

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
NEGOTIATED RULEMAKING  
STUDENT DEBT RELIEF COMMITTEE  
SESSION 2, DAY 2, MORNING  
NOVEMBER 7, 2023

On the 7th day of November 2023, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MR. ROBERTS: Welcome and good morning, everyone to day two of week two of the 2023 Department of Education Negotiated Rulemaking session. We have a packed agenda today, so would love to get right into it, beginning with a roll call. So, if the negotiators who joined us today want to get on camera, we'd love to announce you just for the record as well. So, representing civil rights organizations, we are joined by Wisdom Cole.

MR. COLE: Present.

MR. ROBERTS: And his alternate, India Heckstall.

MS. HECKSTALL: Present.

MR. ROBERTS: Representing legal assistance organizations that represent students or borrowers, we are joined by our primary negotiator, Kyra Taylor.

MS. TAYLOR: Good morning.

MR. ROBERTS: Good morning. And her alternate, Scott Waterman. We'll be waiting for Scott to join us. Representing state officials, including state higher education executive officers, state authorizing agencies and state regulators of institutions of higher education, we are joined by Lane Thomas, Thompson. Sorry.

MS. THOMPSON: No problem. Good morning.

MR. ROBERTS: Good morning. And their alternate, Amber Gallup, we believe will not be joining us today. Representing state attorneys general, we are joined by Yael Shavit.

MS. SHAVIT: Here.

MR. ROBERTS: Morning. And her alternate, Josh Devine.

MR. DEVINE: Here.

MR. ROBERTS: Morning. Representing public institutions of higher education, including two and four-year institutions, we are joined by Melissa Kunes.

MS. KUNES: Here.

MR. ROBERTS: And her alternate, J.D. LaRock. Okay, we might be waiting for J.D. to join us as well. Representing private, nonprofit institutions of higher education, Angelika Williams.

MS. WILLIAMS: Here.

MR. ROBERTS: Morning. And her alternate, Susan Teerink.

MS. TEERINK: Here.

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

MS. DWYER: Good morning.

MR. ROBERTS: Good morning. And her alternate, Belen Gonzalez.

MS. GONZALEZ: Good morning.

MR. ROBERTS: Good morning.

Representing historically Black colleges and universities, tribal colleges and universities and minority serving institutions, our primary negotiator Sandra Boham will not be joining us this morning, but we are joined by her alternate standing in this primary, Carol Peterson. I saw Carol.

MS. PETERSON: Good morning.

MR. ROBERTS: Good morning, Carol.

Representing Federal family education loan lenders servicers or guaranty agencies, we are joined by Scott Buchanan.

MR. BUCHANAN: Here.

MR. ROBERTS: Morning. And his alternate, Benjamin Lee.

MR. LEE: Here. Morning.

MR. ROBERTS: Morning. Representing student loan borrowers who attended programs of two years or less, we are joined by Ashley Pizzuti.

MS. PIZZUTI: Here.

MR. ROBERTS: And her alternate, David

Ramirez.

MR. RAMIREZ: Hello.

MR. ROBERTS: Hello. Representing student loan borrowers who attended four-year programs, we are joined by Sherrie Gammage.

MS. GAMMAGE: Here.

MR. ROBERTS: And her alternate, Sarah Christa Butts.

MS. BUTTS: Present.

MR. ROBERTS: Representing student loan borrowers who attended graduate programs, we are joined by Richard Haase.

MR. HAASE: Good morning.

MR. ROBERTS: Good morning. And his alternate, Dr. Jalil Bishop.

DR. BISHOP: Here.

MR. ROBERTS: Representing currently enrolled postsecondary education students, we are joined by Jada Sanford.

MS. SANFORD: Here.

MR. ROBERTS: And her alternate, Jordan Nellums. We might be waiting for Jordan to join us. Representing U.S. Military service members, veterans or groups representing them, we are joined by our primary negotiator, Vincent Andrews.

MR. ANDREWS: Here.

MR. ROBERTS: Representing consumer advocates, we are joined by Jessica Ranucci.

