea of where we're coming from and other folks where we're coming from and then we can maybe launch into specific topics as we go.

As I said, the statement represents the organizations who deliver FFELP loans, who represent

the state and private sector entities, that partner with the Federal Government to deliver the FFELP loans.

It is our belief the regulations promulgated under Title IV have a direct and major impact on our ability to effectively guarantee, fund, deliver, service, and collect on those loans. This as an opportunity that we greatly appreciative for input and we're looking forward to having some substantive results come out of it at the end of the process.

We look forward to being cooperative with you and of figuring out ways that we can work on an ongoing basis not just to the special sessions.

In your Federal Register Notice on August 26th you solicited advice on how the Title IV regulations could be more effective, how administrative burdens imposed by those regulations could be reduced while assuring effective Title IV administration, and how the ways the Department develops Title IV regs could be improved. Our comments will attempt to provide answers to those

1 questions especially as it pertained to FFELP.

2 This is not a comprehensive list of

3 regulatory changes that we put for before you, but

4 we're trying to give you some major themes and to

5 continue to listen and to provide ongoing input into

6 the Department. We expect to be providing in fact

7 more detail before the September 30th and throughout

8 your process of review.

9 One of the things that Diane just said

10 that I think we're very interested in exploring with

11 you is a way on an ongoing basis outside of the

12 sessions and outside of the congressional deadline

13 you're under to somehow or other figure out ways that

14 we can sit down and review the impact of regulations

15 especially after they are promulgated.

16 I think given the fact that we're going to

17 be all under a whole new set of regulations, fairly

18 substantive changes beginning July 1, it would be

19 good to figure out ways that we can come back after

20 those regs have been implemented and after we've had

21 some time to look at them and figure out whether they

22 are in fact achieving their goals, whether the

thoughts that we had during NEGREG were really as brilliant as we thought they were at the time, and whether there are items that are in fact in conflict or not complementary as we would like them when you put the whole package together and you put it into place.

We, as we've gone about here, have tried to focus our comments and as we have done that we have done a -- are you waiting for this -- a 3-D approach to the regulations.

[Laughter.]

MR. MILLER: That is so you will remember this.

PARTICIPANT: [Off mic.] Sheila is to blame for this.

[Laughter.]

MR. MILLER: That's right. Just showing that you did not effectively strip our senses of humor from us.

[Laughter.]

MR. MILLER: Despite five months of firm effort.

[Laughter.]

MR. MILLER: Yes, they're very patriotic. That was good of Jeff to point that out.

[Simultaneous conversation.]

MR. MILLER: That's exactly right.

[Laughter.]

MR. MILLER: That's right. Yes, use them for internet viewing and you --

[Simultaneous conversation.]

MR. MILLER: The 3-D which these exciting, expense of props represent --

PARTICIPANT: [Off mic.]

[Laughter.]

MR. MILLER: We will get to inducements later, Jeff.

[Laughter.]

MR. MILLER: We believe these are very useful in exit counseling.

[Laughter.]

MR. MILLER: The three D's that they represent are: Default prevention, documentation, and due diligence. And therefore the written

comments we have focus on those areas.

We believe that these requirements govern some of the most important functions in our day-to-day administration of the FFELP. They also are among the most costly functions for us as we perform our duties.

We are interested in maximizing human and technological resources to run an effective FFELP under those regulations. And believe that improvements can be made in each of those areas that will lead to higher degrees of efficiency and effectiveness for all of FFELPs stakeholders including borrowers, schools, and taxpayers.

Let me ask you how you would like to go here. We have specific areas, I don't know if others have more general comments, I guess Maureen and I have been -- you know, and if they like have general comments they would like to start with and then we can get into specifics, that's really up to you on how you would like to roll here, Larry, or how they would like to.

MR. OXENDINE: Does anyone else have any

introductory remarks you would like to make before we get into the detail? Anyone on the left side of the table?

[Laughter.]

MR. OXENDINE: I see you're walking well though, that's good. Maureen, do you?

MS. BUDETTI: Not really. I think, Scott, I would come behind Scott in supporting an ongoing, you know, process. And also what Diane said about, you know, taking a little longer to look at these things.

MR. OXENDINE: Take it away, Scott.

MR. MILLER: I'll talk a little bit about the default prevention and then I would urge my colleagues when they stop kicking me to chime in and elaborate on some of the concepts we put out and, you know, certainly urge Maureen and I to comment as well.

Obviously, default prevention is a top priority for all of us. It's really, you know, the thing we do day-to-day, it's the area we concentrate on day-to-day.

We are very pleased along with the Feds, and despite some folks looking at the math that default rates are going down and we think no matter how you do the math, default rates are going down and we believe that that's been a shared success between the Federal Government and its non-federal partners in reducing defaults.

We are very pleased the Congress and the Department and Ed have implemented measures over the last several years which we have advocated as a community and believe that those measure have been very effective in reducing defaults.

We are pleased that it is easier now for borrowers who require temporary relief in their payments to obtain deferments and forebearances. We believe they are very important to reducing default and getting borrowers sort of lifting sort of an arduous burden on borrowers and making them more part of the system and giving them avenues for relief that are -- that don't have negative consequences for them.

We do have certain suggestions regarding

current regulations. We believe that there is more that can be done to enlarge the current arsenal of default prevention, tools that we have and to broaden the flexibility participants have to further reduce defaults. And let me provide a few examples for you.

Right now current regulations make maximum deferment time limits applicable to the borrower rather than to the loan. The interpretation of deferment application minimizes the availability of statutory entitlements to borrowers. Loan level deferments would be more equitable. The regulations should be changed to allow a borrower to be eligible for the maximum deferment period available for each loan as allowed on the promissory note. This means that a borrower who has exhausted unemployment deferment eligibility and then borrows additional loans to return to school to try to resist being unemployed again, would not be left without options for deferment relief on more recent loans if they had to cope with an unemployment situation again.

Second example, borrowers who seek deferment --

MR. OXENDINE: We are sort of making this --

MR. MILLER: I'll stop there.

MR. OXENDINE: -- format up as we go along.

MR. MILLER: That's cool.

MR. OXENDINE: But if you don't mind, when you say something that I would like for you to expand on, I'm going to just cut in. Okay. I think it's better if we -- yeah, I think it will be healthy if we have just a round table discussion like.

Your proposal for loan level deferments which is an interesting one and one I have considered some time ago. In that situation that you described where a borrower has a loan, gets an unemployment deferment, goes back to school, gets another loan, again is unemployed. The second time around, with a loan level deferment, would that borrower still be required to make the payments on the first loan?

MR. MILLER: My view is that we've got other tools that we can work in concert with that. If there's a borrower who has exhausted unemployment

1 deferment on one set of loans, has a second set of
2 loans and is eligible for that deferment, my, you
3 know, predilection would be to say that forbearance
4 is a tool that could be used to facilitate relief on
5 those other loans. I mean, the borrower isn't half
6 unemployed or partially unemployed, even though only
7 half their loans may be eligible for the deferment.
8 And I think lenders would work with that borrower to
9 figure out other ways to try to provide relief on
10 those other loans. They might fit under hardship on
11 those loans.
12 There are combinations of deferments and
13 forbearances I think that could be used in that case.
14 It also might be a case where administrative
15 forbearance might be a useful tool to allow lenders
16 to match up payment relief among a portfolio of a
17 borrower's loans. I would defer to my colleagues.
18 MR. OXENDINE: And with that approach, are
19 you -- would your suggestion be that we make this
20 provision mandatory or optional by lender, and if
21 it's mandatory, have you considered the operational
22 burden that would be associated with such a policy?

MS. RYAN: The policy that we're talking about, just for the benefit of the other folks in the room, in about, I would say, '94-ish, a private letter was issued that at least for the first time that we were aware of the Department applied the deferment policy at the loan level -- at the borrower level versus the loan level. So lenders and servicers had traditionally, if the borrower received previously, for example, long, long time ago, the borrower had two years unemployment deferment and so if they used those two years up, went back to school, got new loans, those new loans would be eligible for a two-year unemployment deferment.

And so that is the policy that we had been operating under historically. The borrower level deferment has resulted in an entire industry around that interpretation and sort of the implications of all of that and sort of the complexities, et cetera, around that and so while there may be some servicing system changes necessary to revert back to the prior policy, and we think that those system enhancements would be well worth the default reduction

initiatives, but also just eliminating a whole layer of other sets of issues that have fallen out as a result of this policy. So this is something that we wholly support.

MR. OXENDINE: Also under that policy would you be creating the possibility and probability that borrowers would default on one loan and not another?

MS. RYAN: Anything, I guess, is possible, Larry. But the administrative forbearances Scott mentioned is one vehicle to eliminate that option. The alternative would be under the current policy. It's a possibility that the borrower defaults on all of their loans because they are not getting a deferment on at least a portion of those payments. If they had, you know, four loans totalling, you know, $12,000, if they had to make payments on $5,000 versus $7,000, if my math is correct, then they might actually be able to make those payments and avoid default. So I mean, it could have just the opposite effect as well.

Do you want to caucus?

[Pause.]

MR. OXENDINE: Scott, do you want to continue? Cut on your mic.

MR. MILLER: Back in rhythm, you know.

Borrowers who seek deferment or forbearance as a means to temporarily postpone or reduce their repayment obligations typically have already encountered difficulty in making payments and may be delinquent when they pursue deferment or forbearance. Current regs permit application of administrative forbearance to alleviate delinquency, but only in some deferment or forbearance instances.

The administrative forbearance brush stroking regulations needs to be broadened. Regulations should allow the lender the discretion to apply administrative forbearance when needed in relation to the processing and granting of deferment and forbearance so that accounts would not needlessly remain delinquent at the conclusion. And this really gets to you at the point you just raised. The idea of having a mismatch within the borrowers' accounts is where you get into those sort of technical

1 defaults where the borrower probably believes that
2 they are current on some accounts or that everything
3 has been taken care of because they've gotten a
4 deferment. They come out deferment and they find out
5 that they are current on some loans, not current on
6 other loans, nothing could cause more confusion for a
7 borrower at the end of that period. And these are
8 borrowers who are probably, you know, dealing with
9 multiple creditors at the same time and trying to
10 manage multiple problems financially because they are
11 in circumstances which have qualified them for
12 deferment or forbearance at the time.
13 It is our belief that allowing broader use
14 of administrative forbearance will just simplify the
15 process front and back end for deferments and
16 forbearances for borrowers.
17 MR. OXENDINE: Let me make sure I
18 understand what you're suggesting. That if we were
19 to change the regs so that we go to loan level versus
20 borrower level deferments, along with that change
21 also expand the permissible uses of administrative
22 forbearances so you can still keep the loans matched

so you don't have one with no payment due and one with a payment due?

So during the deferment period on a subsidized loan the Department would pay the interest subsidy. During the same period on the loan in forbearance, the interest would accrue and be chargeable to the borrower?

MR. MILLER: Right.

MR. OXENDINE: Okay.

MS. RYAN: Larry, I think in terms of -- we don't necessarily link these two proposals. That, in fact, they are separate. There is a loan level deferment policy which we've been advocating for some number of years, and then separate and aside from that is the administrative forbearance provision. I think there's -- just for a few others sort of benefit, there are circumstances today in the regs where a borrower that is granted deferment, the regs allow for an administrative forbearance so that when the borrower goes into deferment and leaves deferment they are current and can have a fresh-start approach to their repayment cycle. That is also true for

other certain types of forbearances, but it's not universal.

There are still some gaps there so that a borrower could be, as example, 120 days delinquent, perhaps a 60-day administrative forbearance so that when they leave that event, whatever that event might be, they are still 60 days delinquent. And so they are forced to come up with that past-due amount plus their future payment amounts.

I mean, we can go through a process to get a discretionary forbearance, but it requires documentation, et cetera. And so we are separating them and this really allows a borrower that has a change in their servicing either deferment or forbearance, at the end of that even to be current and sort of broadly in all circumstance is what we're trying to get at, on all of their loans.

MR. MELECKI: Larry, could you talk for a minute about taking what Diane said into account and recognizing that, I don't want to put you on the spot, but could you talk for a minute about whether or not you think the Department might be willing to

1 entertain the notion of deferring across the board if
2 the borrower qualifies based on a new loan as opposed
3 to going with this sort of mix of deferment
4 forbearance?
5 MR. OXENDINE: Actually, Tom, the
6 Department is really not here today to provide any
7 decisions. We're interested in finding out what you
8 think what would be advantageous to the program. As
9 I indicated in my opening remarks, nothing is off the
10 table. So we did not come thinking that there is
11 anything sacred, and there are certain areas we are
12 unwilling to go. Everything is totally open right
13 now.
14 MR. MILLER: I think in some ways, too,
15 this issue comes down to borrowers understanding and
16 being able to cope with a very complex process, and
17 in fact, it's just as difficult, you know, for parent
18 borrowers as it is for student borrowers. This is
19 the kind of thing when you go out and try to explain
20 it to folks they really get confused. When a
21 borrower obtains a forbearance or a deferment, and
22 especially a deferment, I think, they really believe

that their problem is over. You know, that they've sort of solved the problems with their loans, that they got relief that the Government has provided to them. And they can sort of, you know, put it aside for the length of that period.

I think when you have the case where the borrower then comes out of that deferment period, some loans or some portion of that loan -- some portion of their loans or that loan is delinquent for some period at the end, I think it creates a great deal of confusion because it really is a case where, when you think about it, you're a borrower who has gotten a deferment, you've gotten a deferment for six months or a year, you come out of there and the first thing you get from the lender is a notice that says, your payment is due, and you're delinquent. I mean, I think if you got that from your mortgage lender, if you called up your mortgage lender and you said, you know, I've been in a flood zone, I need a three-month forbearance, you came out of there and the mortgage lender said, fine, you know, your three months is up, your next payment is due October 1, but you also owe

us all this back stuff because you're delinquent now. You would be terribly confused about that because you had been under the impression that you had straightened that situation out, and now, all of a sudden, you're in a situation where it doesn't look like you effectively straightened that situation out. In fact, you know, somehow or another you've just postponed what you had before and nothing has really been taken care of.

We are going to talk, I think, a little bit about backdating here too and I think that's a similar issue in terms of just trying to allow deferments to do what they're supposed to do, which is basically allow borrowers to deal with their temporary situation in which making student loan payments is an extraordinary hardship or an impossible situation, and allow them to come back out of that at some point and get back into -- have an enhanced ability to make loan payments, a better ability to make them than when they started. I think these sort of situations we've described go against that purpose.

MS. MORGAN: [Off mic.]

MS. RYAN: There are a couple of, I think, gaps in that PM. As we, I think, said earlier, many of these issues have been resolved through the use of prior regulatory initiatives, but you're correct in terms of delinquency prior to deferment. What it is not covering would be any delinquency prior to, say, to a discretionary forbearance or prior to an emergency forbearance, the flood forbearance, whatever we want to call that, unless it's a mandatory administrative forbearance. So it's a matter of, you know, we were looking for something more broadly, I think, into the regs, rather than sort of listing forbearance type and deferment, you know, that kind of thing, but more broadly to say any administrative forbearance prior to any type of deferment or forbearance, it's not really an issue with deferment, but it is with forbearance. There are some gaps.

MR. GETTE: We added some in the last round of regulations in terms of administrative forbearance and I'm wondering, you mentioned more

broadly. Do you have a sense of any types of limitations that you would put on it? I mean, are you seeing some type of time limitations or other limitations, how broad would the discretion you would be seeking be here?

MS. RYAN: Wrong person asked.

[Laughter.]

MS. RYAN: I think this isolated issue that we're talking about prior to a deferment or forbearance we would see that as being, you know, an extremely broad set of circumstances so that it doesn't -- you know, it doesn't seem that limited to 90 days or 120 days, if the borrower is delinquent prior to the flood that caused their house to go up the river, it would seem that we would want to do maximum flexibility.

Outside of the list of topics that are here, certainly there may be other reforms on forbearances in general and we'll get to that a little later. But in terms of this particular proposal on the table we would say, not to put any boundaries around it.

There are not boundaries, necessarily today around the deferment that if the borrower is delinquent prior to the granting of deferment, the lender could apply the full administrative forbearance prior to that granting.

We don't address discretionary forbearances. So back when we had sort of paperwork for a discretionary forbearance, you send the form out for these periods and it takes a borrower X number of days to process it, so suddenly they are, you know, 30 or 45 days delinquent and there's no vehicle necessarily to resolve that delinquency and so there's with the discretionary forbearance there also needs to be some framework around that.

MR. OXENDINE: I'm trying to think through the economics of what you're suggesting. Have you given any thought to the economics and what type of incentives would be created in this area. For example, would there be an incentive to make maximum use of the forbearance authority since it would create a period of time where there is no servicing, but yet interest continues to accrue which would be

payable as part of a claim.

MS. RYAN: I believe the answer to that question, Larry, would be, no, there would not be any sort of counter incentives going on if that is sort of the framework for the question.

We already are doing this in certain circumstances. As a lender we're not -- on an income -- on a loan that is being deferred or foreborn, we are not getting an income stream on that loan for that current period of time. And so that is all deferred to whatever period of time the borrower actually starts resuming payments.

The alternative would obviously be that these are loans where the borrower defaults and there's a higher expense. And so I would not look at -- I would not put those glasses on for this issue.

MR. OXENDINE: Thank you. Scott, do you want to continue?

MR. MILLER: No, but I'll do it anyway.

This is, as Sheila said, before the segue into backdating which, you know, is similar issues, different problem.

MR. OXENDINE: Is it possible for us to find some other term? "Backdating" just sounds so illegal to me.

MR. MILLER: Kiting.

[Laughter.]

MR. MILLER: We are talking here about realistic deferment begin dates.

[Laughter.]

MR. MILLER: Under current rules no deferment can be applied to begin earlier than six months before the lender's receipt of a request for required documentation. The Department has recently agreed to eliminate this restriction for in-school deferments. The begin date for all deferments should be the date that the borrower meets the eligibility qualifications.

It's our belief that providing deferments to borrowers for the full length of time they meet the eligibility standards regardless of when they get the paperwork to us, is really in the best interest of everybody involved here, and, again, is an effective default prevention tool and also goes to

eliminating confusion once again.

It's our view that now you have a case where delinquency period is out to 270 days. So you can have a borrower who is significantly delinquent, gets the paperwork in toward the end of the 270-day period and yet is unable because of the rules to eliminate their delinquency period in full.

It is our view that if a borrower can substantiate that they qualified for that deferment, but they just didn't get the paper to us on time, they should be eligible for the full entitled deferment period. You know, a lot of that seems just sort of punitive on the borrower and doesn't seem in anybody's best interest to again get in those situations where they come out of deferment and are still delinquent.

MR. OXENDINE: Are all of the deferments such that some number of months after the fact we could determine the date upon which the borrower first became eligible? I believe that was the issue that was being addressed with the six-month provision?

MR. MILLER: Are there any that you could think of that wouldn't be?

MR. OXENDINE: Don't answer a question with a question.

[Laughter.]

MR. MILLER: It's cultural, Larry.

[Laughter.]

MS. RYAN: Say no, just say no.

MR. MILLER: I mean, I can't think of one. So my answer is no then.

MS. MORGAN: [Off mic.]

MR. MILLER: You get a situation, you know, the quick answer that I would have is you really would probably only be worried about a period trying to go back far enough to eliminate a delinquency. I could, however, think of a circumstance where a borrower might say, I want to go back and wipe out a forbearance because I can wipe out accruing interest as well in that period. And it may be that that's the choice. But that would only come up in that case.

In general, you would have, you know, 269

days would be about as far as you would think in the vast majority of cases borrowers would want to go back. So that would probably not eliminate -- that would not cover any of the statutory lengths. Again, as I said, except that I could think of the case where a borrower might say, yeah, but I would like to wipe out that prior forbearance and eliminate the interest accrued. But they would be doing that very consciously and very knowingly if that's the route that they chose.

Ivan, do you have any reaction to this kind of stuff?

MR. FRISHBERG: It seems fairly reasonable in as much as you're trying to -- it does seem to simplify it for the student. The only problem is if the -- is whether or not the student know. It makes sense to the student to the extent to which they request the deferment for a particular date and they identify, oh, this was the date that I'm eligible, you know, would be eligible so I can essentially backdate this.

I guess the only question I have is where

they don't recognize that, or, you know, I'm not familiar enough with the form to realize where they would have to identify that or whether it's something the lender would identify without them knowing.

MS. RYAN: The forms are ugly. And, so, I don't know, did we bring them? Yeah. You know, that's sort of not jumping out of this list, but, yeah --

[Simultaneous conversation.]

MS. RYAN: You know, we were actively involved in the development of the form, but when you have sort of a set of statutory requirements that need to be included and regulatory requirements, and sort of definitional kinds of issues, they become, you know, just ugly and complicated. And so I think that answers your question.

MR. FRISHBERG: Does the student have to disclose a date particular to some change of circumstances or to get the deferment or can they just say, I am currently in this situation and then there is ambiguity about the original date?

MS. RYAN: It depends on the deferment,

but most of them there's a date that you can get back to in terms of when they first qualified for unemployment benefits, as an example. You know, maybe they were terminated from employment, typically there might be documentation around that status change, you know, military, there are date certain events that surround that point.

[Pause.]

MS. BUDETTI: I was just going to add that it seems to me that this process is actually very good for this kind of problem. I think it probably speaks to the benefit of having enough time to go through these. Clearly anything that would combine a more simple administration and a less expensive administration of the details of the program at the same time that it protects the borrower, you know, we would be supportive of. But I think it does take a sufficient amount of time to look at it and make sure that by doing those, you don't open any windows for, you know, fraud, abuse, or treating borrowers in inequitable ways.

So, I mean, I can only speak at this point

on sort of the general merits. But because I think this is the kind of thing that really you have to sit down and you have to look at all the permutations and then figure out how you can do the simplest rule that covers the cases to meet the competing, you know, demands.

MR. OXENDINE: Scott, did I understand you to say that part of your proposal would be that assuming we do away with the restriction on how far back the first day of the deferment period could begin that this new provision would apply only in the cases where the borrowers are less than 269 days delinquent? In other words, are you saying that someone could be in default, without the deferment in default and even that one you could go back and undo it and where would you draw the line? That's what I'm trying to get at.