MS. RANUCCI: Good morning.

MR. ROBERTS: Good morning. And her alternate Ed Boltz.

MR. BOLTZ: Good morning, present.

MR. ROBERTS: Good morning.

Representing individuals with disabilities or groups representing them, we are joined by John Whitelaw.

MR. WHITELAW: Morning.

MR. ROBERTS: Morning. And his alternate, Lakisha Wilkerson.

MS. WILKERSON: Present.

MR. ROBERTS: Last but not least, we are joined by several members of the Department of Education's Office of General Counsel, Soren Legaard.

MR. LEGAARD: President.

MR. ROBERTS: We are also joined by Brian Siegel.

MR. SIEGEL: Present.

MR. ROBERTS: And Toby Merrill.

MS. MERRILL: Present.

MR. ROBERTS: And, of course, our Federal negotiator on behalf of the Department, we are

joined by Tammy Abernathy.

MS. ABERNATHY: Here.

MR. ROBERTS: Alright. Is there any old business or business to take care of at the top of the hour from the Department's perspective, or are we okay to jump right into the substantive matter of today's discussion?

MS. ABERNATHY: I believe we're ready to just jump right on in.

MR. ROBERTS: Excellent. Alright. With that, I will turn it over to the Department's screen sharers to walk us through the regulatory text that we're going to kick off today's discussion on.

MS. ABERNATHY: Wonderful. Welcome back, negotiators. Let's just jump right on into the discussion. You see the information on the screen so we will first start with paragraph F and then go to G. Having just a tad bit of technological difficulties this morning. Bear with me. The idea behind these two provisions is that we have two ways that either a program or an institution could lose access to Federal aid based upon the outcomes of its students, gainful employment and cohort default rates. Both these items provide critical protections to students from programs or institutions that fail to give borrowers the tools they need to

succeed. But while they protect future borrowers, they do not currently address what happens to the borrowers whose debts, earnings or default rates show they are struggling. This language would provide relief for the borrowers who attended programs whose results indicate the need to cut these programs or institutions, cut the programs or institutions off going forward. One thing to know at the outset, this is about relief for borrowers, not additional consequences for institutions or programs. Because these debts are being waived, there's no liability to establish or recoup against a school. Turning to the text itself, paragraph (f) (1) describes how this waiver provision applies to loans received for GE programs if certain conditions are met. First, the program must have failed the applicable debt to earnings or earnings premium measures in two of three consecutive years. This aligns with the GE rules framework for determining continued Title IV support. Second, for borrowers who attended these GE programs may be eligible in two types of situations. They may have graduated during the program year that resulted in the failing rate, meaning their own data was used to calculate the failing rate. Alternatively, the Department has proposed texts to include non-completers who dropped out of a program but who had they persisted, likely would have

been part of the cohort that had failing measures. The proposed text includes these borrowers by considering the degrees standard program length, and then includes borrowers that withdrew during that time. It is important to note that there are some data limitations associated with including non-completers. The Department may not have reliable program level information prior to award year 2015. As such, there may be a limitation in identifying students enrolled in programs who dropped out from award year 2014 and earlier. We wanted negotiators to be aware of this constraint. As a final note, a borrower would not be eligible if, after the new GE rule goes into effect, they submit an acknowledgment that their program has failed the Department's accountability standards based on their poor debt to earnings outcome. Next paragraph, (f) (2) addresses the method for calculating the failing debt to earnings and earning premium rates. Once the Department's new financial value transparency regulations go into effect, the Department can use the method and information specified in that rule for the applicable award years. The Department has also proposed performing calculations for years where it has reliable program level data to perform debt to earnings and earnings premium measures. Specifically, the Department has proposed performing calculations for

cohorts dating back to 2015. However, for these prior years, there are some data limitations and so the Department proposes using similar but different metric definitions. The precise text and method is forthcoming. It will be shared a week before the next session. And so, this piece is not the focus of today's discussion.