MR. MILLER: I mean, that's allowable now as I understand it. I've got folks around me who know this a lot better than I do and one of them is going to talk right now.

MR. OXENDINE: But only to six months.

1 [Laughter.]

2 MS. MORGAN: Yeah, there is six month

3 retroactivity and then your forbearance could be

4 granted to pick up the rest of that period and the

5 lender has the option of granting that even after the

6 borrower has hit the magic point of default which is

7 now 270. And that's been there. It's just that the

8 deferment retroactivity can only be with the

9 exception of in school now, six months.

10 MS. STEWART: We actually encounter that

11 all the time in the 410(b)(5) appeal which is the

12 initial appeal after default where the borrower is

13 provided an opportunity to contest the default on the

14 loan. And what happens now is, they get that notice,

15 they say, oh, I didn't realize I was eligible for all

16 this deferment stuff, and here is all the

17 documentation showing that I'm eligible for it and

18 instead of just putting them in the deferment and

19 being done, we have to work out an agreement with the

20 lender -- repurchasing lender, not only to put them

21 in deferment, but also to do a forbearance and we

22 can't take care of it until they fill out all the

forms for the forbearances, yeah, yeah, yeah, so it does sort of make it tough.

MS. MORGAN: Question, does this happen more with particular types of deferment categories, or that someone has not realized their eligibility?

MS. RYAN: The one that probably historically may have been an issue, but I think has been resolved, has been the in-school deferment, you know, because we are getting data from the clearing house and other types of resources. I mean, sometimes students think because they are enrolled, we just know about it. And so things like the clearinghouse and others have been great tools to eliminate those kinds of circumstances coupled with the option under the amendments to allow us to grant the deferment and notify the borrower in the case of an in-school status. And so where that's, I think, about 75, 80 percent of all deferments granted, you know, the others -- other remaining short person, I think the other category that might fall to light would be the unemployment deferment not realizing that there is a deferment vehicle necessarily

available in that circumstance and sort of what the opportunities might be there.

MS. STEWART: Just to pick up on Sheila's point, because we have sort of fixed this with the in-school piece and that represents 75 to 80 percent of all deferments, this would not be a high usage kind of thing and yet it would allow the opportunity to straighten out the delinquency on an account.

[Pause.]

MR. ANDRADE: Jeff Andrade, A-n-d-r-a-d-e, representing the Consumer Bankers Association. I would like to talk a little bit about documentation, the second of the 3-Ds.

We recognize that particularly international FELL program that we've made a considerable amount of progress in eliminating paper in some of the restrictions, but we are clearly not at the point where we have a paperless system. And I can kind of speak to this as a former student loan borrower and as someone who represents an industry that has tried to eliminate paper in financial transactions across the board in a variety of

1 financial services.

2 And we have made some progress,

3 particularly like in the progress made over the

4 effort of the last several years in the master

5 promissory note in terms of serial loans and the

6 paperwork requirements. But this is still both from

7 a borrower's perspective and from a participant's

8 perspective, we still have a long ways to go.

9 My friends down at the Texas Guarantee

10 Agency did some estimates of their current paperwork

11 requirements and, for example, for one year they

12 estimate that about a million pages of paper have to

13 be stored as part of their recordkeeping

14 requirements. If you were to take those pieces of

15 paper, ten year's worth, you could go from Austin,

16 Texas right to this building here and back up to

17 Boston with that paperwork that is required. And

18 even by eliminating paper, and going on disks space

19 and computer space, that's still a considerable

20 amount.

21 Again, using Texas as an example, and I

22 know Texas is a big State, but we estimate that at

about one year's requirements between their mainframe and their server would be the equivalent of about 240,000 floppy disk's worth of data, and that's one agency.

That's not, also, counting in the fact that lenders are also required to keep that same information and duplicate it. So this is an area, I think, that we really need to take a hard look at, both from the proportionality of risk and the reduction of burden on borrowers and this reminding of the process.

Let me bring up a few examples. We talked a little bit about deferments. We have the deferment forms that have been passed out here. As someone who could possibly be eligible for a deferment in the future, I don't know if I would want to have to face this. Maybe perhaps technology has given us the point where we have now been able to reduce this down to a six point type where it's still legible, but we still have a considerable amount of questions that we're asking people on something that they are already eligible for in most cases.

The one example, I think, that we would really like to bring to light is an example of a military deferment where we think that these things should be able to be done over the phone. The regulations that we recently negotiated on the drug conviction requirements are something that is self-certified on the form; someone doesn't have to prove it. You take the word of a convicted felon that the requirements no longer apply to them, but yet someone in the military still has to produce a considerable amount of documentation to get the interest on their loans paid, or even the option not to pay them during the period.

The second -- yeah, does anyone have any -- do you want me to keep going on that? Okay.

The second one is in the last round the Department deleted the requirement for forbearance agreements to be in writing. We support the change in the preamble of the MPRM it stated that the written request was eliminated. There is currently no requirement for a separate written request. And in our technical changes, technical requests on the

1 regulations, we ask that that be reflected in the
2 agreement and it was not reflected in the MPRM and we
3 think that the -- at least in the final regs, and as
4 a matter of policy that this agreement should be
5 reflected -- the agreement negotiated should be
6 reflected.
7 The last -- well, I've actually got a
8 couple of more points here, but -- the other part is
9 the paper trail and I guess since this is a group one
10 issue, and we're looking at it in terms of what's
11 required to be kept by the institutions, if a student
12 is enrolled for four years, if they default, the
13 information that is retained by the schools is for
14 seven years, the lender for about ten years, and the
15 guarantor for about 20, or 10 to 20. And I think
16 this is something which this particular provision,
17 the HEA which requires this regulatory view, I think
18 which it was trying to get at, that we have a
19 tremendous amount of documentation requirements at
20 the institutional level that's duplicated with
21 lenders and guarantors, and that is something that
22 really needs to be examined here, again, on a

proportionality of risk.

Right now I think there's a certain comfort level that the records are there for some -- if someone wants to go look at them in a certain amount of time, but given the reviews that are done, the audited records, and the considerable risk that may or may not be there, I think that that is something that you really need to kind of weigh the recordkeeping requirements versus the cost on institutions, lenders, and guarantors on storing this material.

And then on the last point, what I would like to talk about is paperless and paper we think that getting rid of paper eliminates the problem. If we still have -- I mean, a web-based form with 100 data elements is still 100 data elements of information that a borrower has to fill out. As we saw in the test example, gigabytes and gigabytes of information that's required to be stored and archived is still -- it's still there, it's still a cost, and eliminating the paper doesn't necessarily get rid of the problem. I think we need to look at hard and

fast on documentation why we need the burden on the borrower and the justification for the costs.

MR. BAKER: This is going to sound somewhat challenging and I really don't mean it to be, I'm serious. As you make the point that some of this getting things on paper which we don't necessarily have to, or maintaining whatever documentation, paper or otherwise, is costly and perhaps redundant and so on. I think you are beginning to make the business case that those costs, both real dollars and probably also burdened on students and schools and everybody else is not worth the risk that there might be something -- that something goes wrong because that's generally not the case.

Has the community considered assuming or sharing those risks rather than making the case and perhaps documented very well over the weeks and months as we go along for the taxpayer to assume the risk even if it's minimal?

MR. ANDRADE: We do have some considerable amount of risks in this program, both on -- I mean,

we've had the cut in our yields, we've had -- the fact that we have a 2 percent risk sharing, we do run the risk I think probably every day in making sure that these systems are in compliance that if, you know, the loss of guarantee on loans and what have you. So I think there's a considerable amount of risk sharing that's already there in these programs.

I think also if you look at the audit requirements on lender billings, for example, I think that has taken a considerable amount of the risk of documentation problems away. The fact that the systems that are compiling the bills are doing what they're supposed to and the records are in fact accurate in material respect. So I think if you have those levels of assurance, it's kind of I think onerous on the part of the Government to require specific loan level kind of almost tertiary levels of paperwork.

I can see -- and, you know, promissory notes are one thing, but in fact, things like deferment forms and actually having paper documents with the signatures on there, I think is probably a

little bit over the top.

MR. OXENDINE: If you didn't have some type of documentation, would it be possible for the auditors to do their work?

MR. ANDRADE: Well, I think on some of these we have to decide what you want. There's a difference between having a year's worth of data, for example, until it gets audited in terms of a recordkeeping requirement rather than ten or seven years' worth of records. So that's one level. The other level is I think some of the requirements that we have that are paper or require the submission of a form, the documentation I think would be sufficient to do it with a phone call especially like in the case of some of these deferments. We do contracts over the phone, you can do almost any kind of transaction these days over the phone and that is enforceable and generally accepted as a common business practice.

I think to go and put a borrower through all these hoops of having to send a form, send documentation in is probably not serving the best

interests of the program.

MR. OXENDINE: You just mentioned a point I want you to expand on, but before you do -- before I ask you, let's assume for a moment that we did agree that it's okay to reach certain agreements via the phone, wouldn't it still be necessary someplace to document that those agreements were reached by over the phone?

Also, the thing I would like for you to address, I'm not real sure what you're advocating. Whether you're advocating no documentation or substantial reductions in the time period for retaining documentation; could you address those?

MR. ANDRADE: I think it's actually both, Larry. In some instances, I think we need to really rethink whether or not documentation is required and what level of assurance is necessary to process a transaction.

In other cases where we do think that the documentation is required, I think we need to relook at how long that documentation needs to be kept for an audit trail purpose.

MR. OXENDINE: If you haven't done so already, would it be possible for you to identify specifics and share with us the areas where you believe we would -- we could proceed with no documentation in the areas where you believe we require documentation but reduce the time frame for keeping the documentation.

MR. ANDRADE: Yeah, I think that would be something we would be willing to provide. Obviously not today, it's something that requires a comprehensive review.

I know that the NACHA partnership form is also looking at this in terms of the system implications for these requirements and whether or not you could do things on a pin number and what have you. So there are some efforts underway. But I think that as an industry that we could provide a lot of examples on things that we think. But I think in particular in this deferment area, that's one, especially on the low-use deferments. That's one we really need to take a look at, and sooner rather than later.

MR. OXENDINE: Hi, Gail, welcome.

MS. SOMERVILLE: Hi, Larry. Just a thought -- [off mic].

I do think it probably changes the focus of audits away from looking for, you know, is the date -- it says 1999, but I can't really read if it's May 3rd or 8th, and, you know, I think we spend a lot of time and you spend a lot of time checking for specific items on forms -- is the date clear; can you read it; is it legible -- when what really might matter, is the borrower eligible. So I think it just changes the focus of the audits if we change what's required to grant a deferment, to grant a forbearance, instead of, you know, looking for specific things on the form and did the borrower write it sideways or upside down, and should we be suspicious about that too where is there real risk and does that really matter.

I do think it would change the audit function going forward.

MR. OXENDINE: The audit function that I'm referring to would -- it's not the Department staff

coming in to visit. It's the third-party audits that lenders are required to have, the accounting firms, and I don't think they generally get into that level of detail. I agree with you with respect to Department reviews.

MS. SOMERVILLE: Right. So I would think that those audits might not be affected quite as much as the Department and the guarantor audits that lenders and servicers have on this issue of reduced or revised documentation.

MR. OXENDINE: On the subject of lender and guarantor audit, because I don't want to change the topic right now, but at some point I would like to have a discussion about how we can eliminate the duplication that takes place in that area now. We can just make a note on that when you come back to it.

MS. STEWART: If I can follow up on the discussion you and Jeff were having and perhaps an example that I've pulled out here of duplicate and perhaps unnecessary documentation. In the area of forbearance, we have certain documentation

1 requirements already relating to documenting the fact
2 that the forbearance existed. Forbearance requires
3 an additional documentation where it states that the
4 lender reasonably believes and documents in the file
5 that the borrower intends to repay the loan, but is
6 currently unable to do so. That's two documentation
7 steps necessary for a forbearance.
8 And what is the real benefit derived from
9 this second documentation? I mean, a lender is not
10 going to grant a forbearance just to grant it. They
11 obviously believe that the borrower is willing, but
12 unable at the present time to pay, or they wouldn't
13 be doing that. So that's just sort of an example
14 that I can throw out of duplicate documentation for
15 one particular process.
16 MS. RYAN: One other thing. I know when
17 we've talked before about eliminating or
18 significantly reducing deferment documentation in
19 particular there has been concern about borrowers
20 receiving a deferment that might not otherwise be
21 entitled, and so appreciate that problem. But at the
22 same token, I think that if you look at the forms and

1 the process that we make borrowers go through in
2 order to receive an entitlement. And as Jeff, I
3 think, mentioned, you know, in order to receive aid a
4 convicted drug felon can self-certify, but someone in
5 the military needs to have their commanding officer
6 certify that form.
7 I also think on the unemployment
8 deferment, as an example, this is, I think, a good
9 example, our experience is that borrowers while there
10 might be some surfing the net to see how they might
11 be otherwise able to get a deferment on their loan,
12 in most circumstances they're having economic
13 difficulties and they're contacting the servicer and
14 they're saying, I'm in the military, or, you know,
15 I've just been called to duty or I'm unemployed, I
16 just lost my job, or they're delinquent and those
17 facts and circumstances come out through those
18 telephone and letter contacts with the borrower.
19 And so to sort of walk through a scenario
20 borrowers say they're delinquent, they've lost their
21 job, you're on the phone with them, they indicate
22 that they just lost their job. When did you lose

your job? Have you been looking for work? Yes. How many places have you gone for employment? You know, based on sort of that interview to be able to say, well, you know, we can grant you an unemployment deferment, you know, it's this period of time, here is when you'll have to resume payment. All of that transaction being completed once on the phone versus the current flow which is they give you that information, you say, I'll send you the form or go to our web site to get the forms. They go out, they fill it out, they take time doing it, they mail it back to us, we process it, and, you know, get it into the system, all of which the borrower is listing, you know, the places of their employment. If they were going to lie about it, I can easily read the Boston Globe and say, you know, Sheila Ryan, you know, director of employment at Nellie Mae and here is all of my contact information.

So if we're concerned about abuse, you know, people can go about it in that way, but I think we need to step back and understand how the deferment process or forbearance process gets initiated and

it's through an interaction with the borrower they tell you certain facts and circumstances exist, and then we try to match a deferment or forbearance to their particular circumstances.

And I think if we look at it in that light, I think it's easier to sort of get, I guess, comfortable with the documentation or eliminating the documentation requirement, we certainly would advocate a process whereby in most of the circumstances, if not all of the circumstances that process can be taken care of with the borrower at that moment. We all like immediate results in this world, and so to be able to resolve that circumstance within that particular interaction rather than over a period of time to let the paperwork catch up to the process.

MR. FRISHBERG: I have a question about another third-party interest in this which pertained to my favorite subject on earth, the ombudsman. Let's just --

[Laughter.]

MR. FRISHBERG: The fourth dimension,

because it's not real yet, but it will be soon.

I can see where you have this sort of third party, it's the same as the auditors. They're out there looking for some reason for some information for whatever reason, the ombudsman is going to maybe be in a situation where either the lender or the borrower is going to want to refer to documents and records to be able to go to just be able to certify not in any legal way, but just to say, here's what the facts of the case were. Because there's going to be differences of opinion, people remember things differently, I never asked for that, or I was never told about that. It seems like it would be helpful to have this kind of paper trail of people to refer back to from both sides to be able to resolve -- you know, resolve cases quickly and easily just by sorting out what the facts are which I think would be a large part of that function.

But if you eliminate chunks of paper from this process, it's hard to resolve any of those situations, you know, where you can -- there's a high level of certainty between both parties that what you

have in hand is actually what happened.

MR. ANDRADE: Well, I can kind of shed a little bit of light in terms of how that process might work. When I was -- actually before Larry came on the guarantor/lender oversight staff -- was a desk officer for Sally Mae and would resolve issues that would come up with people that were having, you know, problems with a loan at Sally Mae. And what I would get was basically the computer printout from their computer systems which would give me the trail rather than getting the actual forms. And for a problem resolution thing, okay, you know, there was a record that a letter and what letter was sent on such and such a date, correspondence that came back from the borrower and a summary of that correspondence, the details of telephone conversations.

So I think without requiring specific forms, most lender and servicer records would probably give that kind of information where you could go back. Because I think just from a business standpoint someone coming in to look at the record has to know what has occurred prior to them looking

at it. So, I mean --

MS. RYAN: I just wanted to add something to that. The other thing I think to bear in mind is that while we're looking at some of this information from a Federal compliance or if there are cases that rise to the level of the ombudsman's office and we were focusing in on that, but from the day-to-day responsibility we have customer service responsibilities. And so there needs to be information in our systems to tell about prior transactions with the borrower or prior conversations with the borrower so that another customer service rep as example can quickly assess that, understand what has been happening on the account and continue to service that account.

And so those things certainly can't be lost, Ivan, in order for us to correctly service and appropriately service the needs of that customer. And so those activities can continue, the question is, for example, in the unemployment deferment, if you're having a conversation over the phone, they lost their job and you say they lost their job on X

date, they've been looking for work and you document that in the file, is it necessary to send out a piece of paper, you know, for them to list all those sources including their titles and their address and, you know, blah-blah-blah and then get that back to you in order to process and actually grant the deferment.

And I would suggest to you that it's not.

MR. FRISHBERG: I guess my question more related -- if you have that summary of the information, this letter was sent, you know, this conversation was had, but if someone claims -- if you go back and you're trying to revisit that history and there's a dispute over, oh, no, that letter wasn't sent, or I never said that, or, no, the date I gave was X. There is only -- if it's not an original record that's used to verify that, you have one party who is sitting there -- you know, you could have an electronic summary going. The lender can say, we sent a letter, or the summary will say, we didn't hear anything back or whatever it is, but that's not -- you can't really use that summary record to

resolve a dispute of fact.

MR. ANDRADE: I think in general what you will find with these systems is that those types of things are not allowed under the system. For example, if you put in a date, you can't go and backdate certain transactions -- I mean, the date that the transaction was recorded is recorded from a system date. It's manipulable by the user, for example. And these systems are audited, and, you know, in terms of the dates that are in there are actually being -- you know, the activities are being performed.

MS. RYAN: Yeah, just to add to it, I mean, I think, you know, Ivan, some of the circumstances that we might see, for example, would be a borrower, hypothetically speaking, gets to the ombudsman's office because they believe that they shouldn't be in default because in fact they were enrolled. And their statement is that I sent in the deferment form, but they never got it. Our electronic system nor our paper system is going to document that we got it. And, so, I think what we

need to do to address the concern that you're raising is to look at the particular circumstances and see if in fact the paper (a) helps us address the problem that we might be seeing; and (b) if the presence of the paper is necessary in order to mitigate any substantial risk that might otherwise be there. And we need to sort of have that kind of process.

But our experience is, you know, I sent in the form and we don't show that we got it. And so we're not going to be able to pull that documentation from a hardcopy paper file.

MR. FRISHBERG: And I understand that. I mean, the comment that I'm making is more of a general one in that it seems to me there are places where that will be an issue. It extends on to places where it gets to the level of litigation too forgetting the ombudsman, but where there is those sorts of cases, that particular documents or requests, you know, would be important in that and across the board eliminating them wholesale would cause problems.

MR. OXENDINE: A question for you. In the

case of deferments, the documentation which is generally from a third-party, if not the lender, or the borrower, but we're getting the registrar certification or the unemployment office or something, or the commanding officer that gives the Department some level of confidence that the borrower does in fact qualify for the deferment. And at the time these provisions were put in, I think we probably only had subsidized loans. And it's a money issue for the Department.

If we eliminate that comfort level with the Department, how can we be assured that lenders/servicers will be diligent in determining whether or not the borrower truly qualifies for the deferment? Since it does increase the Government's cost in the case of interest subsidy and, frankly, at the same time reduces the lender in-servicer's cost in terms of servicing expenses. So how do we get that level of comfort?

MR. ANDRADE: I think actually, the level of comfort that you currently have is a false sense of security. I mean, the documentation and I think

there have been cases where this has been found, may or may not be true. So having the documentation I don't think protects you from someone who is out to defraud the system.

I think what you need to do is -- what type of information do you need and from what source, and is there some way -- I mean, at some point if you wanted to come in and check it that you could to see whether or not there was full compliance with the requirement.

MR. OXENDINE: But you see, even having that documentation for someone who is out to defraud the system gives us some level of confidence because then it's not a dispute about the lender misunderstood what I said on the phone. And we would have a hardcopy signature certifying that they did in fact qualify when we could determine after the fact that they did not, and it makes it a much easier case for the Department to pursue.

But let me throw this -- we don't need to debate that. Let me throw this out.

PARTICIPANT: [Off mic.]

1 MR. OXENDINE: Yes.

2 What would you say, lenders, to a

3 suggestion that in exchange for eliminate this is not

4 -- this is just off the top of the head now, okay,

5 don't think this is the Department's position. What

6 would you say to a suggestion that in exchange for

7 eliminating the need for this documentation that if a

8 lender approves a deferment incorrectly, one that is

9 not eligible, all of the interest that accrues during

10 that period of time is not ensured interest?

11 MS. RYAN: If the borrower --

12 MR. OXENDINE: Yes, the borrower wasn't

13 eligible or the lender made a mistake, it doesn't

14 matter. Just as of the fact just determine that it

15 was an ineligible deferment.

16 MS. RYAN: If we relied on statements that

17 the borrower provided to us, we should be able to

18 rely on those statements.

19 MR. OXENDINE: But the issue I'm getting

20 at, Sheila, is I agree with you if those statements

21 are in writing. And that's what we say right now

22 with respect to the application, that you can rely

upon statements made in the application by the borrower and the school, et cetera, et cetera, et cetera. But what I'm talking about now is a phone conversation and there is a lot of room for dispute over who said what in a phone conversation, something that can never definitively be determined after the fact.

MS. RYAN: We're talking about deferment, are we not? And so I guess I would question how many deferments are granted where the borrower later on says, you know, I didn't request that. I really wasn't in the military, I was just wearing a nice hat that day.

MR. OXENDINE: Well, the doesn't happen now because we need the commanding officer's signature.