Turning now to paragraph (g). The cohort default rates. The reasoning here is similar. The Department also measures an institution's cohort default rate as an eligibility and accountability measure. For an institution lost or loses Title IV eligibility because their cohort default rate exceeded statutory or regulatory thresholds. Borrowers who are part of those cohorts would be eligible for relief. As we open it up for discussion, I'll note that since this is an area that is particularly complicated, there may be others from the Department who will weigh in and respond to your questions and feedback. In particular, the Department would be interested in negotiating feedback on the question of how should the Department treat borrowers and cohorts that have failing rates for one year but do not ultimately become ineligible for Title IV support? The current proposed text does not include these borrowers, but we are interested in hearing your feedback on this and other issues. I'll turn it back over to Brady now and

we can stop screen sharing.

MR. ROBERTS: Alright. Thank you, Tamy. Folks, as always, you're invited to use the raised hand feature to be recognized for three minutes. And of course, we always appreciate when folks drop questions, propose texts, etcetera into the chat as well. Kathleen, on behalf of proprietary institutions, go ahead.

MS. DWYER: Thank you. You know, the Department and several of the negotiators have made really great points that these regulations should be more accessible for borrowers and simpler to understand. So specific to the part that we just reviewed, how would a borrower actually avail themselves to this type of relief? Is the Department going to be performing these calculations and then proactively notifying borrowers of their eligibility? Yesterday's conversation, the Department mentioned some things where being administratively burdensome to calculate. So, it's unclear to me how this element of the regulations would be utilized. And the concern that I'm raising is not from the school's perspective, but how the regulation would actually be communicated and applied to an individual borrower? I additionally have a question about those who withdraw and later enroll in another program. How would their total debt load be treated in that regard?

MR. ROBERTS: Kathleen, I'm not seeing an immediate reaction from the Department, would you mind posting both of those questions in the chat? I apologize.

MS. DWYER: Yes.

MS. ABERNATHY: Brady? I'd like to just mention that we would be notifying borrowers, not having them to apply. And these calculations we already do. So, I think that's already part of some of the things. So hopefully that answers your question or questions.

MS. DWYER: Yeah. Just making sure that the borrower- it's very complex. So, if the borrower had to look at this and interpret it, I think that would be difficult to navigate.

MS. ABERNATHY: Yes. Again, we'll be notifying those borrowers. So hopefully that will mitigate that issue. Thanks so much for bringing that up.

MR. ROBERTS: Ashley Pizzuti.

MS. PIZZUTI: Yes. How does this new language and policy tie in with Borrower Defense? Is Borrower Defense to repayment being used as one of the calculations in determining gainful employment, especially for those going back prior to 2015? I know a lot of Borrower Defense applications are standing for those years. I'm just wondering if Borrower Defense is

being used as part of the calculation.

MS. ABERNATHY: No, it's not the same thing. And that's now how Borrower Defense works. So, these would be two separate things. Separate and apart from each other.

MR. ROBERTS: Kyra.

MS. THOMPSON: So, I'd just like to share our enthusiasm for this proposal. Legal aids for gosh, going on a decade, have been asking that there be a relief component to the gainful employment school accountability regulations. And so, we're really excited to see this proposal here. With regards to the question of how the Department should treat borrowers who were in a cohort where there was only one year, instead of meeting the required two years within a three-year consecutive period. We urge the Department to provide relief to those borrowers as well. Regardless of what happened to the school, those borrowers were still within a cohort of folks where it was obvious that they did not receive an education that prepared them to repay the debt that they took on. So, we strongly encourage the Department to expand the eligibility criteria here.

MS. ABERNATHY: Kyra, if you would be so kind as to put that in the chat. And also take note of our proposed regulatory text. If you have any amendments

to that, go ahead and give us that in red line. That'd be very helpful. Thanks so much.

MR. ROBERTS: Thank you, thank you.  
Jessica Ranucci, please.

MS. RANUCCI: Thanks. I want to echo what Kyra said. I think that this proposal provides very important, much needed relief to many people. I want to speak specifically about what I understand to be one of the Department's motivations behind this provision is that certain borrowers would not be able to continue their studies using Title IV aid because either due to the cohort default rate or the financial calculations, the borrowers would be unable to continue to receive aid. I think this principle is really important and want to uplift to the Department that there may be other situations in which borrowers' program or institution loses access to Title IV aid, and I would strongly encourage the Department to include that in their regulations. Perhaps it's sort of one higher level of generality than this, including other circumstances. I think one particular circumstance I'm familiar with is loss of accreditation. So, if an institution or theoretically I think a program loses institutional or programmatic accreditation that's required for receipt of Title IV, I think that would also be an appropriate use

of the Department's waiver authority for a low value program. But would the Department take proposed language about that?

MR. ROBERTS: You're off mute now, go ahead, Tamy.

MS. ABERNATHY: Sorry, guys. I'm having a little bit of difficulty here. We would definitely look at that language, Jessica. So, we strongly encourage you to not only put that in the chat, but to also propose that amendatory text and I believe had the date wrong. It's November 14th, not the 17th. For those of you that don't know me, I sometimes can't do math and I sometimes can't tell what day it is on the calendar. So, it is the 14th. So, a week from this Tuesday, if you'll provide that information to us, that'd be super helpful.

MR. ROBERTS: Yeah, go ahead, Kyra.

MS. TAYLOR: I would just like to jump back in and say, we strongly, strongly support Jessica's proposal and the expansion of folks who attended schools that were poorly performing schools. As she noted, there are other indications that these schools were poorly performing, and those borrowers are equally entitled to relief here. And so, again, I strongly support Jessica's proposal.

MR. ROBERTS: Thank you. Kyra. Yael, please.

MS. SHAVIT: I do as well. And I go so far as to say that, generally speaking, I think the loss of accreditation is a great example. But I think generally a loss of Title IV eligibility should, in and of itself, be sufficient to entitle borrowers to the waiver that the Department is envisioning. So, we support Jessica's proposal as well. And in fact, broadly.

MR. ROBERTS: Thank you. Melissa Kunes, go ahead.

MS. KUNES: Thank you. And I also want to echo that I do support and praise the Department for including this language in the provision. And I do have a question for my own personal clarification and maybe for the clarification of this group when the reference to the word loan is used, is that implied that that includes both the principal borrowed and all accrued interest?

MS. ABERNATHY: Yes, it does.

MS. KUNES: Thank you.

MS. ABERNATHY: Yes, Ma'am.

MR. ROBERTS: Thank you all for your comments. Yeah, Lane.

MS. TAYLOR: I have a question more than a comment. I'm wondering, looking at romanette 2 for

award years 2015 to 2022, and any subsequent award year where the Secretary does not calculate GE rates. I'm curious if this would be applied to folks who had loans previous to 2015 in any way, or if we're just kind of looking at these most recent seven years?

MS. ABERNATHY: Lane, would you go ahead and put that in the chat for us? And we'll try to circle back as soon as we're able to respond to that one.

MS. TAYLOR: Thank you.

MS. ABERNATHY: Yes, ma'am.

MR. ROBERTS: Kyra.

MS. TAYLOR: One question I do have about this language is the provision in (f) (3) that the borrower needs to have not submitted an acknowledgment form under 668.605. We would ask that the Department strike this requirement to be eligible for waiver here. In part because it creates a lot of administrative burden on the Department to verify whether or not these borrowers submitted this form or did not submit this form. And also, we're aware of schools where the school may have fabricated the form for the borrower, and so they may not, in actuality have submitted the form in the first place. So again, we would ask that the Department consider striking this language.

MR. ROBERTS: Kyra, would you mind

just posting that in the form of a comment in the chat as well? Just so we have that captured. Thank you. Jessica.

MS. RANUCCI: I second what Kyra said. I have a lot of concerns about the attestation form being used as a barrier to relief, both from a policy perspective and administrability perspective. The question I was going to ask, though, was different. I noticed that sections (f) and (g) use the phrase may waive repayment, whereas (b) through (e) use, I think, language along the lines of the borrowers outstanding balance. Is that supposed to be a different thing, and if so, could you explain what the difference is?