MS. STEWART: [Off mic.] I'm filling out this deferment form and I'm going to lie -- it doesn't matter if I say, my commanding officer -- over the phone or I might have my -- my commanding officer -- there is no real way, you know, sort of calling and verifying every single form. There is no

way of knowing whether or not that is true or not. You're relying on a written statement or you're relying on a verbal statement. Either way, I'm going to have a piece of paper that shows that Jeff Baker is the commanding officer, or I'm going to have a servicing -- an electronic servicing file saying that Jeff Baker is the commanding officer.

MR. OXENDINE: Unfortunately, we've had a few cases of falsified documentation in the program, some you're familiar with. If we do away with the necessity to have the documentation, then it's an issue of, well, they did really tell me that, and it can't be proved. So a lender who would be inclined to cover up a due diligence violation, let's assume there is still due diligence, we may -- there may not be a --

PARTICIPANT: [Off mic.]

MR. OXENDINE: Well, we haven't had that discussion. We probably should have had that discussion first, and then this may not be necessary.

But a lender who would be inclined to cover up a due diligence violation simply by saying I

1 had a phone conversation with the borrower and the
2 borrower requested a deferment, et cetera, et cetera,
3 and then after the fact, it's the lender's word
4 against the borrower's word. I'm just trying to
5 determine, is there any comfort that can be given to
6 the Department in this area if we eliminate the
7 necessity for written documentation.
8 MR. MILLER: I mean, I think in the case
9 you're stating Larry, you would be looking for a
10 pattern of those activities. I mean, I think you
11 would have a -- you think a lender would only do that
12 if it was so desperate to cover up their due
13 diligence problems, they would only do it in one
14 case. I think that's kind of stretching it.
15 I think, you know, if you went back in on
16 an audit and saw that it was you had 50 cases in the
17 month of May of deferments that weren't documented
18 that the borrower -- you follow up or whatever, and
19 the borrower says, I never requested that, you would
20 have something there. But I think the path you're
21 leading down is a path that could lead to
22 disincentives for lenders to provide -- you know, to

grant deferments. And I don't think that's where you want to go. I think you want to -- you want to have as much incentive in there for lenders to grant deferments and to assist borrowers in this process as you can.

I mean, I think Sheila is right in saying that I think that maybe this is a conversation that needs to take place in the context of reform of due diligence, because maybe that's providing disincentives as well there or for -- you know, incentives to do things that you don't want them to do. But I'm worried that the path you're leading down is not the path that you're going to resolve delinquencies and keep people out of default.

MS. RYAN: Are we validating 100 percent of the statements that families make on campuses as example? I mean, there are numerous circumstances in this program where we rely on the information that's provided by the family. The question is whether we can get comfortable with them providing that information over the phone versus, you know, requiring a paper trail. And that, I think -- I

1 think while we're talking about deferments and
2 forbearances today, I think it gets to a sort of a
3 universal sort of brush in terms of, you know, what
4 we're expecting, applicants or borrowers to go
5 through in order to receive any type of benefit under
6 this program.
7 MR. FRISHBERG: Sheila, where is the
8 information from students and families verbal only?
9 I mean, it seems like we have to put a lot of
10 information on paper and have it all confirmed and
11 checked.
12 MR. ANDRADE: But instances where student
13 and a financial aid administrator, for example, since
14 Larry is here we can talk about financial aid
15 administrators. Those conversations in most cases
16 are documented in the student's files. And the
17 circumstances are stated out, so there is an audit
18 trail for that. But that is not always -- it's not
19 always a piece of documentation backing up each one
20 of those statements. It's just giving someone coming
21 into it either in that office or from an outside
22 entity the ability to go in and determine exactly

1 what happened and why certain actions were taken.

2 So, I think, Scott, this going down a road

3 where we're really starting to hold -- we would hold

4 lenders to a standard that we don't hold schools to.

5 And if a borrower defrauded a lender, or defrauded

6 the Government through a lender, that we would hold

7 the lender liable for that fraud.

8 MS. SOMERVILLE: Larry, I also think that

9 some of these deferments that we're talking about are

10 very low usage and have some pretty obscure

11 eligibility requirements in and of themselves and so

12 you're talking about for the five working mothers who

13 get the working mother deferment, how many of those

14 are going to want to defraud the Government. So

15 we're going to protect against sending those five

16 working mothers this form that they have to fill out

17 to make sure that, you know, all the "I"s are crossed

18 and the "T"s are dotted.

19 I think -- you know, we've made a lot of

20 progress on the in-school deferments. It was

21 important to do that. And the percentage of each

22 deferment type dropped substantially after that and I

1 think we really need to step back and say, what are
2 we protecting, you know, for the NOAH deferments.
3 MR. OXENDINE: You raise an interesting
4 point, Gail, thank you. And what I was really trying
5 to get at with my question is the issue of burden and
6 costs. If you took on responsibility for the
7 interest that accrues during a deferment period that
8 is granted by the lender that after the fact is
9 determined to be an ineligible deferment period,
10 would that increased risk substantially outweigh the
11 expense of obtaining and keeping the documentation on
12 100 percent of the deferments today? Especially if
13 you say that the deferments we're talking about are
14 very low use deferments.
15 If you want, why don't we take a ten-
16 minute break and you don't even have to respond to
17 that if you don't wish to. But we can pick up when
18 we get back from the break. Ten minutes.
19 [Brief recess at 10:12 a.m.]
20 MR. OXENDINE: Let's get started.
21 MR. ZAGLANICZNY: I understand that we all
22 have to be good stewards of Federal funds and the

1 Department has to have a certain comfort level, but
2 and certainly some people have gone to jail, and
3 certainly there have been press reports of,
4 quote/unquote huge scandals.
5 How do those things become -- how are
6 those things detected currently? Are the bulk of
7 those things discovered in IG reports or are the bulk
8 of those things discovered in normal audit processes.
9 Where do those things come from? Where are they
10 discovered? Because it's one thing to have an IG
11 report, it's quite another that the current systems
12 pick them up.
13 MR. OXENDINE: Actually, Larry, they are
14 discovered from numerous sources. Some are from
15 program reviews conducted by Department staff and
16 guarantee agency staff, some are self-reported by
17 senior management, and some are detected through
18 certain patterns during the claims review stage.
19 MR. ZAGLANICZNY: But can you put a
20 percentage on it?
21 MR. OXENDINE: There is no way to do a
22 percentage. Some of the larger ones were discovered

through guarantee agency reviews.

[Pause.]

MR. OXENDINE: Scott, did you want to move to the --

MR. ANDRADE: Actually, can I talk to Larry's point on that? I think you were talking about economic incentives. I think there's an economic incentive especially from top management that these kind of issues of non-compliance don't occur. And I know that a lot of the large servicers and the large lenders invest a significant amount of resources in internal audit to make sure and on the guarantor side as well. And, so, I think if this type -- if the Type of things that you're fearing are happening, they are not happening as a mandate from the top down. They are happening at a very low level close to the source and there are checks and balances within these organizations for that to get detected.

And I would imagine, just from my experience, having done -- doing reviews for the Department, one of the things that we would check initially is the internal audit reports before we

1 even went in to see what kind of problems has been
2 uncovered. So I think there are strong economic
3 incentives for management to catch these things and
4 to not allow the kind of activities that you think
5 may occur.
6 MS. RYAN: I think we're beating a horse
7 that might be dead, but one of the things that might
8 be helpful to this exercise, we are obviously coming
9 to the table with some recommendations, not aware of
10 either, you know, all problems that might have been
11 uncovered in the past, and so it would be helpful to
12 pull some of that data together. The other thing
13 that would be helpful, and I'm just thinking over to
14 other agencies or other, you know, Federal
15 initiatives, things like the IRS. We know that they
16 are going to become friendlier which we look forward
17 to. But, you know, I think of something, for
18 example, you know, itemizing or listing your
19 charitable contributions on your tax return, you
20 enter a line item, there aren't -- they're not
21 requiring at the time of your filing that you go out
22 to United Way and get that, you know, sort of

1 documentation and send that to the IRS or to the
2 Sisters of the Three Knights or something like that
3 in terms of religious contributions.
4 So, I mean, it would be helpful, I think,
5 as we think about this exercise for the Department
6 and we can also take on some of this is to look at
7 other Federal agencies and see what kind of standards
8 and thresholds they establish for documentation. Is
9 it tied, you know, sort of the level of Federal
10 subsidy or sort of tax relief that might be provided
11 to are there benchmarks; you know, is it necessary to
12 have the military personnel get their commanding
13 officer to certify a deferment, you know, if it's
14 $4,000 versus $40,000. I mean, there is different
15 levels of subsidies that get applied there and we
16 sort of do this broad brush approach.
17 And so I would be very interested to know
18 what other Federal agencies are doing. No doubt the
19 whole effort in terms of burden reduction and
20 documentation reduction goes beyond the Department of
21 Ed. I would suspect that other agencies might be
22 more burdensome in this area, and so maybe it made

some significant headway in this regard.

MR. MILLER: I also think, you know, there's an idea of we seem to sit here and try to speculate and anticipate what might happen if, and maybe the other way to look at it, and it might be something to consider as you do this entire regulatory review is the idea of putting some things in place and then seeing what happens. And I don't mean -- I hesitate to use the word "pilot" because I don't think it's the kind of thing where you want to limit to whom it applies. But I think the idea of saying, we're going to put this reg out and two years later we're going to go back and see what we did. And we're going to be able to use all our audit tools and see what happened, and was there some dramatic increase in the granting of deferments that we can't, you know, so that we can't certify on the back, and you know, was there a covering up of due diligence violations through this effort.

But I think there's a lot of anticipation of, you know, that you sort of always anticipate the worst case scenario and maybe one way in terms of

looking at regulatory reform is looking at the idea of putting some things out there and trying some things and going back and evaluating them instead of throwing them out before you even put them out there because of some potential that you see could arise due to them.

MR. OXENDINE: I would suggest that you not interpret the Department's comments as throwing this suggestion out. We do intend to -- I do intend to challenge your thinking to get you to focus on the issues that are important to us. But by us doing that, please don't interpret my comments as saying that we will not proceed with your suggestion.

MR. ZAGLANICZNY: I think that, Larry, that's a very helpful sign.

To align myself with what Scott said, I think the problem we're facing here is that we've put in place systems to deal with old problems. The industry is much more concentrated now. It's much more technologically adept. You don't have the quote/unquote bad apples that we've had before in the way the systems have been designed, so I think we

really do need a fresh look, especially in the trend of the concentration in the industry.

MR. ANDRADE: The only thing I would like to say in terms of challenging the thinking, I think I would like to see the Department try to take a perspective of this as thinking, what if these were new requirements and we were going to put them in rather than saying, we have this and we have to give things up.

If you look at when new requirements have come in whether it be reporting of income information for hope and lifetime learning credits, the drug requirements in the last reauthorization -- the Department in implementing new requirements in recent years has been very flexible, very willing to do some of these tradeoff and give people the benefit of the doubt. I would like to see you take that same approach with these and consider that these are potentially new requirements going in rather than trying to give up old requirements.

MR. ZAGLANICZNY: I'm sorry I came in late, but perhaps it was said. Having been a house

staffer, I well understand the law. I think this review and this report to Congress has to go beyond just regs, and I think we have to identify statute -- statutory problems that are holding us back. Because certainly the Congress has a responsibility since they've put things in law that tie your hands, they tie the industry hands, they tie financial aid directives hands too. So I think the purview of this and the scope of this report should also identify some statutory barriers that are out there that need to be addressed.

MR. OXENDINE: Do you want to continue, Scott? Would you move on to your third D?

MR. MILLER: Yeah, the 3-D. D is for real dog in this case. Talk a little bit about do -- do-do -- due diligence. Rather than reading what's in there, let me summarize and give you a couple of examples. I think you all know we feel we could live without the current due diligence regulations very well and still accomplish their purported goal which is to collect on loans from borrowers who can repay them. And I emphasize "borrowers who can," have the

ability and the wherewithal to repay them. And I think that's one of the underlying failures of the due diligence policies that exist now is that it does not differentiate between borrowers. It's clearly a one-size fits-all approach.

It's characterized by a lack of flexibility and an emphasis on rote, due diligence, make sure you dot all your "I"s and dot all your "T"s and you've done everything that's required whether it really helps to collect the loan or not.

These prescriptive and detailed requirements also come attended with them some of what could be called absurd penalties. My favorite and probably the industry's favorite is the example that if a borrower dies the lender must suspend collection efforts for 60 days. If after 60 days the family has not provided the death certificate, the lender must continue the letters and calls to the borrower. That's the deceased borrower we're discussing. Those letters and calls usually go unanswered in those cases.

In additional if the lender misses

prescribed --

[Laughter.]

MR. OXENDINE: I have about 800 borrowers who could answer.

[Laughter.]

MR. MILLER: You know, we're not here to discuss your relation with the occult at this point.

[Laughter.]

MR. MILLER: Sheila has swami hats for next session, I think.

[Laughter.]

MR. MILLER: In addition, if the lender misses a prescribed due diligence activity prior to the borrower's debt, the claim could be ineligible for reinsurance and there's no remedy available because it's very difficult, despite those 800 -- to get those borrowers to reaffirm their obligation to repay. Those are just sort of some of the things. I mean, that's just, you know, our favorite teasing example, but it really is a realistic example for us. And very difficult to explain to families, very difficult to explain to folks not in the industry who

1 try to figure out what's going on. People who are
2 new to the student loan program are coming to student
3 loans and you try to run this example by them, you do
4 get some very interesting faces.
5 PARTICIPANT: [Off mic.]
6 MR. MILLER: A little bit hard to explain
7 the ombudsman as well. I think our basic goal here
8 is that we need to be relieved from requirements that
9 we believe are ineffective or just not helpful in
10 terms of collecting loans and we need to somehow or
11 other be able to concentrate our efforts on
12 collecting loans.
13 As examples of the changes we provided
14 three. One of them is to eliminate the detailed
15 collection and skip trace requirements of Section 411
16 and thus the need for the famous Appendix D which
17 spells out the penalties for violating those
18 requirements.
19 We believe the guarantor should be free to
20 collect loans in the way that they see fit and not
21 according to the prescribed requirements of 410 and
22 that would include litigation where appropriate -- I

emphasize "where appropriate" -- and eliminate the need for a claim-by-claim review and replace this with sampling so that we can really get an idea of what lenders are doing without overburdening both them and the guarantee agencies.

The current claim review and documentation process is a significant documentation burden, dovetails with some of our prior statements, and really uses resources that could be applied more effectively to default prevention rather than trying to see if every "I" is dotted and "T" crossed. And with that we'll -- I know you probably have some comments.

What I would really ask you, Larry, to start you off to start you off as to where -- I know we have talked in general about the need for looking at Appendix D and 411 and 410, it was a forboden subject during the previous negotiated rulemaking with the promise that there would be an opportunity to really discuss it in a serious form. We view this as the first -- in what we would assume would be a mutli-stage process, and we would be very curious to

1 know where you believe the Department would like to
2 go in terms of what sort of framework for regulation
3 do you think would be appropriate?
4 MR. OXENDINE: I do believe the Department
5 shares the goal that you're trying to accomplish.
6 The Department doesn't have a specific proposal for
7 how to go about accomplishing that goal. We would be
8 interested in hearing any suggestions that you might
9 have. Clearly we can't -- I won't say we can't, we
10 would not feel comfortable at the moment simply
11 telling lenders to do whatever you want for 270 days
12 and if you don't get the money send us a claim.
13 At the same time I agreed that the current
14 due diligence rules are seriously outdated and do not
15 always accomplish the goal of collecting money, but
16 instead lenders are forced to -- excuse me -- forced
17 to spend a considerable amount of resources to ensure
18 they don't lose the guarantee.
19 I believe that the desired place is
20 somewhere between the two extremes, what we have now
21 and no rules at all. I would love to hear some
22 discussion on how you think we could replace or

modify the due diligence rules that would continue to protect the Government's interest and giving us some level of comfort that serious effort was made to prevent the default.

MS. RYAN: Larry, I think one rule that we have in place today which I think we could step back and see whether that is adequate and that's the gap rule in terms of spacing between collection activities rather than prescribing sort of what needs to go out when and the content of the letter and how harsh it needs to be, et cetera, to sort of maintain the general standard about the distance between two particular collection activities.

I also think that -- I wonder why the Department -- I know you said be bold. But why the Department thinks that it couldn't drop the due diligence requirements. Larry mentioned earlier about concentration. You have really sort of a concentration of ownership interest in this program in terms of loans outstanding. Loans that default the lender shares in risk sharing. There's additional servicing costs and expense, not to

1 mention that that's not an earning asset. I mean,
2 there are a number of factors that cause all of us to
3 look at our delinquency and default rates and seek to
4 reduce those rates in order to make our programs more
5 effective and more efficient.
6 I think we need to be careful about using
7 default rate as the measure because it may have some
8 consequences on the front end in terms of loan
9 eligibility, et cetera, that might be unintended or I
10 think would be unintended consequences. But I would
11 challenge sort of the wholesale sort of reluctance in
12 terms of getting rid of the current process. There's
13 a huge amount of resource spent, as you say,
14 complying with the current due diligence rules. If I
15 sit on one more 411 Q&A call, that the community
16 might have trying to figure out what was meant by X
17 or Y, I think I'll go out of my mind, but there is
18 just sort of a huge amount of effort around that.
19 And then there's this huge, you know, sort of process
20 of packaging up claims and sort of putting all of
21 that and then you have folks that actually, you know,
22 make sure that every "i" was dotted and then they go

back and there's a huge amount of resource there that could be better allocated to other aspects of the program. And so --

PARTICIPANT: [Off mic.] -- administratively cumbersome.

MS. RYAN: Correct. Right. So I think -- and I don't mean to sound flip when I, you know, suggest that we get rid of the 411, but it seems as though some very broad parameters and, you know, again, looking at the concentration, looking at the financial interest that people have in this program we ought to, you know, be able to provide some reliance there.

MR. MILLER: Larry, I think one of the advantages we have now too is we have a benchmark against which to judge changes like this. I mean, I think, you know, when the due diligence rules were first enacted, I think, you know, we probably it would have been difficult to try to compare that to what had happened previously. I think now we have a long track record of folks using these due diligence rules, both at the guarantee agency side and the

1 lender side. I think if you put in -- again, I'll go
2 back to the sort of take a look, do something bold,
3 take a chance to evaluate it. You have a nice
4 benchmark to look at it. And I think as Sheila
5 appropriately says, you can't just use default rate
6 as your measure, but you can model portfolios, seeing
7 a portfolio like this and a portfolio that's
8 represented -- you know representative in whatever
9 ways you want to do it, what was the effect, what was
10 the impact of relaxing the rules and having the
11 lender, you know, concentrate its efforts. Was it
12 positive or negative. Who became payers who last
13 time might not have been payors, who this time were
14 payors that didn't become payors this time.
15 I think we have an opportunity to judge a
16 bold change in due diligence against a lot of good
17 past history where there's a lot of good data out
18 there and a lot of experience with these rules. So I
19 think, although you indicated an initial reluctance
20 to, you know, dump all the rules, I think, you know,
21 your reluctance is because you're not sure what's
22 going to happen. I think if you did it in some

1 controlled way with those sort of measures in place,
2 I would hope that you might think about that and
3 become more comfortable with the concept.
4 And as Sheila states, and I'll just add to
5 it, there are significant economic incentives both
6 for lenders and for guarantee agencies where risk
7 sharing has now been increased to five percent to
8 prevent default. And certainly especially from the
9 lender's side, to limit delinquencies. And I think
10 that those -- you're looking for economic incentives,
11 that's probably the single biggest economic incentive
12 in the program these days to limit delinquencies and
13 defaults because the cost of them are staggering.
14 MR. OXENDINE: I think I need to clarify
15 my comment about reluctance to eliminate all the
16 rules. I didn't intend to imply we would be
17 reluctant to dump all of current 411. We would be
18 reluctant to not have any rules whatsoever concerning
19 the level of effort that lenders must expend in
20 trying to prevent default. So I think that we have
21 an obligation to have some level of effort that's
22 required since schools are really the ones who will

be penalized for the defaults. And clearly we could not give lenders total discretion to do nothing and then have the school suffer as a result of the default rates.

I also would point out, Scott, that while we have more of an economic incentive than we've ever had before, I don't think it's particularly great at the moment. You mentioned the 5 percent and while I don't want to sound like I'm arguing with you, I don't think that's much of an incentive at all since the 5 percent is also federal money.

There is the 2 percent on relatively new loans and there is -- the 2 percent doesn't apply on a substantial portion of the outstanding portfolio.

I do that think there are opportunities for us to seriously modify the due diligence rules to provide lenders with substantially more discretion than they currently have so that they do have an economic incentive to focus on reducing delinquencies and defaults instead of on hitting the buckets. Exactly how we structure that program, while I have some ideas, I'm not sure I have the perfect solution

1 just yet and that's what I think we need to have some
2 discussion on.
3 MR. MILLER: I just want to clarify that
4 in terms of economic incentives, those are not just
5 the 2 and the 5 percent, but as Sheila points out the
6 significant administrative costs involved in dealing
7 with delinquent and defaulted accounts in terms of
8 not only cash flow, but in terms of actual expense
9 incurred in the collection process. So there were a
10 number of economic incentives that go beyond just the
11 2 and the 5 percent.
12 We also just want to -- I'd like you to
13 comment at some point on 410 as well as 411 as we go
14 on here.
15 MR. OXENDINE: I agree with you with
16 respect to the administrative expenses -- operation
17 expenses incurred by lenders in due diligence
18 activities. I believe that's probably the strongest
19 incentive we have for modifying the due diligence
20 rules and probably we should focus our energies, at
21 least for a while, on trying to maximize those
22 incentives in exchange for doing away with the

current prescriptiveness of the regulations and creating more flexibility.

I've had some discussion with some of you on ideas for how we might pursue that goal. I would suggest that possibly risk modeling may be an attractive avenue for us to take a look at.

MS. RYAN: And we talked about sort of the risk modeling in terms of looking at sort of a portfolio and as I understand it, that would be identifying certain characteristics about certain groups of account and these accounts are more likely to default than other accounts and so you would intensify your collection efforts within that population and perhaps lessen it with another population.

I don't disagree that the might be one model to look at. One of the things I think that we need to consider is that there may not be just a single model to look at. That, in fact, there might be multiple types of frameworks that a lender could service their portfolio under without -- it may not make the sense to the lender, for example, to invest

in a system to do the performance-base or predictive modeling. There's, you know, different views on that in terms of its value and its overall performance and so we would want to be guarded against a single approach to this process because that's exactly what we've had historically.