MS. ABERNATHY: Not at this time.

MR. ROBERTS: Yeah, I was gonna say, if you want to post that as a question.

MR. LEGAARD: Yeah, we'll take that one back. Thanks, Jessica.

MR. ROBERTS: Any new comments or suggestions for the Department's on sections (f) or (g)? Not seeing any hands raised immediately. Oh, spoke too soon. Jalil, please go ahead.

DR. BISHOP: Just a clarifying question around the may waive repayment that's in the regulatory text. Is this- and I'm just curious why the may? I know we talked about this a little bit more in

that a part of this was trying to just clarify. But is there also space for this to be the Secretary, you know, is required to waive if these following conditions are met rather than may waive? That's just a question to the Department.

MR. ROBERTS: Yeah, and not seeing an initial response, Jalil. If you wouldn't mind again, posting that as a question.

MS. ABERNATHY: Brady, would you ask him to repeat that question? I want to make sure I.

DR. BISHOP: Yeah. So, for example I'm looking at under the gainful employment part (f), it says the Secretary may waive repayment if the following conditions are met. And I'm wondering if there is a benefit and a value add to having that be the Secretary is required to waive repayment if the following conditions are met. I think the may part for me seems to suggest some of what I already know. Borrowers go through where you go through these processes, and you still don't know on the back end if you're actually going to get the discharge that all the conditions suggest you're legally entitled to.

MS. ABERNATHY: So typically, we do not tie our hands and regulate ourselves by saying the Secretary will or the Secretary must we use the

terminology the Secretary may. And that is very inclusive. The Secretary may exercise his authority in this condition. So, it doesn't mean, you know, we just don't typically regulate ourselves. So, we use the words may.

DR. BISHOP: And is there- and what's the consequence of regulating yourself? So, if I say will instead of may, what's the consequence of that?

MS. ABERNATHY: I'm not sure why we would want to tie the Secretary's hands in any capacity.

MR. LEGAARD: Yeah. And Jalil, just to speak to that a little bit, too, and building off of what Tamy said. So, we are- this is discretionary authority, right? This is under our compromise and waiver authority. And we feel like in a legal position, right, because it is discretionary authority that we can't then make it compulsory. So, we're regulating- so that's why you're seeing the may's in this space. But a great question.

DR. BISHOP: I mean, that clarifies. Yeah, I mean, my goal is not to try to limit what happens here, but it is trying to understand how it can be more guaranteed to borrowers.

MR. LEGAARD: And that's just our general practice here. Yeah.

MR. ROBERTS: Any additional

questions, comments suggestions for Department's on gainful employment or cohort default rate? Tamy, seeing no hands raised at this time, I'll happily turn it back over to you as to where you'd like to steer the conversation next.

MS. ABERNATHY: What I would really like to do, Brady, is take a few minute break to resolve some of the behind-the-scenes technological issues that I'm having. If that's okay?

MR. ROBERTS: That's fine by me. Should we say we'll reconvene- it's a little after 10:30 now. Do you want to say at 10:45? So about 12,13 minutes?

MS. ABERNATHY: And how about 10:50?

MR. ROBERTS: 10:50. I'm a hard bargain. Alright.

MS. ABERNATHY: Thanks much.

MR. ROBERTS: Alright. You can go offline, and we'll resume at 10:50. Welcome back everyone. Hope you enjoyed that brief break. Think before we move to our next topic which would be a discussion on hardship. I do just want to ask one more time if there's any additional comments, feedback, suggestions at all for the Department on low financial value programs. Yael, please.