MS. STEWART: Following up on Scott's question, could you comment on your thoughts on 410(b) as well in this regard?

MR. OXENDINE: My thoughts on 410 is I would like to hear what you suggest. As we indicated initially, we didn't come with any preconceived ideas of what need to be done. We want to hear from the community to what you think should be done. I can share with you that I think reauthorization presents us with an opportunity here and that certain economic incentives were created as a result of reauthorization, so how do we leverage those incentives in order to provide more flexibility through regulations?

If you have an incentive to perform a particular function especially well, is it necessary

for the Department to regulate in detail how you perform that function? That's what I mean. Guarantee agencies clearly have an economic incentive in terms of collections due diligence. Is that incentive strong enough for the Department to substantially liberalize or eliminate completely the current due diligence rules that relate to guarantee agency collections?

MR. FRISHBERG: That's my basic thinking on this which is we've -- there is some -- there has clearly been some progress in terms of moving in a number of ways the system to create market influences. And there is all sorts of guessing or disagreement or speculation about how significant those market forces are. But to start beyond what we've already accomplished, to start taking away pieces of the existing system without looking at how those changes are going to have an effect seems somewhat presumptive.

So I would generally be in favor of the approach saying, let's look at how some of these things have an impact. I mean, how much, you know,

the default diversion fees and all these other things, how much impact do they have such that they really render some of the other regulations useless because you're -- because the market force is so strong. But I would like to see that actually played out in some verifiable way.

Sheila you mentioned that default rates wouldn't be the only way of looking at that. I would be interested if as a start of that process you could work out some set of criteria by which over the next few years you start to evaluate change at a number of different levels, you could come back and say, it's not just lower defaults, or it's lower this, they've been lowered by this amount. But all these other things have happened as well. You know, then you're in a stronger position to go and say, you know, now these regulations are completely useless because we're so driven by market forces. But I don't think we're quite there yet, because we haven't seen any of these things in play.

MS. SOMERVILLE: Play, because when we went from the bucket system to the window system and

1 the 45-day gap system, and the new 45-day gaps at the
2 end of the 90 days, I think we have had some time to
3 use a little bit more flexibility. And from Sally
4 Mae's perspective, we do more now with the window
5 system and the gap system than we ever did under the
6 bucket system. And we are filing a lot less claims.
7 I think we could do more if we open it up
8 even more. I think we are still talking around this
9 perhaps underlying assumption or fear that no regs
10 means do nothing. And I'm thinking no regs is going
11 to mean do a lot of different stuff. And it might
12 not be the same thing that we would do at Sally Mae
13 in Kansas, as Unipek would do, as Kentucky would do,
14 as Texas would do, and I guess I would like to hear a
15 little from the Department.
16 Are you comfortable with the concept that
17 the circumstances that the Texas guarantor and the
18 mix of that portfolio might be different than what's
19 at Kentucky or PHEA and so I think one of the things
20 we've always struggled with is what to come up as the
21 alternative. And I think what we've come to is there
22 might not be, as Sheila said, one alternative; that

we really do need to embrace this ability to be flexible and to do experimentations and invest in the technology and what works at Unipec might not work at, you know, Bank of America.

MR. OXENDINE: I don't think the Department has in mind replacing 411 with something else and saying, well, this is the new due diligence. I totally agree with you that we need flexibility both in terms of due diligence and in terms of the types of activities that various entities wish to pursue that they will call their due diligence. So I personally don't see the future due diligence as one set of activities for everybody.

I believe flexibility is the key and let the lenders decide what will work best for them.

Now, with that said, I do believe that there is a minimal standard that we must regulate in order to ensure that every delinquent borrower receives some level of due diligence effort in trying to prevent that default and that the borrowers themselves are therefore not penalized by a lack of effort and that schools are not penalized with high

default rates by a lack of effort.

Now, it could be that the minimal level of effort would simply be something, and I'm just pulling this out of the air to get your reaction, clearly you have to have a final demand letter, in my view. Clearly you have to -- [mic off] and after that then there is the question mark, there has to be other attempts made, but what is the magic number. And my view is that it should be possible for us to come up with an approach that basically does away with the time frames.

But, again, as you know, I'm big on incentives. Come up with an approach that creates the right incentive for lenders to vigorously pursue delinquent borrowers, and then we don't have to regulate the detail.

MS. SOMERVILLE: [Off mic.] How do we convince you --

MR. OXENDINE: You never will.

MR. FRISHBERG: That's my point is that it has to be outcomes based. And figuring out -- I mean just like we're asking SFA to do performance-based

organizations and there's going to be voluntary flexible agreements, in looking at how -- you have a set of circumstances where you can decide, we're going to judge this based on outcomes, so let's figure out what those appropriate outcomes are. And that that would be what allows you to free up the kind of more directed regulation underneath.

MS. SOMERVILLE: [Off mic.] -- different for different participants in your view? Yes.

MR. SEGAL: I just want you all to keep in mind that we do have one legal requirement that we really have to keep in mind on the cohort default rate appeal side where schools are going to have and will have an appeal based on loan servicing. And there needs -- one of the things that we have to keep in mind is there has to be some standard for doing that. Right now those are tied to certain steps in the current due diligence process. We've done them fairly broadly. But as we look at revamping that, we have to keep that consideration also in mind. One of my concerns in just allowing the lender-based system would be that what are those standards and how do we

meet that.

I don't know what the answer is, you know, it's just when things get discussed over the next few months and into the future, and as proposals become more solidified, just keep that in mind that that is one consideration that we have to address some how.

MR. ANDRADE: But, Brian, isn't there a certain reasonableness standard there? I mean, obviously there is still going to be servicing records in the case of an appeal, and I would say someone who went in who had never contacted a borrower would be hard pressed, you know, to say that they had made due diligence. But if someone had gone in there with whatever set of activities were appropriate for that particular borrower and based on their knowledge of the portfolio, to me, I don't see what legal problems are caused.

I mean, I think you don't have an absolute standard that said, yeah, you didn't jump through hoop A, and hoop B, and hoop C, and, therefore, we can throw it out of the record, but I think there is a certain reasonableness that needs to come into play

here. And I don't know if that's necessarily grounds for driving the whole process on that we need to have absolute steps in order for schools to be able to appeal their cohort default rates based on servicing.

MS. RYAN: And Scott made this point earlier and the more I think about it, I find myself agreeing with him. Yeah, it took a while, but whether we come up with -- whether you sort of the cart before the horse, but I mean, we do have -- these due diligence regs have been in effect since 1986 and so we have a significant amount of historical data. We have default data based on different economic trends, regional, you know, probably national economic trends, et cetera, that if for example, you said all of 411 is gone absent, you know, obviously needing to address something of Brian's concerns, but and then, you know, sort of looking at -- I'll use Nellie Mae and as example, sort of a snapshot of our portfolio to the extent that either, you know, sort of the performance of that portfolio declined without some other intervening factors. There's a different, you know,

type of mix in terms of the portfolio or some other shift. I mean, we do have something to look at.

I mean, obviously we need to be sensitive to regional and economic trends in terms of the economy where the really extraordinary time that will change and that will no doubt effect student loan delinquencies and we need to be sensitive to that.

But I still want to keep in mind, and I think it's important to keep in mind, that we do have that historical data and we do have something to fall back on in terms of, you know, standards. And can identify whether this is having an adverse effect and we can identify pretty readily if it's having an adverse effect in order to be able to alter change. So if it's something like, you know, you have X, but if you want to do Y, you can do Y, but if you ever, you know, fall below certain thresholds you have to go back to X, you know, creating that incentive for the flexibility to occur during that process.

We've got a lot of information behind us and we ought to be able to take advantage of it.

MR. ANDRADE: The other thing, Larry, too,

I do want to take a little bit of exception to your statement that you don't believe that there's enough economic incentive currently in there. And it's not all the 2 percent. And I know at least with the banks that we represent, delinquencies are not looked at favorably. The same way that in the mortgage side of the business, just because you can foreclose on the house doesn't mean that that's a good thing if you have a lot of delinquencies and you're doing foreclosures.

If our lenders have high default rates and have high delinquency rates, that's not looked at as a favorable economic outcome within the bank within management itself. So I do think that there are strong incentives and people do try to cull through their portfolios and to try to bring people as current as they can.

MR. OXENDINE: So will the industry be sharing any specific proposals with us at a later time?

MR. MILLER: What's the process -- I mean when we -- we put forward just dump 411. Well,

that's our starting offer here.

[Laughter.]

MR. MILLER: And 410. But when we had our favorite NEGREG sessions and you took these issues off the table for later date you seemed to indicate to us that they would be some sort of process. So I was curious if you had any thoughts as to what that process would be and what sort of timeline you were looking at under there. And if no, then maybe what we need will be helpful maybe to have in fairly quick order would be a follow-up meeting just to sort of go through that and see if we can figure one out that would work.

MR. OXENDINE: I think the Department has a real desire to focus some energy on 410 and 411. The industry, the program has changed substantially since those regulations were promulgated. In terms of time frame we have not yet developed a time frame.

The problem that I am having right now is first clearly we can set up another negotiating committee to begin working on these issues. I'm not real excited about pursuing that too quickly,

frankly. But the issue is, it seems to me that we should do some work in trying to come up with ideas that show promise instead of just going in to this in the dark. We should have some general direction that we think we want to go before we actually create another negotiating group.

Let me throw out an idea for you and I haven't -- it's only a concept. I don't have the detail. A lot of lenders, like it or not, are comfortable with 411 because the devil they know is better than the one they don't know. At the same time other lenders would love to pursue other approaches to due diligence.

Suppose we were to come up with some concept that said you can either continue 411 as you know it today, and this wouldn't necessarily have to be lender-by-lender, but it could be loan-by-loan if you want. Or, as an alternative you can make any decision you want for due diligence up to, say, X-days delinquency. Pick a day, I don't know where it is. Something short of 270.

PARTICIPANT: [Off mic.] 269.

MR. OXENDINE: Okay. If you can do that, I'll start at 30.

[Laughter.]

MR. OXENDINE: We've gone through this before. Let's say, to me the day is somewhere between 120 and 180. But if the account becomes 180, then these are the activities that must be done so that we give lenders a lot of discretion to use a risk model, any risk model they want to use, to determine that this borrower is a habitual late payer, I know they are going to pay before 180, so I'm going to do nothing now that they are 60 days delinquent. That will give the lenders an opportunity to more accurately target the due diligence dollars. And if they are diligent in making those decisions, there is a substantial possibility of seriously reducing the lender's expenses. Because for every one where they use the risk model and use it correctly and the borrower does not become 120 or 180 days delinquent there is no due diligence money spent.

Only an idea to get your reaction.

MR. ANDRADE: Well, Larry, I think part of that depends on what you're expecting in the cost of what you're expecting on the federally-mandated due diligence requirements --

MR. OXENDINE: Let me address that before you go on.

MR. ANDRADE: Can I finish that and then I'll let you --

MR. OXENDINE: Go ahead.

MR. ANDRADE: Okay. Thanks. Because the problem that I see there is that you're going to be spending money on due diligence and on trying to bring the borrower back current in the time prior to that. If you make it onerous on the other end for loans, because there are going to be a certain percentage of loans that are going to go into default and that basically we're just going through the motions at this point because our experience shows us that at that late date of delinquency there is really not much you can do to intervene to stop it from going into default. So you're going to be expending these funds on loans with very low likelihood of

bringing them current.

MR. OXENDINE: Under what I just threw out the lender would have discretion to either follow 411 which the lender would follow in the case where they thought the loan was going to default, or this new approach. And the new approach would only be followed in those cases where the lender thought the loan was not going to default.

In order to make this work, in my view, the federally-mandated requirements for the last X number of days would have to be sufficiently onerous from a cost standpoint to give the lender an incentive to try not to get into that time period. So did they make good decisions about which ones to do nothing for 120, 180 days?

MS. RYAN: Larry, I think first, you know, we can certainly explore the implications of that and it is a creative concept. The one reaction that I would have is that even within the constructs of the existing 411 for a lender that wanted to follow that for all of their portfolio or a portion of their portfolio, there are requirements that are contained

1 within that just either don't make sense or just are
2 unnecessarily complex or complicated, and, you know,
3 getting down to the claim review process, we do a
4 claim review before we file the claim and then the
5 guarantor does the claim review when they get the
6 claim. There's a huge amount of resource and expense
7 spent at that sort of, you know, double checking that
8 I think that under this proposal, even if you were
9 relying on the existing 411, there's a need to go and
10 make certain that 411 is as efficient as it needs to
11 be and as prescriptive as it needs to be. And then
12 sort of taking that, you know, sort of step aside in
13 getting rid of those burdens, looking at a creative
14 model like this.
15 But I still think it is worth to match --
16 making certain that we match whatever we do on 411 to
17 the claims process and see that we can't sort of
18 reduce or significantly or eliminate or whatever in
19 terms of the review process associated with that.
20 And so they do need to go hand-in-hand, and so that
21 if you had a couple of different models or you had
22 three different models or four different models which

we would certainly advocate because there are differences, certainly geographic differences that might drive behavior. We also have to be sensitive to the claim review process of the guarantee agency and sort of any complexities and burdens that we might be imposing there.

And so I do think it's worth sort of exploring that kind of concept that you suggested to create those kinds of incentives. I do agree with Jeff that even -- even under a predictive modeling process where they say, borrower A is going to be a slow payer, but will pay, and borrower B isn't likely to have the financial resources, do you want to make -- because Jeff is borrower B and the credit score says he's likely to default, do I want to peg him in that corner and therefore sort of alter my behavior in such a way that I know he's going to -- you know, it's pretty likely he's going to default and, you know, what level of resources do we want to spend on that.

I mean, some of it I think we don't want to result in just the opposite kind of result and

behavior to occur as well.

MR. OXENDINE: But under this approach assuming that you're using a reliable risk model and it gives you good information the majority of the time, at least theoretically, that would free up some due diligence dollars that could be allocated to the others where you could, if you wish to use those dollars in this fashion, intervene quicker with more effort.

MS. RYAN: Are you thinking under that model that the current 411 is the -- if a lender wanted to do both, the current 411 and this performance-based model and we've scored two borrowers. Jeff is very likely to default, Jane is very unlikely to default, which one would you run through which collection requirements?

MR. OXENDINE: Under that, if I were the lender making the decision, Jane, I would do nothing. I wouldn't send out any letters. Jeff I would begin earlier than I otherwise would under 411 with more effort.

MS. RYAN: But then in that scenario,

because I'm doing nothing, I'm following the new concept that 180 days delinquency if Jane is still delinquent because no model is going to have, you know, we'd all be really financial wizards if we could do that kind of thing. So Jane becomes delinquent and then the lender has these onerous due diligence requirements because in fact the model didn't prove to be or have this -- sort of the outcome that we thought it would have.

MR. OXENDINE: I think I did use the word "onerous," but that was the wrong word. I would say "intensive."

What you would be doing is consolidating the activities into a much smaller period of time for Jane if she became X days delinquent. But if I were a lender, I wouldn't wait until the last day to send out the first notice. I might decide on Jane that I'm going to do nothing for 60 days. But if I don't hear from her in 60 days, sometime in the next 30 I'm going to send her a reminder notice.

Maybe in the next 30 or 60 you make a phone call, but that would be up to the lender. The

lender could decide to do absolutely nothing up to X days, whatever "X" is. But then if Jane became -- hit that magic delinquency date, then the due diligence would be compressed into a short period of time. So that there would be a lot of activities during the short period of time.

MR. MILLER: One of the things that we're getting stuck on specific ideas here which I don't think is really where we want to go at this point, and I think what it brings to is there's this whole other effort that went on, you know, under Greg Woods, this customer service task force, and one of the things, you know, you look at that and you see is assembling best practices and trying to figure out how those best practices fit in. This sort of seems to me is an opportunity to do that same sort of exercise, to be able to provide sufficient freedom and then for the Department and the community collectively to go back and say, okay, here we've been doing this for a couple of years, where are we, what works, what doesn't work.

I mean, I think a lot of us have talked

about risk modeling and very few have put it into place to any great degree yet, so we don't have any great feel for how perfect or imperfect it is or what it really gets you at the end of the day. We need to go give that sufficient time to work, understand what its implications were and whether it really is a best practice or not.

I think we need to, as we go and look at this, and, again, remembering that we've got this nice benchmark to measure from, be able to go forward after a couple of years and see where we've gone. So I mean, I would just say that instead of debating individual ideas, I think maybe we need to look at a framework and where we want to be in three or four years in terms of due diligence and look at this, and whatever this next stage that comes out is the way to get there. It's not particularly articulated on it, but I think debating individual ideas at this point, I don't think is where we want to be.

I think we want to be there after those individual ideas have been in place for a while and I think the more -- the wider variety of individual

ideas we have to look at, the better off we're going to be at the end of the process.

MR. OXENDINE: Could you expand on the benchmark that you keep referring to? What are you talking about?

MR. MILLER: Well, basically I'm just saying you've got something to measure against. You've got -- we sort of -- we could develop a model that would tell us what current due diligence gets us in terms of what is our collections rate like for different types of borrowers and different types of circumstances, who attend the different types of schools for different amounts of time. We know that we could find out a lot about that. We may not have assembled that data yet in a way that's usable and easily put into a model of -- that puts all those factors together.

I mean, you want to be able to say, what's the effective due diligence controlling for type of school, number of years attended, degree earned, whatever it is, we have -- we should be able to do that and use that as a judge later on to see, does

this due diligence method or lack of method produce similar results in terms of delinquencies and defaults.

MR. OXENDINE: And you're suggesting that we would do that type of analysis by lender; is that right?

MR. MILLER: I'm not sure whether it's by lender or whether you could develop broader profiles. I mean, the hope would be you could develop broader profiles, but I honestly can't tell you now without having tried the effort where we would be, whether it would be by lender or whether it would be you would be able to fit people into broader profiles.

I mean, a lot of it is local, regional economics, we would have to be able to blend in what if the economy doesn't perform at the rate that it's been performing over the last, five, six, seven years. All those sort of things going in there so we would know whether it was really the due diligence effort, or whether it was really a change in general economic condition that caused the result we were seeing.

MR. OXENDINE: I'm still not following you completely. So are you advocating that there be no due diligence requirements at all?

MR. MILLER: I'm not sure yet. And I don't think we're at that point. I mean, I think that's a starting point and it's not a bad idea to look at and I'm not really sure and that's why I was sort of pressing you as to how you're planning to, you know, get to this policy at the end because I think there is a lot of discussion and a lot of ideas that can be considered. I think the more we know about your process and your thinking and where you want to go and what your time table is, the more we can be assistive in providing some of the data and some of the resources that I think are going to be necessary for that.

For example, I think, you know, we would be well served if some how as an industry we can better quantify for you the economic incentives that currently exist, for example. I think we would be better off if we knew a little bit more about risk modeling and could share what we know with you as

well as be able maybe to have some experience-based knowledge about what that's done for us in terms of direction or collection activities.

Those are, you know, two off the top of my head, but I think the more we deal from, you know, fact rather than assumption or myth, the better off we are going to be, but I do think we need to set up something that allows more freedom now and subjected to evaluation rather than be more restrictive now because of assumptions that we're going to start out with.

MR. ZAGLANICZNY: Scott, I don't think you need to rely on the on the Department, I think the industry has to come forward with the best possible proposal and then push the Department. Otherwise, we're just going to be in the same going around, and around, and around again. And I don't think, you know, Larry's early thinking is creative, but I think frankly it's up to the industry to accept the challenge from Larry and come forward with the best practices, tell them what you want and let's go from there. Let's get down and dirty.

MR. MILLER: Somehow or another the issue is that it's that Larry and not this Larry that is going to end up making a final decision. So somehow or other, I have to fit a little bit more into his framework, but you are correct and that why I was trying to throw things out to say that I think there are things the industry can do to contribute to a process that as long as we have some assurance that it's worth doing all that work to get to the point. I'm getting a sense of Larry, he's a little more open than some of us may have seen and I'm pleased about that.

I want to somehow or other try to, you know, get him to open up even further and then I think we can have the right dialogue.

MR. OXENDINE: I think we share a common goal. It would be difficult for us to get to the point of say no requirements whatsoever, not even the most general. I don't believe it would be difficult for us to even begin by tossing out all of 411 and starting over again. We don't know what to start with, and that's where we need your help.

I am convinced, have been convinced for a long time that 411 no longer is accomplishing the goals that we wish to accomplish.

Jump in, Sheila, go ahead.

MS. RYAN: Yeah, I think part of what would be helpful, Larry, is the sort of the framework. And again it gets to the cart and the horse again. If the framework is we're willing to undertake a process whereby there's a great deal of flexibility, we have some beginning benchmarks and then we evaluate how that process or what that process might have in terms of overall portfolio performance and then sort of revise it and move forward is one sort of process and that causes us to think perhaps one way about how we would initiate this model.

The other is, you know, a process where we need to anticipate what the outcomes might be ahead of schedule and put, you know, widgets in to mitigate any risk that might be causes or results of that. So it's really getting an understanding of sort of where the beginning point is, for us to be able to craft

around it.

MR. OXENDINE: Well, at least I personally am very big on incentives. What incentives are created by the decisions that are made?

MR. ANDRADE: But, Larry, I guess what kind of -- the hard part I'm having with some of this is, it seems like you're looking and it's kind of based on what Ivan had said earlier. You're looking for some kind of like outcome. And in some instances, I don't know if number one there's an absolute standard across the board that we can say should be applied. And I think that there is the effect that we've seen on defaults of outside influences like the economy just being probably the base example, you can be making incremental changes in your target groups, you know, as you're kind of managing your default prevention activities in your portfolio, but that may not be enough to offset the effects of an economic downturn, for example.

So if you're trying to say that there is, you know, even if you're heading in say, you know, that the goal is improvement, the situation of the

economy may prevent you even from doing that. So I think if we're starting to look at outcomes, I don't know if that's necessarily going to get us where we need to -- you know, where we need to be. If the goal is that you need to do something, then I think we can have a good conversation about that in terms of what that something, you know, what you can expect from that. But in terms of holding someone to a bottomline, I think we're kind of chasing something that's unobtainable.