MS. SHAVIT: Thanks. Did want to just

chime in about removing and I'm sure they'll be proposed regulatory text to this effect but removing the requirement that a borrower submit the acknowledgment. I'll say, you know, from the broader consumer protection perspective that we see across a lot of areas, but this one included, we have very serious concerns about the ability of institutions to manipulate these types of forms. And often borrowers won't understand what they're signing at all. This is a, you know, an issue raised during the gainful neg reg as well, so it won't be new to anyone. But think particularly in the context of what the Department is trying to do in the context of this neg reg separate and apart from the purpose of the gainful employment rule, this doesn't serve a meaningful purpose here at all, and in fact would only result in borrowers who should be getting relief, being deprived of relief because of the misconduct of their of their schools.

MR. ROBERTS: Thank you, Yael. We have Ashley next, but I just want to note that we have Ed coming in on behalf of consumer advocates and Jalil coming in on behalf of graduate student loan borrowers. So, Ashley, go ahead.

MS. PIZZUTI: I'm going to agree with less paperwork is better. From my experience and I know Borrower Defense does not apply to this but just two

things from personal history. One, having the schools self-regulate and report gainful employment, I know from my personal experience and thousands of people that I represent that schools, you know, if they're defrauding their students and they're not providing high level education, they're going to be reporting any employment. I know personally, my school, Brooks Institute, was shut down in 2016 after the last gainful employment rules came out. Prior to that, were reporting any job. So, if a student leaves their program and they call and say, hey, are you employed and they're working at Starbucks making minimum wage, they're reporting them as employed. They're not gainfully employed within the program that they have now taken on massive debt for. I also know the Department's failure in Borrower Defense in filling out applications and the backlog that it has created for many, many, many years. Getting people to acknowledge that their paperwork and getting them educated and up to speed on what they are filling out is problematic. I know that the backlog that it's going to create for the Department of Education is going to create years and years before any of these people see any kind of relief. We know- I filled out Borrower Defense in 2015. And it was only the Sweet versus Cardona lawsuit that is taking care of my loans, and even acknowledged that I had filled

out this paperwork. They're still working on years and years and years of backlog of paperwork. So, to make that a requirement for people when they shouldn't have the burden of this debt on their plate is, you know, absolutely ridiculous. That should not be a part of this.

MR. ROBERTS: Thank you. Jalil.

DR. BISHOP: Thank you. I think what I want to add to this conversation is for us to really consider the borrowers who are not covered by gainful employment are not covered by some of the conversation we have had so far, and think a part of this conversation really has to consider how do we include borrowers under this general principle that seems to be underlying the Department's, you know, guiding question for today is really what do you do about a borrower who attended higher education and did not get the benefit of taking on that student debt, did not get the benefit of paying for not just the cost of college, but also the interest and the consequences of having to carry increasingly growing student balances over time? And right now, the GE rule captures and provides relief in a much-needed way. But there are still many borrowers who attended nonprofit institutions that are not covered under GE who have had experiences taking student debt, where they haven't received that benefit. And so far in this conversation

from the 25 years to the conversation today, we haven't really carved out a place for the borrower who has debt and no degree. The borrower who has tried to continue, particularly Black and brown borrowers, to take on more debt, to have social mobility and they have not received that benefit. So I'm trying to understand where in this conversation we're going to really zero in to talk about borrowers who are experiencing hardships and not continue to have the Department push a level of burden from a borrowers having to prove that they were poor, having to prove that they read every form that was dropped in front of them by institution. I think so much of this regulatory text is not capturing the underlying principle that we have many borrowers who took on debt that has crippled their life opportunities and life pathways, and this regulatory text is creating more burden and asking us to trust the Department that as Ashley just articulated, she had to go through a process of being a part of a lawsuit to get her entitled relief. And I think, again, we need to keep bringing this conversation back to how do we make it automatic, how do we make it easier, and how do we expand that principle of we have borrowers who took on student debt and have not received relief? And how do we have that flow throughout the regulatory text and the categories of relief here and not

just isolate that? So again, let's not ignore the history of the burden and the hiccups and the mistakes and the policy failures that have happened so far, let's create something going forward that really highlights and provides broad relief to, again, borrowers who have debt and have not received the benefit from their education. And we can, I think in a lot of evidence and a lot of ways have already documented that. And I just want to push for that to be a little bit more in this conversation, for the Department to strongly consider that in revisions of this regulatory text.

MR. ROBERTS: I know the Department wants to respond to a few points raised, but I do want to get to Ed first.

MR. BOLTZ: You can go- do you want to go ahead? This is important enough that you should respond to him first I'd say.

MR. MILLER: So just to make sure because I think there's a fair amount of confusion here. Gainful employment is not an application based process. Essentially, what occurs is we have a list of students where we use our own data. The school indicates what program they're in as part of an ongoing piece. We calculate the earnings information and the debt information. The only sort of added things the school

gives us in that regard would be sort of private loan or institutional loan amount we capture in our systems, but we use our own data to make these determinations. And so, there's not an application type thing we're discussing here. We're talking about using administrative ED data to identify these individuals based upon the records we have. That's partially why you see a discussion about, you know, having limitations on the data here. So, issues being raised about job placement rates and all of that are completely irrelevant to what we're discussing here. This is really about what we have in our own records to identify people. And as you saw some of the earlier questions, once we identify those folks, we would be able to notify them, give them the opt out, etcetera. So, I think there's just a little bit of a knowledge gap that we're talking about here. But this is really about data we have in our possession, making the calculations using administrative data, identifying who's eligible, things of that nature. And then just as a reminder, the next topic, which we will have extensive amounts of time for, is all about other areas related to hardship.

MR. ROBERTS: Thank you, Ben. And I'll turn it over to you now.

MR. BOLTZ: Thank you. I know that we'll be talking later, you know, when we get to the

hardship questions, we'll be comparing and contrasting that with what's going on in bankruptcy cases. But wanted to add an additional comparison when it comes to the idea that there should be an acknowledgment that there wasn't a waiver or an attestation for the GE. Because in bankruptcy cases, waivers discharge are almost universally unenforceable because otherwise it's the least reputable lenders and institutions that would take advantage of consumers by forcing those into boilerplate language. The only times they're enforceable is when there's been a specific determination by a bankruptcy court that is in writing, that is signed separately by the debtor that is came after they sought relief and that it's reasonable. I don't think that the Department of Education should place a much lower standard for GE than there is in bankruptcy cases, because, again, it would be the made obligatory by the least reputable and most abusive lenders and institutions, and buried in paperwork where the borrower never realized the rights that they were giving up, because at the time they were full of hope and promise without recognizing the lies that they were subject to. Thank you. I'll put that in the chat also for you.

MR. ROBERTS: Thank you, I appreciate that. Anything else on gainful employment and cohort

default rates. If not, you can turn it right over to the discussion on the seven questions that were distributed on hardship. But I just want to give the negotiators one final opportunity to offer additional feedback for the Department. Thank you all. Tamy, do you want to move right ahead to that discussion?

MS. ABERNATHY: Yes, sir. Thank you, Brady. As we noted.

MR. ROBERTS: Oh, sorry to interrupt you.

MS. ABERNATHY: Alright. As we noted earlier, the fifth issue, hardship, is an area where more information is needed. Despite the important conversation during the first session and this morning's session. We provided the issue paper that summarizes the discussion from the first session and highlights some additional questions for discussion and consideration, as Brady mentioned. While I do not plan to read through the summary of the first session, you can see we have a lot of ideas and suggestions from negotiators for discrete categories of borrowers in this paper. We know we did not capture everything said during that discussion, but we want to use the bulk of our time on the new discussion questions. I would like to highlight some general themes before we get into the actual discussion questions.

First, for all these items, we're interested in hearing about concrete data, research studies, etcetera. That would be useful. Second, the Biden-Harris Administration has done work around bankruptcy standards, and we thought using that as a starting point for some consideration around what elements of that might be useful here and that would also be good. It's important to think about hardship in relation to how it is not addressed by other programs, especially Income Driven Repayment. Fourth, and finally, we are very cognizant of what is feasible for implementation. How would that look here, both in terms of the burden on the borrower as well as Department resources? So, thinking about simplicity and what data are available or easily accessible is extremely important. With that, Brady will turn it over to you guys for discussion.