MS. RYAN: How would you react if under a scenario you eliminate all of 411, 410, just hypothetically speaking?

[Simultaneous conversation.]

MS. RYAN: And the economy stays just the way it is in our hypothetical example, but there's no change in the default rate; is that a successful effort or not?

MR. OXENDINE: No, not at all. I would be horribly disappointed.

MR. GETTE: I that we're starting to get to the heart of the question of what happens next.

Which is something that we need to hear from you about as well, not just substance, but process a little bit.

Sheila, you started -- you alluded to it somewhat in the way you approached the one point that you made which was, depending on what process we're going to use will depend on your starting point is kind of how I read it.

If we're going to start a round of negotiated rulemaking, you're going to start at one point. If we're going to start down the road of a cooperative process of trying to find the best outcome, you're starting point may be totally different. And I think that's a valid point to make.

So where do we go with the process of an issue like this? Recognizing that this very process that we started today is the Department's hope that it will be a cooperative process and not just the first day of the next set of negotiated rulemaking.

MR. ZAGLANICZNY: To give people a chance to think about that, let me ask a question following up on Sheila's question. Let's say we kept due

diligence in place as it is currently and the economy went into a severe recession and default rates went up, would that be an acceptable position -- outcome?

MR. OXENDINE: I have a very difficult time, frankly, tying those pieces together. The fact that someone is unemployed, as we had extensive discussion this morning does not mean they have to default. There are numerous tools available to accommodate those individuals who have a desire to pay, but are unable to pay. So I personally have a pretty difficult time with the discussion about outcome measures.

Because in order to have any type of an outcome measure, basically it would have to be at the lender level and the lender portfolio would have to remain basically the same. In other words, the mix would have to remain basically the same over a period of years and it doesn't happen.

So I don't -- I'm not real optimistic that tying due diligence to outcomes will be very productive.

MR. MILLER: We are more optimistic.

MR. OXENDINE: And as Ross Perot said, "We're all ears."

MR. MILLER: But he was all ears.

I think there's more creative ways to think about outcome measures than looking at lender portfolios. I think that there are ways to segment lender portfolios and as I indicated before to control. There's all sorts of sophisticated ways to control for some of the underlying characteristics regarding the borrowers in that portfolio, and I think that we are committed to do some work in looking at being creating that way and we may need the Department's assistance and there may be other Government agencies that have some experience in this as well that we may want to bring in. But I think that there are potentials out there for being able to develop meaningful outcome measures. And I do believe that despite all the tools available, the overall health of the economy does have an impact on student loans as it does on every other type of credit out there.

MR. OXENDINE: The comments I just made

1 related to lenders. I think the situation may be a
2 little bit different for guarantee agencies. It may
3 be possible since we're dealing with one entity with
4 a large portfolio, and generally geographically
5 situated, it may be possible to use outcome measures
6 in the case of the guarantee agencies effectively.
7 Certainly much easier than it would be for lenders.
8 MR. ANDRADE: Larry, since these
9 requirements also as I understand it apply to the
10 direct loan servicer, what steps are being taken in
11 terms of making that contract more performance-based
12 which we may be able to get some ideas from on the
13 direct loan side?
14 MR. OXENDINE: That's the at-the-moment
15 discussion. Because I don't know.
16 MR. ANDRADE: But, I mean, do you view
17 these as linked?
18 MR. OXENDINE: I personally do not. No.
19 MR. ANDRADE: So that there would be
20 different requirements for FELL lenders on collecting
21 loans and the direct loan servicer?
22 MR. OXENDINE: No, I didn't say that. I

said I didn't view them as linked. There is not statutory reason right now to have them the same. There was a decision made to have them the same. Whether or not that decision should stand in the future, it's debatable. I don't know. But whatever is done in 411, 410, the loan program may or may not elect to follow the same rules. There is no legal reason that they would have to.

MR. ANDRADE: But up until now there has been a policy precedent that the two are the same?

MR. OXENDINE: That's right. And that policy was made primarily, since I think I made it, primarily for time considerations.

MS. SOMERVILLE: In the event that we could pursue down a path where even within the FFELP community different things or different parameters maybe be established, it certainly does add to the mix that we also have the direct loan program. Because, I mean, I think we were starting down the path that and one of the reasons -- you know, to your point the industry come up with something, I think, you know, we have continually been challenged to come

up with something that works -- that we think works across the board for every portfolio and isn't going to affect future changes in that portfolio. So we do have some issues to recognize there, I think.

And then, Larry, I do appreciate your thoughts here on the -- I'll just use 180 instead of 120 a when this intensive collection activity would kick in and I would like to take that back and try to, you know, look at that some more in terms of our Kansas facility and the collections that they have done. Because I think certainly not to lock into this view, but I think it's going to be helpful to the discussions for us to better articulate where we would see the holes in this view or the problems with this view if in fact it wouldn't work for somebody so that we can try to help construct something that might.

MR. OXENDINE: I just want to point out, I did not intend that to be a proposal.

MS. SOMERVILLE: Okay.

MR. OXENDINE: It's a concept.

MS. SOMERVILLE: An idea.

MR. OXENDINE: It's an idea that if you find it attractive, we could try to work out the details.

MR. BAKER: We jumped around a little bit. One is I think there's a difference between benchmarking and risk models. Right. Okay.

Is anyone suggesting or even thinking that if you had a sophisticated enough risk model you might identify Jeff as so unlikely to ever pay, and, again, -- well, it's fun.

[Simultaneous conversation.]

[Laughter.]

MR. BAKER: You've got a lot of history. And as Jane said, nothing is --

PARTICIPANT: [Off mic.]

MR. BAKER: That's true. Nothing is 100 percent by definition and model. But that the model -- people feel comfortable enough with the model that the likelihood of a particular borrower defaulting is so great no matter what you do that the business plan would be you didn't do anything. Or have I jumped way further?

Not in Larry's model, no, no.

MR. OXENDINE: First off, I don't see the Department ever agreeing to that.

But under the very fuzzy concept that we were discussing, in a situation such as that, the lender would follow 411. Yeah, the fuzzy concept. So they just work through -- they send out the letters, make the phone calls, and file the claim.

MR. MILLER: I think there is space between nothing and 411.

PARTICIPANT: [Off mic.] Yes.

MR. MILLER: I mean, and I think, Jeff, a lot of your question goes to, we don't know how reliable that model is. We know it works in the real world, you know, of collection. You know, I mean, it's based on some things in terms of lending, you know, criteria. So, you know, it does work out there. I know that there was that sort of modeling used in the HEEL program in terms of whether or not to pursue litigation and, you know, if the judgment out at the end was that if it wasn't worth doing, it wasn't worth doing.

I think that the answer -- the appropriate answer is there is something between 411 and not doing anything.

I don't think anyone, as Jeff indicates, is comfortable with not doing anything because there is still some hope that maybe the model is wrong and that this borrower will -- circumstances could change. I mean, you've modeled the borrower at a point in time and circumstances change, so you don't want to just write them off and never contact them either. But I think it may be a way in terms of targeting efforts that may be a very valuable tool. And some of that targeting says, this is really not worth your effort, and some of it says, this is worth extraordinary effort because you're probably going to be able to collect.

MS. SOMERVILLE: I have another comment on the benchmarking, because I do think as Scott said that we probably do have enough experience and probably information to better quantify the success or lack thereof of 411, but I think we do need to be careful because there are some of us, probably many

more than we give credit to that are doing more than the minimum 411. So as we have seen improvements in the default rate recently, perhaps because of the economy and perhaps because we do have participants that are doing more than 411, we need to be careful not to lump those recent improvements from people doing more activity at a point now as whether or not that is a 411 case history.

So we may have to go back a couple of years to actually look at that data.

MR. OXENDINE: We are quickly running out of time. Are there any other topics? Clearly 411 is near and dear to the hearts of many of you. So is the documentation. Are there topics we haven't discussed today that you would like to put on the table?

MR. MILLER: We had some general comments about process. That moves us off the "D"s on to the "N"s which is NEGREG. But we don't have to go through them. I mean, if I could just summarize the salient points for the record here are one, we were very pleased with the fact that in a contrast to the

last set of sessions to the folks from the Department who were sitting at the table were empowered to actually negotiate and make decisions. We felt that was very important to the process and was a welcome piece of the process that we think had been absent in the first round back in -- whenever the heck that was -- '93. So we think that that was important and allowed people to actually come to the table to negotiate.

Toward that point too, and we understand that the time frame was not necessarily of the Department's doing because of statutory requirements, but we believe that the pace of the negotiations although arduous and sometimes slow, was actually in some cases, especially the end, too fast. Because folks were -- it was necessary to make spot decisions and not be able to go back and allow sufficient time to consult with the folks whom we represented at the table. And so I would urge that in the future or in the future two things, one is that we make sure we have materials distributed, you know, well in advance of the meeting that even that seven-day time frame

which the Department tried diligently to meet is probably not sufficient given the number of folks that need to review it and the number of conversations that we certainly had amongst our membership regarding those. Those became very, very short time frames for us. And so as we are not butted up against statutory restraints, we would urge, you know, that more time be given for review and that we avoid that sort of last-minute having to make a decision right there or you get to go home without anything.

We believe that a little bit more care needs to be made in some cases in selection of participants so that we assure that there are stakeholders at the table and we do not mean to undermine or to say anything negative about the folks who are involved in the process because we believe that everybody who sat around the table contributed to the process. But we believe that in some cases it was a little unclear what the exact stakeholder interest was that was being represented at the table. And so we would just ask that that process be maybe

thought through a little bit more carefully.

And lastly, I think the issue of preambles needs to be a little bit -- could use some refinement while we were told at times preambles were not negotiatiable, they were certainly negotiated under the same conditions as the actual regulations themselves or the actual proposed rule themselves.

We believe that the outcome regarding preambles did not always reflect those negotiations and we couldn't quite figure out the pattern of when it did and when it didn't. And so we, in essence, really suggest that either preambles are on the table or off the table, and that they should not be used as vehicles for -- one of my colleagues says, the answer is actually on the table.

Especially -- I mean, you get a choice, you either get longer, more convoluted regulations, I guess, or you get a preamble that helps to explain, but we do not believe that they are appropriately used as vehicles for expressing one party's point of view at length. So that's our take.

Our NEGREG with the -- you know, the

closure that we do think that the process was much improved from '93, while we are not in 100 percent agreement with the outcomes, we believe that most of the outcomes were reflective of the negotiations and that we do believe that they resulted in a better NPRM than would have been developed in the absence of those negotiations. And we do want to thank our two particular facilitators whom we had to work with for their efforts.

MR. ZAGLANICZNY: Scott, you know, I just can't pass up the opportunity to, as strongly as possible on page 8 -- in terms of the stakeholders issued -- disassociate myself with the last sentence in that paragraph.

[Pause.]

MR. OXENDINE: Thank you.

Let me ask a question. Thank you for your comments, Scott. Let me ask a question.

I want to get your view of a possible new process for death and disability cancellations. I think you've all seen the press that we've gotten recently on this topic and it appears that some

1 cancellations have been granted that on hindsight
2 probably should not have been. In thinking about
3 changing or modifying the procedures, we have to be
4 sensitive to the needs of the individuals who are
5 making the application. There shouldn't be an issue
6 with respect to death claims, either the person is
7 dead or not, but there is an issue with respect to
8 disability claims, whether or not the individual's
9 disability satisfies the requirements for
10 cancellation. And some of them are tough calls. And
11 if you ask, you know, two or three people you get
12 different opinions.
13 What do you think of a process, give me
14 your thoughts, of a process whereby for those tough
15 calls we grant -- change the regs to grant a
16 conditional cancellation. In other words, it's
17 canceled subject to reevaluation during X period of
18 time. And during that X period of time if we choose
19 to reevaluate we could revoke the cancellation,
20 reinstate the debt, and if we don't within that X
21 period of time, then it becomes a permanent
22 cancellation.

Give me your reaction to that concept?

MR. MILLER: I'm going to speak solely for myself here after having read that report and looked at it. The first thing is, one of the things that that report indicated but didn't say very loudly is that the vast majority of those cancellations are legitimate and that it was a fairly small number and a very small percentage that were called into question.

So first of all, I would be very reluctant to endorse anything that -- and I'm not saying this about your proposal, anything that added new hoops to a process in order to ferret out what was a fairly small number, at least in my mind.

MR. OXENDINE: I don't think that was the case on the disabilities. I think it was a very large number.

MR. MILLER: Well, you know, it looks large, but in context, I mean, you know, my view is I think it was not large enough to warrant putting incredible hoops the number of people who need this benefit.

1 Second is, I think the important thing
2 about that report and I think your proposal goes to
3 it and it's hard to react to your proposal because
4 I'm not sure how you would administratively identify
5 hard calls as you call them. But it indicated that
6 there was a backend way to go back and check and see
7 if these things were correct or not. And it was a
8 pretty straightforward one. Social Security database
9 seems to have a lot of information that would enable
10 you to go back in a systematic way and see whether
11 those people were actually legitimately dead and
12 whether they in fact had, you know, significant
13 earnings in the future.
14 I mean, I think there was a broad brush
15 stroke there in saying that any earnings indicate
16 that it wasn't a total disability because I think
17 there are certainly things that were not anticipated
18 by the legislation in terms of advances in computer
19 technology and, you know, ways that folks are
20 rehabilitated and able to perform and to earn, maybe
21 not the way they were earning to the degree that they
22 were before the disability, it may or may not reflect

that the disability was legitimate or not, or that the cancellation was legitimate or not. I think all those things need to be taken into account.

But I think what the report did indicate was there was a way to go back and look to look backwards and see whether these were. And something that could be implemented that would be able to use that database to look backwards rather than put up hoops at the front end I think is a much better approach, and your idea goes to the back end.

MR. OXENDINE: Are you suggesting in your comment that we should consider a process whereby we do the match periodically and reinstate the debt if we indicate that the individuals have substantial earnings? I'm getting to your comment about looking backwards. There is no need to look backwards if we are not going to do anything with what we learned.

MR. MILLER: I definitely think if you find the person is not dead. That's probably a good reason to reinstate the debt.

I do think that there was -- I just don't know off the top of my head, Larry. But I do think

that there were a number of issues involved rather than just looking at a pure earnings number and whether to determine whether that total disability determination was in fact legitimate or not. You can be, you know, a quadrapalegic and have some earnings potential because of advancements in technology. Part of that is what is it costing it costing you to participate in those earnings, to participate back in the workforce and get those earnings. There are a lot of factors involved that are not just straight, well, he's earning $30,000 a year, so, therefore, he's a cheat. I think there's a lot more that goes on.

I think maybe it prompts an investigation and it prompts a review. I'm not sure where you draw some immediate line that says, absolutely that earnings number tells me this person was trying to rip off the Government, because at the time they certified it, they may have had no reason to believe that three, four years down the road they could have had an earnings potential.

MR. ANDRADE: I do agree with you that

something needs to be done in this. I think any type of fraud that we have in the program reflects badly across the program and the issue needs to be addressed. I would probably be more inclined to recommend an auditing of claims paid rather than a conditional payment of a cancellation on it. And basically where you would go through, I mean, just essentially kind of like IRS audits, IRIS tax returns, and to go back over it.

And then, I guess the question I would have to you though is, mechanically, if you reinstate the debt does it go back to the lender, the original lender or would that now be a debt that the Department would have as a receivable.

MR. OXENDINE: We haven't gotten to that point yet. Certainly those issues would have to be rubbed out, also the issue of interest accrual, but the thing I'm interested in right now is just a concept of whether or not we should have a conditional cancellation or is there some other way to address the close calls.

MR. ANDRADE: Can I ask a follow-up

question? What do you see in terms of benefit of a conditional cancellation versus going back over cancellations that had been granted and doing an assessment of -- an audit in the assessment of the reasonableness of those?

MR. OXENDINE: I think it's really the same thing. It's just I think from the borrower's standpoint, from our standpoint it's a little easier if the borrower knows that this is conditional and not lead the borrower to believe it's permanent in the first instance and then come back after the fact and say, but, it's just creating expectations.

MR. ANDRADE: Because the problem I see is putting people in that conditional category. I think maybe even from the guarantor side, it's putting them in that category and from my perspective I think what you would want to do is basically give yourself free range to look at any cancellations that had been granted and to go back whether or not they had been deemed as conditional or not.

MR. OXENDINE: Jane was next.

MS. STEWART: My comment is a little bit

more simplistic than that and it gets to the actual process related to the granting of the determination of total or permanently disabled. I've been around long enough to remember, and I know you do too, Larry, back in the '70s the way it was and the reason why it's much easier and that is I was a lender at that time for five years. And I never had a disability plan pay the entire time I was at the bank. That's because the process was so cumbersome it just never happened. I had a lot of death claims, disability claims I converted to death, but no student ever got a disability because the process was just too cumbersome.

So I would just caution against any sort of knee-jerk reaction on doing that and try to keep that in mind as we go through this as well.

MR. MELECKI: I guess my concern is the ability of the guarantor or even a lender to determine what is or is not a close call on a disability that has been certified by a physician which leads then to the other question of in terms of operationalizing this, who is going to review these.

I've got to tell you, at one point we had an employee who had gone out and bought himself a used medical dictionary. And I think it was rather presumptuous of a mid-level bureaucrat who had never seen the patient who was reading in his medical dictionary what the condition was to make a decision as to whether or not that was a condition that could totally or permanently disable somebody. And, therefore, I'm reluctant to suggest that for example mid-level bureaucrats like myself should substitute their judgment for the judgment of physicians.

My other question is, and please don't interpret this as a flippant or challenging question regarding the work that's already been done in identifying these, but has there been any additional work -- any additional research done on the cases going beyond whether or not -- just whether or not folks were earning certain levels of income or whatever, and if so, does the Government contemplate any investigations that might lead up to prosecutions? Because I think the gist of the report was there's been fraud committed. And it seem to me

the Government has been defrauded. And a lot of players throughout the student loan system in good faith aced on the data that they had and unwittingly participated in that fraud. It would seem to me the perpetrators of the fraud should be brought to justice and a few good public hangings might have a chilling effect on this thing.

MR. OXENDINE: The answer is yes and yes.

Sheila?

MS. RYAN: Two things. Previously the regs required that if a borrower whose loan had been permanently disabled wanted to go back to school they needed to reaffirm. We had supported that policy and we're one of the organizations I think that suggested that the Secretary not change it and so just from a historical perspective there was -- at least going back to school, a request for additional eligibility seemed to suggest that they no longer met the definition which is unable to attend school or have a condition -- and have a condition that's likely to result in death I think is something like that.

The other thing, I don't disagree with the

premise that individuals that received a benefit and shouldn't have received a benefit based on whatever definition they are dead, or they have a condition that is likely to result in death should be required to reaffirm that debt. Just clarification of your proposal. My understanding of what you were suggesting on the conditional is that the borrower is granted the discharge and that's their status, but it is clear that there may be continued follow-up to make certain that they maintain that designation. It's not a new status of a discharge condition. Okay. All right.

MR. OXENDINE: Your understanding is accurate.

We have run out of time. This has been really good.

MR. ZAGLANICZNY: Can I ask one -- interrupt with one thing?

MR. OXENDINE: Sure, go ahead.

MR. ZAGLANICZNY: Because I want to go back, since I interrupted his train of thought, I want to go back to Jim Gette's question and suggest

that we do need to follow through with these things and just not let it drop here. I know the Department is -- I think the Department is committed to having an ongoing process and I would suggest the Secretary convene a working group by the end of November with a date certain and report back with recommendations for changes. And I think it needs to be broadly representative of the industry. And going back to page 8, bullet two, I think there need to be other representatives around the table at the same time. So that's my two cents on that topic. But I think we don't want to squander this opportunity. And, you know, the Secretary wants to go forward with that, that's fine. The Vice President want to announce that in Texas that's great too. Whatever you want to do.

MR. OXENDINE: Actually, the reason I raised the topic is I wanted to see if there was any appetite for tackling this issue whenever we begin our next NEGREG session. I do think it would be necessary to make modifications through regulation and I wanted to see what the general reaction would

be to modifying the process that we have been following for reviewing these cancellations. Yeah, Tom?

MR. MELECKI: Larry Z. is your point that perhaps there's some benefit for a working group looking at data and researching and considering things, work to be done prior to NEGREG?

MR. ZAGLANICZNY: Pre-NEGREG, absolutely.

[Pause.]

MR. OXENDINE: I certainly hope that as you think about the possibilities that as you come up with new ideas you will certainly share those with us via the internet address that was given to you earlier. I also agree with you Larry, that to extent possible we would like to have, if nothing else, informal discussions with as broad a group as we can to see how much agreement we have prior to engaging in the next NEGREG session.

I think that to the extent that we all share, at least in general, the goals that we wish to accomplish through NEGREG that it will be a much easier process. So if we know going in that we are

interested in doing something in the area of due diligence for lenders 411 and for guarantee agencies 410, death, disability, bankruptcy process, and that's the goal that we go in with, I think it's going to be a much more efficient and productive process. So we would be interested in having those discussions even if they are informal.

I wish to thank you all for joining us today. This has been especially helpful. The main topics, the 3-Ds did not come as a surprise to me, but the glasses, that was a neat twist there.

Again, as you come up with additional ideas, just -- and I'm suer there are some little knits that have been bugging you for a long time, just share those with us via the internet address.

Thank you all and I'll probably see you over at your conference later.

[Whereupon, at 12:09 p.m., the morning session was adjourned.]

A F T E R N O O N S E S S I O N

[Time noted: 1:30 p.m.]

MS. VETA: I'd like to say good afternoon to everyone. I know a number of you here and for those of you who I don't know, I'm Jean Veta, the Deputy General Counsel and am co-chairing this regulatory review process with Diane Rogers who I understand most of you heard from this morning.

Since I gather a number of you were here this morning, I won't repeat the full-blown opening remarks that Diane and I planned to deliver at each of these sessions. But just again, to welcome you on behalf of the Department and to reiterate that this regulatory review process is very important to us and both the Secretary and Deputy Secretary Mike Smith are very interested in this process and are very interested in our having a continuing dialogue with all of you.

As you know, this morning we talked about issues that were focused primarily on guarantor and lender issues. The purpose of this afternoon's session is to talk about loan issues more generally,

similar to the kinds of things that those veterans among you will recall was committee two. And Jim will be leading this discussion as our facilitator as he so ably did during committee two.

The one additional point I wanted to make is what I know a number of you heard this morning and that is, this is not your only shot. We recognize that the timing for these sessions was not the best and we don't plan to make this the only shot and then go off and disappear. By the same token, we very much appreciate the fact that you all have been through similar drills like this in the past and we hope you'll find that this one is different. I can't promise you over night changes and I can't promise you that everyone will agree with some of the recommendations that some you may make. Nevertheless, I think we are quite serious about listening to your suggestions, having a broader discussion about those items and then moving forward.

As you know, in addition to our interest throughout the Department in moving forward with the

regulatory review process, we are also obligated by statute to prepare a report to Congress dealing with, in particular, five specific questions. So because of that, as was done this morning, I think we're going to try to focus on the five questions that Congress asked us to pay particular attention to and that Jim will go over in greater detail.

So, again, thanks to those of you who were here this morning for sticking around, and for those of you who have just joined us, welcome. And we look forward to a productive dialogue with you and a good afternoon. And for those of you who perhaps are just joining us who aren't at the table, we would like to invite you to come join us at the table if you would like.

Now I'll turn it over to Jim.

MR. GETTE: Thank you. To go through a couple of housekeeping items, one, I'm going to pass around some sign-in sheets again. This is so that we can type these up, hand them out to the group before we leave this afternoon so if people want to get in touch with and continue the discussions we're having

today with people here they'll have some way to get ahold of each other.

The second housekeeping item is that we are creating a transcript of these sessions just so that we aren't missing any of the ideas that people put forward and that we want to get on the list of ideas that we're considering. So for those of you who weren't here this morning, before you start comments, especially the first time you speak, if you could just identify yourself so that the reporter can get down who to attribute comments to.

So, I'll pass these sheets around and get those going.

Like this morning, we really want this session to be something that is thought provoking and puts ideas on the table. It's not our objective to rewrite all of Title IV regulations this afternoon, and it's not our intent to drive the conversation in one direction or another on behalf of the Department. So please don't take my silence or lack of response to ideas that you put forward as lack of interest. It's simply that we don't want -- we want this to be

a session where your ideas are aired and discussed, and not where ideas that the Department wants to get out on the table get thrown out and everyone has to talk about the ideas we want to talk about.

In that vein though, I will try perhaps to keep us focused on loan issues to make sure we stay in that arena so that we don't get so far afield in our discussion and I will try and keep us focused on the five questions that we're asked by Congress since that is our initial focus.

Ultimately we certainly hope to hear all ideas and all suggestions you have for regulatory change. This is simply where our focus is going to begin.

And just to remind everyone, those questions were: Are there any regulations that are duplicative or no longer necessary; are there any regulations that are not being interpreted and applied uniformly; are unnecessary burdens being placed on schools through the eligibility and compliance process? For example, is there a need to consider eligibility and compliance issues

simultaneously? Are unnecessary costs imposed on institutions of higher education by regulations that were designed to apply primarily to industrial and commercial enterprises? And, finally, are there any regulations affecting public and private colleges and universities and proprietary schools that receive less than $200,000 in Title IV funds each year that could be improved, streamlined, or eliminated?

Within those broad categories, however, any ideas you have or suggestions or thoughts, please feel free to put them out on the table.

For people who are just coming in, please join us at the table for our discussions and sign up on the sign-in sheet as they come around.

That being said, Jeff, the first person with your hand up, you get to go first.

MR. ANDRADE: Actually, I want to pose this question while Jean is here. We didn't talk about it that much this morning, but I'd like to get more of a sense from the Department on the time table for this. There's 15 months and seven days left in this Administration and --

[Laughter.]

MR. ANDRADE: -- but not that I'm counting or anything. But that is a concern. I would like to know when you're projecting to start these sessions and when we can expect or where the conventional wisdom is on the final regulations resulting from this process?

MS. VETA: I think it's a fair question, Jeff.

At this point we're not in a position to give you a precise answer, in part, because we wanted to hear what we learned at these sessions. Again, we're trying not to do this -- how can I put this -- cart before the horse kind of thing where we come up with the schedule and what we're going to do and then try to fit whatever it is you all are interested in with some preconceived notion that we have.

So, again, we're very sensitive to the point you raise and to the fact that regulations become effective typically on July 1 of the next year and that there are some things people want to do sooner rather than later.

I think it's fair to say, it depends on how long the list is whether or not we can get to everything on the list, you know, immediately. But we're interested in hearing the concerns you have and then based on that coming up with some sort of schedule that makes sense. And that makes sense from your perspective too.

MS. BROFF: I would, kind of to echo on that, there are a lot of things we're all going to put on the table and there will be a lot of agenda items coming. But there's also the countervailing concern, I think, to some extent that resources are limited and the kind of negotiations we did this past spring. It was very difficult for a lot of organizations to be able to keep up that level of attention to all four teams, for those of us who were on all four teams when they're all going simultaneously.

So to the extent that we can maybe do things sequentially or work it some way so that it's not quite so resource intensive that that would be something that we would certainly be interested in

discussing with you.

MS. VETA: And I think we're sensitive to that point as well. I mean, we're in a little different position this time in that we're not trying to deal with the reauthorization where there were a whole host of issues that we absolutely had to take care of. So we will try to work with you on that point.

MR. GETTE: In that context, I mean, as you're proposing ideas and as we start to create our list, some sense of the priority for items from your perspective as you're identifying them would be really useful for us so that as we try and think about an agenda and a process for actually taking these ideas to the next step, we have your thoughts on that instead of, as we were saying, getting the list and then saying, well, we like these three, so we're going to put those on next REGNEG. So ideas about timing and process from you are important aspects of this as well.

Okay. Those things being said, are there people who -- is there anyone who would like to start

with some ideas and comments? Nancy?

MS. BROFF: We have several areas that we would like to see revised. The whole 668.17 from the point of view of clarity and plain english and just making it something that schools can understand a little more easily is something that we would like to have revisited. It may be that a lot of what needs to be done there can be done through working groups or something other than a formal negotiation, but we would put 668.17 in its entirety on the table.

MR. GETTE: I think that's as good a place to start as any. Are there more specific on 668.17 for those who use english instead of numbers or how ever you process these things are the cohort default rate regulations.

Gail, did you have something?

[Simultaneous conversation.]

MS. BROFF: Oh, and speaking of cookies, I would like to apologize for my appalling lack of confidence in your hospitality by bringing my own cookie. I won't make that mistake again.

[Laughter.]

1 MR. ZAGLANICZNY: She was worried about
2 legal inducements.
3 MS. BROFF: This morning there was some
4 discussion about the due diligence regulations and
5 what kind of activities that lenders and servicers
6 have to do to properly service loans. And obviously
7 if there are changes made on the due diligence side
8 that could impact on the requirements for servicing
9 loans for purposes of improper loan servicing appeals
10 within 668.17. So that one will depend -- because,
11 you know, substantively there needs to be a crosswalk
12 between any changes made on that side and any changes
13 made over here.
14 MR. GETTE: In that vein, I don't know if
15 you were here this morning specifically when Brian
16 Segal made the comment that that connection had to be
17 recognized as we talk about changes in due diligence.
18 From your perspective, are there -- is there a way it
19 should be approached on the due diligence side that
20 would work well in your mind with the loan servicing
21 appeals? Is there some way you've seen to connect
22 those two up as we perhaps start thinking about

1 changes on the due diligence side?

2 MS. BROFF: It would seem to me to make

3 some sense that there ought to be some connection.

4 We have argued for years that the disconnect that

5 currently exists between the due diligence

6 regulations and the requirements for a servicing

7 appeal from a policy point of view and from a real

8 world point of view of what happens doesn't make a

9 lot of sense. So we would support looking at the

10 servicing appeal criteria either in the context of

11 changes to due diligence or just on their own.

12 Because we think that is an area where there could be

13 some positive change that would make it all work a

14 lot better.

15 MR. GETTE: Other cohort default rate

16 related issues or ideas?

17 [Pause.]

18 MR. GETTE: Okay. If no --

19 MS. BROFF: This one is only kind of

20 partially related to cohort default rates. We have

21 had trouble in a number of instances when a school

22 closes and another school either does a teach out or

tries to do a teach out, or in some cases on a purely, you know, arm's-length transaction tries to nothing other than lease the space which is already built out for a school, and the Department often makes it very difficult to do that and makes the school essentially or threatens to make the school buy the closing school's cohort default rate problems, often, as part of that transaction.

And we think this is an area that ought to be looked at again. We ought to be encouraging schools to help teach out other school students to be able to enroll those students kind of for the longer term and continue their education all the way through, and not make it -- not put a lot of hurdles in the way of schools trying to do what is essentially a good deed.

MR. GETTE: On that issue I would be interested in hearing what -- what ideas people have that would encourage that sort of activity. Because I think that from the perspective of a lot of people, the idea of teach outs, or whatever you want to call them, some way of allowing students to complete an

educational experience that they've started is a good thing.

How do you encourage that while at the same time not encourage the continuation of programs that may not be well suited for that region or for whatever reason aren't producing job opportunities for students and, therefore, you're seeing defaults from borrowers as they complete their program. So how do -- how do you encourage one without perhaps bringing the other less attractive aspect along with it?

MS. BROFF: Well, currently the Department doesn't distinguish between whether there are changes in the incoming operation or not. When a school agrees to do a teach out for a closing school, it can also often be very resource intensive because there's usually no money or often no money that comes with those students. There's just the obligation to teach out the rest of their program. Which schools do, but in order to make it economically feasible sometimes, if there's a lot of students, or it's a long program, or something, the only way that it makes sense for a

school to do it is to be able to enroll new students at that site to take over the lease and -- you know, because it's already built out as a school. They may teach other programs, you know, after they get that site in. You know, they'll bring in their own management, they bring in their own programs, they bring in their own teachers, it's a whole new operation.

But right now the Department's position is that if you're taking over that site, even if you have no relationship to that old school, you're not buying any of their stuff, you know, nothing, it's a pure arm's-length transaction, but that if you take over that lease space, you can be potentially stuck with that school's default rate problem which is a huge disincentive for schools. And then it's also very wasteful because then you've got some landlord with a space that he can't rent to anybody. So, you know, I'm not sure what the solution is other than for the case management team to work with the new school and make a case-by-case judgment rather than some cookie-cutter approach.

MR. GETTE: Anything else on change of ownership issues related to cohort default rates?

[No response.]

MR. GETTE: Okay. Nancy, do you want to keep going down your list or is there someone else who has some specifics they would like to raise?

MS. BROFF: We're trying not to put too much on the table.

There is one issue that it's really mainly a student eligibility issue that we'll be bringing up tomorrow morning, and it has to do with programs that teach in a modular set up where you do, you know -- I'm making up an example here, this may or may not be the way it's one, but let's say, for instance, you've got a medical assisting program and your first module is anatomy and your second module is insurance and your third module is doctor's office procedure or something, and, you know, each one is four credits and it makes up a 12-credit semester. But the student only begins the beginning of the semester taking only the four credits for anatomy. And if they drop out before they start their credits in

insurance and medical office procedures, they go from being a full-time student to being a less than half-time student because of the way it currently works. It's a big problem for PELL.

There are, I believe, some situations where it becomes a problem for loans also. And because this is purely a difference in teaching approach, I mean, this is still a full-time student, they're going, you know, five hours a day, five days a week, or six hours a day, five days a week, so they're -- by any rational definition they are full-time students, but the current rules turn them from a full-time student into a less than half-time student and screw up their aid.

So we would like to see some change in the definition of what is a full-time student so that different types of teaching methodology can work equally well and that schools aren't pushed into using kinds of teaching methodologies that may not be the best one for them just in order to protect student's aid eligibility.

MR. ANDRADE: Nancy, are you thinking in

terms of treating those modules as terms? Or some kind of hybrid on the current --

MS. BROFF: I guess I would be thinking of changing a definition of full-time student to include in addition definitions linked to number of credit hours in a given chunk of time. Also, some definition that would say, if you go to school at least X number of hours a week, or Y number of hours a day, or something like that, where you're considered a full-time student so that for purposes of a school they would, you know, several different menu options to choose from in determining whether they've got full-time students so that they can then teach in the way that's pedagogically the best way to teach.

MR. GETTE: Are there other people that have seen concerns with this issue or have some sense of how this might work? Suggestions?

[No response.]

MR. BAKER: Just say nothing. The issue that Nancy raises while she uses an example from a school that she represents as very and more and more

common in four-year programs, graduate programs, at so-called "traditional schools" if there are any such things anymore in the world, modules, and not just summer, modules throughout academic terms, you get more and more questions and it raises lots of issues, the one you mentioned about -- and full-time and other kinds of issues including our favorite one on refunds. So we look forward to more of a discussion on that tomorrow with those folks.

MR. GETTE: Okay. Well, Nancy is done with her list which means we can all go home unless there are others who have some -- Pat?

MS. SMITH: I don't know if I'm here for the right session today, but I couldn't come this morning because some of the associations had a very enlightening episode with Greg Woods, but, at any rate. At least it's Department of Education all day long, anyway.

I had submitted one item on loan counseling, exit counseling which I tried to bring up in NEGREG and at that time we were trying to restrict NEGREG pretty much to things that were

1 reauthorization oriented, but I think you all got a
2 message for Ed Omendorf last week that one of the
3 things we are asking to be considered as a kind of a
4 follow on to NEGREG is that right now the regulations
5 require that schools tell students the average
6 indebtedness at their institution. And in the spirit
7 of the charge in the legislation language that we try
8 to clear up regulations that are out of date or
9 inappropriate. Time has passed them by. It seems to
10 us that this was one time that time had passed by
11 that institutions giving students average information
12 is not all that helpful about students planning their
13 repayment and what kind payment option they're going
14 to choose and scheduling what kind of job they can
15 afford to take given what their payments are going to
16 be. And with the existence of NSLDS we would hope
17 that the Department could take over that function by
18 supplying the students that leave school what their
19 indebtedness is.
20 I realize that the statute is fairly
21 explicit on this right now, and the regulation almost
22 mirrors the statute, but because this review was so

much in terms of the language in the statute about what this review is supposed to be about that we're engaged in, looking at things that are obsolete, it seems that this is all rather obsolete. Whether the Department's legal staff would think that Department could relieve institutions of this responsibility, whether the Department took it on or not out of NSLDS is something that I'm sure you all would have your own internal opinions on.

It seems to us that ask you that it isn't necessary anymore for institutions to give some average amount which can almost be misleading when more accurate information, at least in theory, is available through NSLDS. So we would like for the Department to take under consideration -- and it may be that this is part of your modernization plan -- I wasn't able to find a specific reference to it in the modernization plan and I worked at it. But I would not claim to be an expert on that plan right now. But I think if there is any one thing that students do need to have it would be the best effort of everybody connected with student aid, delivery, and

repayment working on it to try to give them the best idea and the most up-to-date information on what their total indebtedness is so that they can make the most informed choices as they leave school.

In addition, I would say -- I would counter, and I don't know if this has been mentioned already, some of my colleagues around the table may have brought it up, but the associations are on record with the Department asking for a discussion with the Department about how to do an even broader review of regulations than we're talking about right now. But these were some specific items -- this is one of two specific items and the other one we'll talk to tomorrow that asked you how to propose coming out of the NEGREG discussions.

MR. GETTE: I think to start, there's two things I would like to follow up on from your comments, Pat. The first is specifically with respect to the exit counseling. Jeff had pointed out and we had actually talked about this the other day after we saw Ed's comments, that the statute is fairly direct on this point, so this may be something

that while there is regulatory change that's needed, it may require statutory change as well. That's not to say that it isn't an important thing and worth pursuing in that respect.

Specifically I'm wondering, from an operational standpoint, when you're saying the Department, take it over, how would you see that working? Would it still be a part of exit counseling that the institution would tap into from NSLDS and then just printout the total indebtedness of the student or how would you see that working?

MS. SMITH: Not having worked on campus, it's a little hard for me to see exactly how this would work operationally, because now there is something about NSLDS that I don't totally understand about the fact that the person has to have an EAC. And I don't know what the process is for getting an EAC.

I gather there have been some problems connected with which students can get which information out of NSLDS. However, I assume the information is in there for all students whether this

current EAC process would allow either the Federal Government simply to send institutions a roster for students who are leaving school, or whether the Department of Education would contact students directly themselves, and, therefore, at this point not making a precise recommendation, I think if the Department wanted to pursue this and if the associations did we would have to go into more detail about exactly operationally how this would work.

The other reason that the recommendation is worded the way it is, I realize that since at some point we're talking about the Department taking over a function, I realize the Department doesn't regulate itself. So the main way we're dealing with the regulation is just simply to say that the institution would no longer have this responsibility to provide this average information.

I realize, as you said, the statute does require the language that's in the regulation right now, whether the statute could be interpreted to say that this was kind of a minimum, and that if there were more accurate information than just an average

1 for the institution, that this could be provided in
2 lieu of that. That's one possibility on a
3 theoretical point of view from my standing anyway.
4 MR. GETTE: Yes, I don't think -- I mean,
5 for this exercise -- I mean, saying that it's in the
6 statute and therefore it's somehow sacrosanct, is not
7 the -- is not the way we're going to go with this
8 process. I mean, you raise a good issue and we'll
9 put it on the table. So that certainly is not the
10 end of it. Whether it's through a -- somehow being
11 able to interpret the statute differently or whether
12 it's, you know, ultimately making some
13 recommendations for statutory change to Congress,
14 those are all things that should be considered in
15 this mix.
16 The other thing that I would like to
17 follow up on, Pat, is you said suggestions and
18 thoughts for broader regulatory review, without going
19 to deeply into that, I mean, I would be interested in
20 hearing what conceptually if there is some framework
21 that you see for that consideration of some
22 regulatory review that's broader than what you think

is occurring here what that might be?

MS. SMITH: Well, I have a copy of the letter that the association sent to Mike Smith on September 10th and I can read you one paragraph out of it that would at least give you and the group -- and I could leave this copy with you if you would like.

Specifically, we would like the Department to establish a process to conduct a comprehensive review of Title IV regulations and that includes a examination of the overall regulatory approach as well as a detailed look at specific regulations. Title IV regulations have evolved over a generation, much as changed both on campuses and in Government during that time and we should use this opportunity to give a fresh look at the fundamental regulatory approach. That is just one example of that change. The majority of regulations now on the books predate the advent of the widespread reliance on technology that permeates the society.

So it's asking for a meeting with Mike to discuss a broader review. I don't think the

1 associations felt that that was contradictory
2 necessarily of the statutory language, because the
3 statutory language with a date in it that the
4 Department has to respond to allows the Department to
5 present a plan with an implementation timetable so
6 that perhaps this did not -- we did not think it was
7 in conflict. I realize you all's lawyer is -- but we
8 didn't think that it was in conflict with the
9 statutory mandate. And this was six or seven
10 presidential associations, NICUBO, NASFA that sent
11 the letter.
12 MR. GETTE: I don't think that it's
13 necessarily in conflict with what we're doing here.
14 In fact, that's kind of why I wanted to follow up on
15 what the thoughts were to see how it might play into
16 this process and whether this exercise was the right
17 place to start considering those very issues.
18 MS. SMITH: Well, one of the problems that
19 we certainly ran into in negotiated rulemaking this
20 year which I mentioned at the NASFA meeting to one of
21 your GMs, and I never can remember how to pronounce
22 her last name -- Jean Vandlandren; is that right?

1 And in one of the sessions that she had at
2 NASFA was that it was a frustration during negotiated
3 rulemaking that on one hand I think most of the
4 people around the table wanted to be as general as
5 possible in order to allow some discretion to the
6 institutions in as much as was responsible in terms
7 of the law and the Department's mandate to protect
8 students, but that many of the institutional people
9 back home worry about program reviewers coming in and
10 they keep pressing the Department to be more and more
11 specific about things, because then that protects
12 them from the program reviewer coming in. So we had
13 this tension going back and forth all the time. And
14 Jean was very responsive to this and said that she --
15 her whole goal -- thought -- which was what some the
16 associations thought would be a good idea in the past
17 was that the Department would move more in the spirit
18 of the new performance-based organization toward
19 performance-based regulations that would not be so
20 prescriptive in terms of how things were done on a
21 specific level.
22 What I didn't quite understand is still

1 what we do with the program reviewers if we do that.
2 But in the minds of some of us, we would hope that if
3 you took a broad regulatory review and this would, I
4 think, involve a lot of problems with the underlying
5 statute because Congress has kind of micro-managed in
6 a sense in a lot of this statute to start out with.
7 But if you could move more toward a performance-based
8 set of regulations that we're not quite so
9 prescriptive about on what day, this, that and the
10 other has to happen. It would be -- I'm not saying
11 that you could not do some fine tuning of some
12 specific issues in the meantime, but that you might
13 try to accompany that with a broader look at could we
14 move toward a who different regulatory approach.
15 MR. GETTE: Sheila?
16 MS. RYAN: Caused me to think about
17 something. But I was curious as to whether any
18 Federal agency undertakes the rulemaking process in
19 such a way that the rules expire 6/30 of '99, there's
20 an end date to the regulations and so that prior to
21 that end date there's a need to re-evaluate the
22 program rules. I think that Pat raised a good point

in terms of both the Higher Ed Act and the Regs have been a layering effect over time and so while something might seem like a good idea for this particular issue this particular week, this morning we talked about death and disability claims, that sort of stepping back from it all to the extent that we're aware of any other federal agency where their regulations expire, that causes them to have the discipline and the process to in fact re-evaluate the need for them,

And, you know, harking back to some of the conversations this morning about due diligence, there were certain issues in 1986 when those regs were put on the table that are very different in today's scenario that we're note, you know, it's sort of a huge and arduous task to sort of force us to justify why something has to -- can come out of the regs; rather, why should it be there in the first place?

MR. GETTE: Maureen?

MS. BUDETTI: Yeah, I think following up on what both Pat and Sheila said, I guess what the associations were interested in was -- is probably

multi-faceted. I think during the legislative process the focus was more on doing a comprehensive review to eliminate, as you have in your numbers ones and two, duplication and things that don't work and so forth. But upon reflection, I think there were some who felt that not only was this an opportunity for perhaps review of the substance, but the process and structure. And doing things like Sheila suggested maybe looking at other agencies and, you know, whether or not they have any particular mechanisms for avoiding some of the sort of time induced stiffness in the regulations.

I mean, my sense is that they all grow kind of exponentially with time, but I think there was some sense of wanting to step back and look at the broader process. That was my understanding.

Maybe Pat could comment further on that.

MS. SMITH: I don't think we have in mind a perfect model which is why we wanted to try to sit down with the Department and explore how far the Department might be willing to go along this line. But we don't know of any agency that we have perfect

relationships with on the subject of regulations. But there certainly is a lot of variety out there and that you all may be more knowledgeable about what other agencies do about regulations in terms of their approach to it than we are since we just look at the other end, what comes out the back.

MR. GETTE: Glad to say that you're on that end and I'm not.

[Laughter.]

MR. GETTE: Laurie, you had some comments?

MS. QUARLES: Well, I think building on what has already been said by Sheila and Pat and by Maureen is there is a sense of this is sort of a special opportunity. It's been rare that we haven't either been pushing to implement a new law and we've been under, you know, a gun, both with the Department and the community to come up with quick interpretations in order to make sure we affect these changes as soon as possible. And this is sort of a golden opportunity for us to really give it a global review and include people that perhaps normally wouldn't be involved in something like negotiated

rulemaking to contribute to a broader more philosophical approach as well as getting people in the community to do some thoughtful analysis. So we were concerned that we have the same problem that you have at the Department with only a few people to handle regulatory matters and they've been focused intensely on getting those comments in and reviewing and working with the department on negotiated rulemanking and very pleased with what happened during negotiated rulemaking overall. I mean there are probably specific areas that people will fight on, you know, forever. But feel that this is an opportunity to build on sort of that good will and to continue a process over the next year, perhaps not one that's quite as intensive in terms of time requirements, but one that does require participation on a broader outreach than you can possibly do during the next month.

And I guess one of my concerns in going into this was in looking at the notice. It talked about all the comments you got from customer service task force, and I don't think those are necessarily

representative of bigger, broader, regulatory issues. They are somewhat anecdotal in the way that they were determined.

And I'm not trying to criticize the customer service task force which I think did an excellent job in a very short period of time of getting input, but it may not be input from those that are going to be working in the regulatory environment since most of us were a little distracted during that same time frame. So I would caution you to assume that that is reflective of the broader community since we didn't really sign on to a set of recommendations, we didn't prioritize within those customer service task force lists. So while I think there probably is some merit to a number of the proposals I don't that's reflective of what our big issues are over the next few months.

MR. GETTE: I think on that specifically, I think that there are some people who recognize the process that was used to collect those and understand what limitations they might have. But certainly didn't -- wanted people to know that people in the

community hadn't been asked to go through that process and then those ideas were just going to be put in the shelf and that we were going to do this next exercise. That, you know, we wanted to show that as a department we could actually coordinate some things that we were doing and keep the theme running from one exercise to another and use the good product that comes out of one exercise to form the basis for, you know, the next steps. But we kind of understand how I think all of these will flow together to some extent, but we want to make sure that that happens.

Pat?

MS. SMITH: One of the kind of codes words in that memo is this business about the fact that a great deal of what's gone on in the regulations -- existing regulations and existing statute may have been taken over by technology changes is reflected since I don't think this is any great secret among anybody right now that the associations are full of comments for Greg Woods on his modernization plan and one of the -- ironically one of the suggestions that

we have made to him is that we are not sure exactly what the role of the associations is in -- or even the institutions for that matter -- the development of that plan because the way we're used to dealing with the Department is through regulations and negotiated rulemaking. And there seemed to be a lot of kind of rogue processes going on out there in this area and we're perhaps more comfortable with bringing it back into the regulations arena.

Our institutions have lived by these regulations as they exist for a long time, and that's a known quantity. Whether the modernization plan is out here on a different track and decisionmaking is making is done or institution requirements are done in a different manner is kind of troubling to us. We are not that fast to absolutely have a hissy fit about the whole thing, but this is part of why we would like to see the regulation update, if we can move more toward a technologically-based, performance-based set of regulations that we know what the input of the higher education community broadly is in that. WE're not quite sure what the

input is in terms of what perhaps may be planned right now. And it may well be that understandably that performance-based organization just isn't far enough along to have all of these relationships worked out. But we don't want the regulations to get left out of this process, that that's a process that we accept and understand. We may grumble about it all the time, but that's a process we accept and understand and that it is part of the legitimate way the Government goes about its business. So we don't want to be left out of the process.

MR. GETTE: I think specifically on the modernization plan, I know that as each iteration of the plan is drafted, it's being posted up on the web. And so for those who aren't aware of that, you can find it, I think at the IFAP site, there's a link and they're encouraging comments in response to those plans. So I would encourage you to look at that and make comments to the extent that you have them.

Pat, in one sense you raised kind of the fundamental question about the approach that you're suggesting and that is that you're saying that people

are more comfortable doing it the old way in one sense, you know, doing it through regulations through a process that they're familiar with and comfortable with. And as we consider a new approach to regulation are we going to be able to get over that hurdle, how do we help ourselves get over that hurdle of institutions and individuals who feel safest when the regulations are very prescriptive and spell out exactly what you can and can't do to protect yourself from, as you said earlier, the program reviewers.

MS. SMITH: I think that's one reason why this rethinking has to go on. On one hand, I think many people from the colleges and the associations would rather have less prescriptive regulations. On the other hand there are certain key points on which we would still want to be able to depend on the regulatory process because it is a public process where things are publicly debated. It's not just that it's old and familiar, but it's very public. And particularly when it gets down to who pay for what. I think one of the somewhat contentious issues so far is how is an electronic signature going to be

developed and who is going to pay for that.

And right now the Department is on record about having asked us via NACHA to pay for a membership in NACHA in order to have a seat at the table on how electronic signatures are developed and we've taken issue with that.

It's so that you would want to be less prescriptive in some ways and more performance-based, but in other words, on certain key elements you like to feel big issues about what basic roles and responsibilities there are and who pays for what that there still be a regulatory process which is public and open and is not something that kind of is devised in a way that nobody quite understands where the decision got made and who really had a seat at the table.

MR. ANDRADE: I think I share Pat's concern on that. I think what we're staring to see in a number of areas is policy by pilot program and pilot project and I don't know if that's necessarily probably the best way to go in some of these.

And I think there needs to be a

differentiation between testing new ideas and proving concepts and deciding what policies are as a result of that. And I'm seeing a blurring of those lines in some of the recent actions.

MS. STEWART: With respect to Pat's comment and your question, Jim, regarding participants wanting very definitive, very prescriptive black and white issues so that they aren't penalized on program review, one way to encourage participants to steer away from that habit is to change the philosophy on the program review and compliance circuit and sort of get rid of this "Gotcha" attitude where the threshold in your manual is $10. And so if the violation exceeds $10.01 it's a gotcha in each and every incident. And look to performance-based issues, you know, what is the evil that is lurking here and what has happened, and some yardstick to measure that by.

I think the whole change in philosophy here would be -- would provide for a regulatory environment that does allow discretion if you are focusing on the performance or the outcome.

[Pause.]

MS. RYAN: I also think that it would be worthwhile to step back and identify what the purpose of the regs -- what the purpose of a Federal agency -- what's the purpose of a Federal agency issuing regs? Is it to put the statute in plain english?

I've heard numerous times over the past six years that the Secretary doesn't regulate himself. Back when I started in this business 105 years ago, that's what I understood the purpose of regs to be was to bind the Secretary. And so I have been very perplexed, actually, by the statements that the Secretary doesn't regulate himself and so I always thought that that's what the purpose of the regs were. I think some of that sort of just stepping back in terms of, you know, what the ultimate goals are here will allow us to step back and see where we need to add or subtract or improve upon what's there.

MR. GETTE: Let me ask an additional challenging aspect of this concept that I was talking about with some folks this morning for a little

while, and that is that, do you by necessity if you're moving towards an outcome-based or performance-based regulatory scheme, do you by definition accept some percentage of error, and if so, is that acceptable for those borrowers or participants who fall into that acceptable error level?

MS. BROFF: We would argue certainly that there ought to be some leeway for good faith error. It always strikes me, and this is going to be an uncharitable statement, so I'll make that disclaimer right off hand. But it always strikes me as somewhat ironic that the Department comes down as hard as it does on schools that make good faith mistakes in compliance with very complicated and technical regs. When the Department itself time and again has, you know, major computer program problems and can't get this processed or can't get that processed, and, you know, it's always a contractor problem or a servicer problem or some problem, but there's all these problems and that somehow we are supposed to forgive the Department when there is some major problem at

the Department's end. But when we have a school that ran into some kind of a compliance problem, the school gets walloped. And I think that creates a lot of the discomfort in the community. There seems to be a double standard, I think, to a large extent. And I think part of what Congress was saying in the reauthorization on the -- what we're calling the cures is, you know, let's cut these people a break sometimes if they're making good faith mistakes trying to implement what is a very complex regulatory scheme.

MS. QUARLES: The point is, if it's not so complex, then perhaps it will be easier to be in compliance provide that we don't eliminate certain provisions that are needed to address certain specific issues. And, I mean, I'm not going to define, you know, what is complex and what isn't, but I think we can all say without having to think too hard about this that the current regs are fairly complex if all of us need special help in interpreting them then clearly people out in the field that don't have the benefit of the lengthy

discussions have difficulties in following them sometimes. So I think that at a minimum we are trying to make a sincere effort to eliminate some of the complexity while preserving the spirit of the regs of implementing the law, but allowing a certain amount of latitude to make good faith efforts in implementing the law.

So I would suggest that even with some of our differences we could agree that there is complexity that could be eliminated and it's a question of taking the time to sit down and go section-by-section on some of it and other sections may no longer be necessary based on the change in environment. And many of the problems that the regulations address have been dealt with legislatively and some of the institutions or problems that were there are historic ones, I would contend, and perhaps we no longer need some of the regulations that are there to address historic problems.

MR. GETTE: We've been talking about changes in environment and especially growing out of

the increasing use of electronic means of doing business. Where -- are there some areas that you can identify in the regulations where, you know, not by specific number, but in terms of the process where this is most needed?

MS. SMITH: Well, this goes back to, is it the regulations of the law? But I certainly think that there's a great deal of interest in the community among the colleges and their schools and their aid administrators and the electronic signature and in SLDS, and exit counselling. I mean there are -- but the electronic signature I think in terms of if you talk about general level of frustration that that's one in which there is a great deal -- now, it may well be that once the colleges -- once we all see the colleges and the associations both about what it's going to be like to try to develop an electronic signature and who is going to pay for it and how complicated the process is going to be, we may not like it. But I would hope that that is not the case. I would hope that with all of you all's creativity within the Department one way or another you could

get to that.

But I think some of the places where the frustration has been the greatest in the past has been in the application process. I realize from having read more or less tried to read the modernization report, a great deal of what that report is about is the internal -- the Department has some of its own internal processes that have to be updated, et cetera. And it's always a little hard sometimes for us to see what the relationship is going to be between that and how an institution operates its aide office or its business office. But the application process, there certainly has been support for facts on the web and moving toward an electronic signature and the front-end application to make things easier for students is one of the classic cases in point.

MR. ANDRADE: One of the things I think is important and we are talking about electronic signatures and there has been some work started on this already is there's a difference between something where you really require a signature

because you need a valid -- something valid or the equivalent of a signed signature to make it a binding legal document. And when the signature -- the current signature requirement that's there is really to get an acknowledgement that the borrower either received information or completed a transaction or something like that. And when we translate kind of the written requirements that we have in the regs to the electronic media, I think we need to kind of take into consideration what you really need, kind of what the electronic equivalent of a signature is and you just need some type of confirmation that may not have the same security or the same legally-binding effect.

Because I think that if we start getting into where we're just going to do a straight mapping of the written requirements to electronic signature, we are going to find ourselves with some technological constraints that may prevent us from delivering better service to the students.

MR. GETTE: Other areas that are ripe for a very hard and close look in terms of changing towards a more outcome-based approach?

1 MS. MILLER: The electronic signature kind
2 of brings us to mind, and this is something that I
3 believe is in progress, but I would like to get an
4 update, maybe. For the Perkins loan program,
5 currently borrowers have to send a written request
6 for their deferments and that implies -- it does not
7 imply, but it requires that the borrower sign the
8 deferment form. It's a very burdensome process and I
9 know there have been proposed regulations, but we
10 haven't seen finals, so can you maybe give us a
11 little update on the final regs and what's in it?
12 MR. BAKER: Yeah, I don't even know when
13 it was we published an NPRM on some issues having to
14 do with Peace Corps deferments and written requests
15 and the finalization of that package is in it's last
16 stages. Hope to get it published before the end of
17 this month and it would much like for FELL and direct
18 loan, it will eliminate the requirement that the
19 request for a new school deferment be in writing.
20 MS. RYAN: What are you referring to?
21 MS. RYAN: We are basically mimicking what
22 we proposed in direct loan and FELL based upon the

statutory change. There is no concept of another application, but the ability for a Perkins school or their services to grant a deferment based upon receiving reliable information that the student is enrolled somewhere and then the school can grant the deferment and then similar -- again similar to what we proposed -- negotiated and proposed in FELL and direct loan the school would then have to just notify the borrower that they did this and give the borrower a chance to say, no thank you.

MS. STEWART: We talked about it at length this morning, so I won't belabor the point, but in today's context and the context of the Team II issues, I would say the same things that we said this morning. That the three areas that are ripe for this kind of consideration we believe are default prevention, due diligence, and documentation.

[Pause.]

MR. GETTE: Other ideas or comments for regulatory consideration beyond kind of the general issue that we were discussing of kind of a revised approach to regulation? Are there more specific

comments?

Ann Marie?

MS. MILLER: Another Perkins issue is in 674.33(e)(9), well, I did look it up before I came -- the have's the economic hardship --

[Simultaneous conversation.]

MS. MILLER: No, okay this is economic hardship deferment and paragraph 9 requires that when we evaluate the eligibility of a borrower for hardship that we use the ten-year repayment amount, although the borrower's note and his repayment schedule may be calling for a minimum of $40. This is a penalty, I believe, on the Perkins borrower, and in my mind it came about because the regulation was copied from FFELP and in FFELP it does make sense. It does give a borrower a break to go to the ten-year repayment plan as opposed to whatever it is that they are paying. They may be paying over 25 years, so you give them a break by making it a larger amount and using the ten-year.

But it's not so in Perkins, and so first of all it's very burdensome to have to figure it out

because when the borrower sends an application in, all they know is what they pay. And so you have to obtain the amount of the loan and all the various schools and you have to figure out what is the ten-year repayment amount, anyway it's a big, big burden and its unfair to the borrower. So I would ask you to evaluate the possibility of eliminating that particular part of the reg for the Perkins program.

MR. GETTE: I was just asking Jeff and Pam if they understood the issue, since I didn't. Pam told me it was on the list already and I said, I know, I didn't understand it the first time.

[Laughter.]

MR. GETTE: Sheila?

MS. RYAN: A few comments. One is we haven't talked about private letter rulings and sort of the role that they play -- regulatory guidance be it in a private letter ruling, be it by form, be it by whatever, powerpoint presentation, whatever you would like, and sort of the role that that plays and I would refer you to the IRS model which appears to make those private letter rulings applicable to that

individual party. Part of what we are doing is we are complying not only with the regs, the preamble language, the NASFA announcement, you know, that might be made from the podium, but also, you know private letter ruling that Jeff got that he happened to share with me. And so I'm subject to that.

So I think we need to think about the whole private letter ruling process. Yes, there's a need to respond to individual inquiries from individual participants, but how that guidance gets translated to other participants if it needs to bind somebody and incur either a risk or a burden, it ought to be in the regs if it has to be somewhere.

The other thing is I think about the conversations from both this morning and this afternoon, I am sort of still uncertain as to where we go from this point forward. Part of me says that the Department ought to do some bold statement like all regs expire as of 6/30/2001 unless we otherwise extend it beyond that. And so that it forces action and sort of deliberations around this process.

The other part of me says that we ought to

1 start off and ask various organizations to come up
2 with their top three priorities so that we can work
3 through those and see some substantial movement and
4 reform. Having been through this exercise about five
5 or six times several of us are somewhat pessimistic
6 about outcomes and where we go and exactly how far
7 the Department wants to go in terms of its burden
8 relief, where we have been through it before, there
9 have been reg changes, but they've been sort of on
10 technical, sort of -- I don't want to say "nitsy"
11 points, but they haven't resulted in a substantial
12 shift of sort of the economics or the burdens and so
13 that, you know, part of me wants to say, let's take
14 some really juicy topics and, you know, like due
15 diligence and if we can get to sort of a major reform
16 initiative in that regard where we feel that the
17 results were beneficial as the Department that we,
18 you know, sort of continue that process on a topical
19 basis, but so I guess I'm not sure where the
20 Department is going, but I still haven't figured out
21 in my mind which one I favor yet, the small couple
22 three list or the total expiration of all regs on a

1 particular date certain.

2 MR. GETTE: I could actually hear Jeff's

3 heart starting to race over here when you suggested

4 expiration of all the regulations.

5 [Laughter.]

6 MR. GETTE: I suppose that they're not

7 necessarily mutually exclusive in one sense, and that

8 is, that even if you created a hit list of top items,

9 you could still do something fairly bold without

10 necessarily getting rid of all of the regs in one

11 fell swoop, but clearly that's an act like that

12 certainly forces your hand to make some change.

13 It's specifically directed to the

14 Department of Education; right?

15 [Simultaneous conversation.]

16 MR. GETTE: Equal opportunity.

17 Larry?

18 MR. ZAGLANICZNY: Well, as much as I would

19 like to see regs, I guess I would like to see regs

20 expire, that's already currently the case. If you

21 don't reauthorize the act the regs don't have any

22 effect. So that brings up the more general point

that I think in this review of regs that the Department also should identify with the help of the community and certainly using your own resources those parts of the law that need to be changed because I think in my view 95, 96, 97 percent of the time the Department is just following the law, and that's where we have the problem.

Now, when we have the problems of the other 2 or 3 percent of the time, that's just general counsel getting involved or Jeff Baker having a bad day, whatever the case may be.

MR. GETTE: Now, I think you make a good point and that is that -- and this came up repeatedly throughout REGNEG where -- maybe not repeatedly, but several times where everyone at the table concurred that we would like to see a regulation that said "X" simply to look at the statute and say, oh, we can't say that, the statute doesn't allow us to. So recommendations for statutory change in this context, I think are important to get on the list as well.

Having raised that topic, Larry, do you have any in mind?

[Pause.]

MR. GETTE: Talking about -- it seems to me, Sheila, you raised what I think perhaps could be a good approach, but that kind of begs the question more generally, what approach after today do people see us taking.

At this morning's session there was a recommendation that there be a work group of some sort or some group to take a look at regulatory issues and report back. What -- is that an approach that people would like to see? Is there some other approach that would work well as we start to consider these ideas? Is Sheila's idea of a top three list from, you know, everyone at the table a good idea to kind of identify the priorities, how should we approach this next? How do we make sure that at the end of the day, you know, the last five experiences Sheila had aren't the same as the one she's going to have this time?

MS. SMITH: Well, I think that letter that I gave you all a copy of kind of puts some of us on record on a given position about wanting some broader

look. So I guess that some people might say that that's our version of a work group except it's simply a little bit more expansive in trying to get the Department committed early on to an approach as opposed to just a group of us sitting down and coming up with what we think a better approach might be.

But in terms of what has to happen next, whether the Department decides to have a work group or whether the Department decides to take some permutation of this letter that some of the associations have written, one of the things that I think I mentioned briefly and I think Sheila picked up on or Jeff, one, is that at some point it is a great bafflement almost to the community why there is this disconnect between the regulations and what we see in the regulations and what we see in the regulations and what we think Jeff or some of his staff said to us and what program reviewers do. And the best I can figure out -- the best I understand, program reviewers don't report directly to the staff in Washington; is that right? Do they report to some regional person?

MR. GETTE: Ultimately, I mean the case management teams are part of -- were part, and I think they still are, with the reorganization I'm never quite sure -- report to IPOS which obviously until just recently was headed by Jean Vanlandren here in Washington. So there is aspects of the program reviewers and their staff that are concerned with consistency across the board and in making sure that each of the reviewers in each of the regions are taking a consistent approach.

MS. SMITH: I guess the complaints that we heard all through NEGREG simply indicate that a lot of people around the table just don't believe that that's working well. And if we are going to do anything in terms of a conceptualization from everybody in Washington, you know, I don't know, maybe the kind of NEGREG universe and the Department more broadly, et cetera, and we don't deal with is there some kind of fundamental disconnect with program reviewers, or can this somehow be discussed or explained to us better, or could there be some other mechanism in there for seeing this consistency

that you talk about which our colleges just don't feel that they see.

The only ones at our colleges that are happier, the ones who have been lucky enough to go 15 years without a program review, but at some point, the Department needs to find something to say to us about that. I can't quite visualize what it is right now, because I don't know constraints that you're under about it. I doubt that you can just wake up some morning and decide that there's going to be a new approach.

My vague memory is, didn't these programs get regionalized way back in the Nixon Administration or something like that? Has much changed since then? And it may well be that if we're stuck with that as a given that whatever comes up, whatever we come up with in terms of regulations, even though it's not the ideal of what anybody in Washington would want, might have to build around that process that it's going to have to be that the regulations are going to have to be day-to-day administered, so to speak, by a group of people who none of you all have direct

control over.

MS. BROFF: Another piece of that that kind of piggybacks onto Pat's comment is that in addition the having program reviewers who you all do have some ability to control, there's also the Inspector General who comes in and makes their own assessment of what a regulation means and then starts a whole long process of review over which you all have some but somewhat less control. And, again, I think that argues for in many cases more specificity in the regulation so that schools know, at least I've got this safe harbor. If I do this, then the IG isn't going to come hammering at me and the program reviewers aren't going to come hammering at me. There needs to be enough specificity so that everybody knows what are the rules that we're playing by. And that will always, I think, be somewhat of a tension between enough specificity so that folks don't worry about someone looking over their shoulder and saying they did it wrong against the overly burdensome and overly detailed and overly complex and hard to understand set of regulations that you get

when you get to that level of specificity.

MR. GETTE: I dare say that there are some people in the Department who if you could tell them how to better control IG, they would love to hear your ideas on that as well. But I think -- I mean, we've talked about this a little bit earlier today, you know, coming back around to the question of how exact and prescriptive should regulations be and I think that is an important question to look at as we approach this kind of regulatory review process. And I suspect that, you know, there will not be uniformity of thought among the community and on that very topic. But, you know, perhaps there are alternatives, perhaps by using outcome-based or performance-based approaches, you can avoid the prescriptive rules but yet still give people a safe harbor by being able to accomplish the outcome that's expected of them. So perhaps there are ways to approach it like that.

Jeff?

MR. ANDRADE: I mean, I can understand really even the program reviewer's standpoint because

in the three days they are trying to say, okay, you're in compliance with this. And, you know, what do you look at? But I think this issue needs to kind of get addressed each step of the way. I mean, at what point do you give a certain amount of subjectivity to the participants and let reasonableness kind of take its way; and, you know, you still have to address when you go and review it what is somebody actually going to take a look at. And I think it's very easy kind of in the current situation we have where they can say, okay, well, you know, check -- you know, timelines are great for this kind of exercise. It's like, you know, did you make the refund in this amount of days; oh, you didn't, gotcha, you know, as Jane was saying. Hey, you know, you've passed over the line. And I don't think that's kind of where we should be on this. So I think that question has got to be integral as you go through this review and determine, okay, how is somebody actually on site going to check this and what's the standard.

MR. GETTE: Gail?

MS. SOMERVILLE: In listening to this it strikes me that what I'm hearing is that there are some who think we need to be very prescriptive or specific in the reg, not so much because we really need the assistance or the guidance in order to effectively administer something, but out of some fear of, you know, getting some financial penalty or some press or -- and I think it does go to some of the comments that were made earlier by Pat and others about just perhaps this is a mindset change that goes somewhat broader and does include audit staff and, it is a different approach.

We have tended to have the regulations look at what would happen in the worst case scenario and let's protect against that one borrower or that one school or that one lender who might do something silly. And I do think we could probably look to ways, if we're not going to necessarily be silent in the reg to actually build in that there is no requirement for this, or there is flexibility for a school or a lender, so there isn't a debate when the IG comes or the auditor comes. I think we can look

to try to find a middle ground and help to lay out some comfort without being prescriptive which isn't the tack we've typically taken. We've typically been prescriptive or silent.

MR. GETTE: Pat, then Larry.

MS. SMITH: One of the problems we had, again, during NEGREG on this issue, and it kind of relates to again to the whole modernization report too is that some of the big institutions, particularly big public institutions, but I think big private institutions as well, and I suspect the same thing is true about some of the big proprietary schools, although I don't have first-hand anecdotal information on that, but is that some of the big institutions will say, let the program reviewer come after us. But at any rate, so the regulation wasn't that specific and we did what we thought was best and if they come after us, we'll just go to an ALJ and we'll all have it out.

But as my fiend Nancy Coolidge says, the University of California has got about 17 lawyers sitting out there for the system office, they don't

have anything to do anyway. So let them defend us. But at any rate, so they can kind of take that attitude.

But post-secondary education has also got a whole lot of small private, non-profit, and proprietary institutions as well as some small public institutions in it. And one of the things that we can't quite figure out as we sit around and watch you all and try to figure out, what do you suppose they're thinking about, or collectively are they even all thinking in the same way over there at the Department. Off and on in the last year or two there seems to have been a tendency that you all think about what if it happened if we just managed to cut these institutions out of this delivery as much as possible and the Department do it itself?

Because if the Department just did it itself, at one point there was a whole lot of talk about a smart card, and from some fairly high levels in the Department too that we'll just let the student go to the bank and get his money. But at any rate, and at that point I assume you would have to go back

in and change the statute about all the over award provisions and all that because, you know, because you've got so many institutions giving out institutional aid out there. But it would be kind of useful to some of us even though maybe it's expecting too much. And one reason why I would like to have this internal discussion with the Department to try to figure out, is the goal partly to get institutions out of the process as much as possible so that the Federal Government can concentrate on delivering its PELL and its direct loan money and we'll kind of let the rest of it be a wash. Or do they really want to try to bring even smaller institutions which are always -- or even some of the collegiate sector's bigger institutions sometimes can have some of the worst problems like community colleges. Some of those have had some go arounds with your audit staff, they're memorable.

But, you know, do we have a common goal that we're all trying to pursue or are we kind of working at cross purposes with each other where the institutions want to keep a role and the Federal

Government is trying to get us out of it. Because if the Federal Government really does want some particular functions to take over itself and get the institutions out of it, well, those regulations can be real simple. Because they won't be requiring us to do anything. But there's a whole lot of ways you could go on this modernization thing and there's a whole lot of ideas floating around as there should be. If you want to be creative, you've got to have a lot of ideas floating around. But where you end up on that kind of a system is going to say a whole lot about what kind of regulations you need when the dust settles.

So there does kind of need to be a broad discussion within the Department as well as maybe with the outside schools and their representatives about what the agendas are.

MR. MELECKI: Yeah, I think a lot of us in FELL share your concerns about the Department cutting partners out and going to direct delivery. We have since about 1993.

MS. SMITH: We're a little slow.

1 MR. MELECKI: But we're glad to see you're
2 catching up.
3 MS. BROFF: Pat, I know you said you don't
4 have much experience with the compliance levels at
5 proprietary institutions, but even our large ones
6 they comply. As Nancy Coolidge called us during one
7 of the -- I think it was Team IV meetings, she said,
8 "you guys are just the compliance champs." speaking
9 of my sector because traditionally we've been the
10 ones that everybody has looked at most carefully. So
11 we are proudly the compliance champs.
12 MR. GETTE: I think just say, I mean,
13 obviously I can't speak for the entire Department,
14 but I do know that from my perspective what we talk
15 about within the Department is not how do we cut
16 people out or how do we exclude this group or that
17 group. The basis of the discussions we have are how
18 do we most effectively and as cost effective a manner
19 with, you know, appropriate protection of all the
20 participants in the program deliver student aid to
21 students. So I think that at least from my
22 perspective that's the objective that we all ought to

be looking at and we shouldn't -- I think it would be putting the cart before the horse to ask the question, okay, well, who are we going to let play in this game and then make up some rules. I think the idea is you set out your objectives for how, you know, how you want to get financial aid in the hands of students and then work from that.

MR. ZAGLANICZNY: I want to go back to what Gail was talking about and Nancy is leaving the room so I can talk about her.

[Laughter.]

MR. ZAGLANICZNY: I think that within the NASFA membership there is a body of our members who would want as much specificity as possible and, you know, tell us what to do so we can do the job and not get in trouble with you. But then there is a body of our members who are saying that we're not serving students, we're serving the regulatory process and that we do have to open up the regulatory process so that we have a little bit more flexibility that we have to find a middle ground between overregulation, micromanagement, and serving students. And

1 unfortunately, I think for any number of historical
2 reasons, and I don't think there was any malicious
3 intent on anybody's part, the system is ossified, and
4 that's, I think, one reason we're here today. And so
5 we've got to -- I don't know if we find the middle
6 ground, maybe we go err on the side of more
7 liberalism in terms of regulatory concerns rather
8 than a more conservative approach of tell me exactly
9 what I have to do.
10 If we're going to serve students best, I
11 think the system has become ossified to the point
12 where people are focusing far too much on what do I
13 have to do exactly and not concentrating on what best
14 meets the needs of my students.
15 MR. ANDRADE: I think Larry brings up a
16 real important point and I think -- I mean, NASFA
17 probably provides the best model that we have to kind
18 of see whether or not this gamble is worth it.
19 Thirteen years ago I think NASFA was the leading
20 proponent for professional judgment for student
21 financial aid officers and at the time both the
22 Department and especially the IG was all up in arms

that this was going to be, you know, a terrible thing and we couldn't allow it. And it was probably -- and it was applied to probably what is the most rigid set of rules that we had and that was need analysis and that was truly a one-size fits all kind of policy because, you know, you're supposed to have an outcome that applied equally. And I think we've seen over the years that that has not been abused.

In fact, I think if you look at how financial aid officers have used that discretion it's been fairly prudent. And even with the IG going in looking over people's shoulders and trying to second guess, I think there are very few examples where you found that was abuse. And I think you have a lot more students who have gotten aid packages that are more suited to their own financial situations now and over the past years than you had prior to that.

MS. RYAN: I don't think I need to say this, but I will. We would not -- we do not favor more regulation and the need to be proscriptive. We would be one of those entities that is at the other end in terms of opening them up deep and wide, and so

I just wanted to be on record for saying that.

MR. GETTE: Let me try and steer us back to the process question again. That being said, how do we approach climbing that mountain that Sheila has suggested? Laurie?

MS. QUARLES: Well, going back to -- I think it was Jeff's question when we started this session which was sort of your timelines. I know you have to do a report to Congress. But the report doesn't really specify that all the actions have to be completed by a certain date is my recollection. You simply have to have the report in by a certain date with some timeline for implementing. So I guess I would like to see it happen over the next few months. When I say "months", I'm not necessarily looking at a month or two months, but over several months that you look at this to do justice to the issue since these regs have sort of been building up over years, not over days. You're talking about years' worth that have to be reviewed.

I don't know what is a reasonable period of time whether nine months is reasonable or a year,

I mean, I don't know whether you can project beyond the end of this administration and reasonably set up a model that goes beyond that date regardless of who gets elected, you know, in November. But it seems to me that you need to start off a process that perhaps give us some idea of what kind of timelines you're looking at of what you think is reasonable and to get some reaction to it as well. I mean, you know, if I were to throw out 12 months as a suggestion to see what kind of response you get to that, but I don't see how you can do it in one or two months given the amount of material that has to be reviewed if you're going to do justice to the process and it also involves some people that perhaps work -- get some input from how other regulatory agencies have done this before in terms of doing the big picture as well as sort of the issue-by-issue review and I think you need to do both. And that's a huge undertaking.

MR. GETTE: To put the timeline in perspective a little bit, while we certainly have not sat down and come up with the timeline, I can say the one date that is looming for everyone is October 7th,

when we have to submit this report to Congress. That being said, the way I viewed it, and I think that the Department generally views this is that the report to Congress is the kickoff of the process, not the conclusion of the process. You know, I think we all are smart enough to know that there's no way we could get any kind of meaningful review done in the next three weeks. So we see that as kind of this is the launching point with the report perhaps starting to lay out this process that we might go through over the next several months letting Congress know what our intentions are in terms of a process and a timeline and then working from there.

Pat?

MS. SMITH: In that context you said group one -- Team I had recommended a work group or something like that. And my boss, Ed Elemendorf is assuming that you've got all the regs up on the web now; is that right? Does your web site have all the regs on it? Yeah, I thought that they did -- that it did. So that you could in addition, if you wanted to set up, I don't know, two or three work groups, kind

1 of similar to the way NEGREG was broken down or
2 something like that so you could let people work on
3 the parts they were most interested in. You could
4 have -- not only a formal work group, but you could
5 offer -- Ed's suggestion was that, you know, you
6 offer every aid administrator and every college
7 president and everybody else out there to comment
8 that if you've got certain work groups set up to go
9 through certain subjects to try to move toward a more
10 performance-based approach that anybody who wanted to
11 send in comments to that work group could pulling off
12 the web whatever section they were interested in and
13 making suggestions about it so that it could be a
14 work group, but it could also include -- because you
15 want to get some kind of a product by X date, but
16 that you could also open it up to everybody who
17 wanted to say, we think these regs are great, don't
18 you bother then one iota, or, you know, this is a
19 real pile of junk and surely you can do better than
20 that. And then have to decide what you're going to
21 do about the regulations -- I mean, about the
22 underlying legislation because it seems to me that if

I read this legislative mandate right, there's no restriction on saying you want overtime change the law. So if the reg exists because it has to be that way because of the statute, it might -- you know, result in some recommendations. But that you could have a three or four work groups and suggestions also coming in from the field to the work groups or to you.

I mean, you know, you could say we don't want the work groups editing out comments from the field. They could come in through the Department to get a full-scale review going if the Department itself wanted to move more toward a performance-based approach.

MR. GETTE: Maureen.

MS. BUDETTI: Maybe Pat could clarify, are you speaking of in the next three weeks to open this up or are you talking about longer-term?

No, I guess what I'm saying is, so you're addressing the longer-term review that that could be a mechanism and perhaps you could even put that as a suggestion in the report that's due in three weeks.

Because it sounds to me like you have maybe two weeks to get comments at the most if you can write a report in a week or so. Is that --

MR. GETTE: Well, as I said, from my perspective, the Congressional report is a stepping off point. We have been trying to focus on the very -- even of the five questions that were asked by Congress, there was only one that they -- the first one that they really focused on in terms of requiring a report by October 7th which is the duplicative or no longer necessary, so that's really where the focus of that report is going to be.

We thought then the second focus of that report, there would be two basic focuses -- and the second would be what issues have been surfaced and what process and perhaps timeline we might attempt to follow in reviewing those additional more difficult issues. So that is where our thinking is right now about what we would try and include in the report that's going to come out on October 7th, and then I think the longer term would be some sort of process that gives us more of an opportunity to air comments

and to work with the community to tackle the harder issues.

MS. BUDETTI: Would your initial report be willing to consider not only proceeding as you've already started, I mean, there is already some structure in place, but starting afresh? I mean, at this point you've already set up the review kind of is following the NEGREG structure, you have those three -- excuse me, four committees, you know, is there anything that drops, you know, through, or do you want to have it wider, you know, reorganize it differently or whatever. I think that would be something that you might --

MR. GETTE: There is certainly no magic to the four teams and their issues being the structure that we use. We used it initially here because it was kind of in people's mind. We had just gotten done with it, it seemed to be a way to quickly break the issues into some manageable chunks for the regional sessions that we're holding over the next week and a half, we're not splitting the issues up at all. I mean, those are going to be more open

sessions.

So there's nothing magic to those four groups of issues. You know, if they do seem to be a useful way to divide the regs up into more workable chunks, great. If there are other ways to break them up that works better, you know, let's hear about that as well.

Laurie?

MS. QUARLES: Could you comment on what you see, assuming that there was some consensus that was reached through some process, whatever that process was, would you then anticipate doing some sort of draft reg to substitute for a certain section or a larger section which would then have to go through the normal regulatory process in terms of proposed? And am I misunderstanding what the regulations say now that any changes in the regs require negotiation and so how do you sort of reconcile those two processes? I mean, is there a way to broaden it to sort of look at the big picture philosophically of what you want to do? Because I think you need to do that before you then tackle the

individual pieces. But then decide how to prioritize and then set up another negotiation.

I don't see how you can really get around that the way I read the statute. And so I just want to throw that out for comment.

MR. GETTE: I mean, you raise a good question that I'm not sure we have the answer to. I mean, from my perspective we haven't had a lot of detailed conversations, but it does seem like any new regulations in Title IV have to go through negotiated rulemaking. That being said, when you put things into a negotiated rulemaking context, I think you inevitably start to shade the way people approach it and I think it's maybe a little less constructive. If nothing else it puts a timeline on it, you know, that's very strict in getting things published by certain dates and yet that reality is there.

So is it that our first step is some sort of review process that then filters down in to specific recommendations that are taken through REGNEG, do we -- you know, do we have some chunks that we know are high enough priority that they go

right into REGNEG while we work on some other areas? You know, your question in my mind raises ten more which we need to answer. So it is something we need to think about and consider as we develop this process.

MS. RYAN: And, Jim, in terms of the timeline, I'll restate sort of the earlier statement about we need some early victories.

MR. GETTE: Where was I when you made that? Was I here?

[Laughter.]

MR. GETTE: You want some early victories.

MS. RYAN: No, getting back to the fact that we've been through it on several occasions and so I guess I was reading the provisions in the amendment not only to address historical concerns, but also to address at least on the lender the guarantee agency side the substantial and deep cuts that were enacted last summer that there would be a regulatory reform initiative in order alleviate the burden and then mitigate some of those risks. And so, you know, we would be looking for some broad

sweeping regulatory reform initiatives in some key areas that have some substantive effect on the program rather than, you know, a few things around the edge.

MR. GETTE: I think that -- I mean, I hear what you're saying and I think it's -- it depends in large part upon how we develop this process as to how deep we can go and how meaningful the change will be to people.

Clearly, ultimately having to do this in the negotiated rulemaking context, I think negotiated rulemaking by definition creates a situation where you have more incremental change because of the attempt to bring together an entire community and move forward all together. So there is that aspect to keep in mind no matter how meaningful and substantial we would like the change to be whether, you know, the process we have will ultimately allow it or not, I don't know. But, you know, maybe we'll come up with such great ideas that everybody will just jump on the bandwagon. But that's something to keep in mind as we try and push this process forward.

Other substantive issues or regulatory comments? I'm starting to sense a kind of tiredness for people who have been here all day and I'm not sure whether there are any more issues out there. So, this is kind of a last call for issues you would like to put on the agenda as we begin this process. And as we've said before, remember this won't be your last opportunity, but if you've got them, please let's get them out so we can start the process rolling.

MS. SMITH: Could I ask Sheila, or maybe you, Jim, whoever, from Group I and when you recommended some work -- one of our work groups to come up with some specific big chunks of regulation that needed revision in a broader sense who you would envision being on these work groups, what kind of people?

MR. GETTE: Yeah, it's probably not fair to lend that suggestion -- Larry, was that your specifically -- I think to all of team one. I certainly think it's a reasonable suggestion, but since Larry, I think it was his idea, I'll let him

talk about it a little bit and how he saw it working.

MR. ZAGLANICZNY: Wouldn't you know it's me, right, Pat?

No, I think there was a little bit of frustration on my part and certainly a wish that we carry forward with some progress. And I challenge the industry to come up, rather than to ask the Department what was on the their views, I challenge the industry to come up with their own recommendations and I suggested that one way to do it is to move the process along is to develop a work group or several work groups to go after all the issues that these groups would be broadly representative, but at the same time manageable. And that it not be just an industry-related group, but that others that had interest like students financial aid administrators and institutions participate too in some way.

I assume that process would lend itself to this group and then the others.

MS. SMITH: One example that we saw during

NEGREG is even though we technically had all these -- you know, all these officially appointed people on NEGREG when they got to some issues and you wanted to have a work group within NEGREG people just self selected who was really interested in doing it. I guess the most noteworthy that I remember is that huge work group on the return of Title IV aid which I guess Jim didn't get to experience, but which I'm sure Jeff remembers every moment of. And, you know, they seemed to me -- I didn't sit in on it, but it seemed to me they worked hard and stayed late and there was no actual mayhem in the group or something like that so that the work group may not have to be as rigidly constituted as in Larry's formulation as the NEGREG groups were in a sense.

MR. GETTE: Final comments, suggestions, questions?

MR. GREGORY: Sorry I came in a little bit late. Is this the last chance to just offers suggestions or issues for the day?

MR. GETTE: Yeah, I think we'll probably wrap up after these.

MR. GREGORY: Okay. Great. Just real quick, my name is John Gregory, I'm with NAFSA, Association of International Educators, and our issue is basically the regulatory interpretation. I guess it speaks to issue number two on the five point questions and it has to deal with 34 CFR 600.9 which is written agreements or consortium contractual agreements. And we have just two main issues regarding the interpretation. One is broadly -- this basically relates to study of ROD and our concerns with enhancing it and improving opportunities for study abroad. And one of them is just to expand the interpretation that the Department has, I guess, come up with thus far to expand the definition of written agreements beyond social and contractual agreements. And it's just our belief that broadening our flexibility will enable more study abroad programs and students to study abroad.

Related to that is Section A and B of that particular section. Related to that is third -- for lack of a better term, third-party providers of study abroad -- excuse me, of higher education through

study abroad and a change or an interpretation that would allow such providers to better participate in the process via written agreements.

I am kind of speaking on behalf of some of our members so I'm not as well versed as I would like to be in all the issues, but those are the -- the essential issues that we are kind of bringing to the table. It's just our view that an expansion or a more broad interpretation of those two things would be helpful for the study of broad community. So I'll open that up to any questions or comments.

MR. GETTE: Any with ideas about contractual and consortium agreements? Maureen?

MS. BUDETTI: Yes, what are the other types of agreement?

MR. GREGORY: Well, we have talked to NASFA, I don't know the NASFA representative here, and also the to Department a little bit about that there needs to be a structure. But things like memorandums of understanding or memorandums of agreement is just not a formal contractual or consortium agreement, that there are other types that

can suffice, at least that's our belief in looking at the particular regulation.

We're not out for taking away the structure that exists, but just providing more flexibility trying to establish some different options. And this relates also to the student financial aid handbook and its definition in Chapter 9 of consortium and contractual agreements.

MS. BUDETTI: And the third-party providers, how does that work? Are you talking about like international living or something? I mean, I know that's a high school program, but --

MR. GREGORY: Right. The third-party providers are more people that don't provide everything but classroom instruction. They provide everything but academic instruction because of the way that the regulation is now written there is eligible and ineligible institutions for financial aid and a lot of that -- it's based on whether you provide classroom instruction or not and a lot of third-party providers that might facilitate study abroad programs and the like, do almost virtually

everything but provide that instruction. And so they are the link really between sometimes the overseas school and the home institution here international United States.

MR. GETTE: Other final thoughts, suggestions?

[No response.]

MR. GETTE: Okay. Well, thank you all for attending. Reminder to those who have program institutional or student eligibility issues, tomorrow sessions in the morning and afternoon right here in this location.

And somebody tell Nancy she doesn't have to bring her own cookies again, that we'll have coffee again.

[Whereupon, at 3:27 p.m., the meeting was adjourned to be reconvened on Tuesday, October 14, 1999 at 8:30 a.m.]

CERTIFICATE OF REPORTER

I, Gerald T. Brooks, Sr., the reporter by whom the foregoing proceedings were reported, do hereby certify that these proceedings were reported by me verbatim and thereafter reduced to typewriting under my direction; that this transcript is a true and accurate record of such proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was held, nor financially or otherwise interested in the outcome of this action.

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Gerald T. Brooks, Sr.

Court Reporter

Notary for the District of Columbia

My Commission expires: September 30, 2002