MR. ROBERTS: Alright. Thank you.

Glancing at the questions, would it make the most sense to take them one at a time, given that this is a fairly wide discussion, or is there a preference on how you'd like to solicit feedback?

MS. ABERNATHY: I think it would be appropriate to do one at a time.

MR. ROBERTS: Okay.

MS. ABERNATHY: Thanks.

MR. ROBERTS: With that, folks, I'm looking at question one on the issue paper that was distributed. Any feedback for the Department on question one? Yeah, Kyra.

MS. ABERNATHY: Can I just interrupt for a second? Brady, we think it would be best if you did read the question beforehand so that we could get it on official record.

MR. ROBERTS: Oh, sure, I can do so.

MS. ABERNATHY: Thank you. Sorry, Kyra.

MR. ROBERTS: That's alright. So, question one applying a standard used in providing student loan discharge to the bankruptcy of the Department's regulations would require the Department to establish a standard for review. At present, bankruptcy discharges are governed by an undue hardship standard, which courts have interpreted using the Brunner test or another similar test called Totality of the Circumstances. This relies upon three factors. One, being unable to maintain a minimum standard of living, two the financial circumstances are unlikely to change, and three there's been a good faith effort to repay their loans. While a hardship process under the Higher Education Act need not be subject to the same test, these standards may

be informative of the considerations other policymakers have used to identify hardship. Given that which elements, if any, of these undue hardship considerations of this undue hardship consideration would be appropriate to adopt here. How can they be assessed in a manner consistent with the Department's limited capacity for individualized review? Kyra, did you want to- I saw that you lowered your hand. Did you want to?

MS. TAYLOR: I'm going to let Ed kick us off.

MR. ROBERTS: Okay. Ed, go ahead.

MR. BOLTZ: Sure. So, I guess as a bankruptcy attorney, I would like to kick off by you mentioned the Brunner task, you know, and there's a lively debate about whether it's Brunner or Brunner, but nobody really knows. But, you know, I think some background about where that test came from is, I think, very helpful to show how that it's not something that the Department of Education could be bound by outside of bankruptcy courts and the bankruptcy code. When Miss Brunner finished her master's degree in the mid-1980s, student loans were dischargeable if they'd been in repayment for a period of five years, or if you filed a chapter 13, they were automatically dischargeable. Otherwise, if you wanted your student loans dischargeable

sooner, you had to meet this undue hardship test, which as you described was the past, present and future analysis as I describe it to my clients more simply. At that time, Miss Brunner had \$9,000 of student loan debt, which with inflation is probably greater than it sounds today but was still not a substantial amount and she'd been in repayment for all of six months because she had not yet found a job. So, the standard that was put in place and that grew from there was for a borrower who had barely tried to repay her student loans and could have found other means of discharging those in bankruptcy much more easily. So, you know, from there, over the past 35 to 40 years, we've seen the courts increasingly tighten those down. Until only last year in November, the Department of Education, working with some limitations put on it by the Department of Justice, came out with the student loan adversary guidance that would liberalize that discharge through stipulations without changing the law, which Congress has not been able to adequately address itself. I would at this point, I would hope that the Department of Education could, in order to help us better analyze how successful with nearly one year on that guidance was issued on November 17th. So, we're almost to the one-year anniversary. If the Department could provide us some data, and I'll post that in the

chat for how successful or unsuccessful that been over the last year for getting bankruptcy discharges, which has been a higher standard, a more burdensome process, because debtors, when they file bankruptcy, are subjected to a much greater scrutiny regarding all of their finances than the Department of ED has expressed any interest in for these other alternatives. But think it does help- would help us evaluate how successful that has been, both for this process and also for evaluating whether it's been a successful process that has been instituted. I'll post those questions in the chat rather than reading those.

MR. ROBERTS: The questions as well as the data requests. Thank you. Alright, Kyra did you still want to, yeah go ahead.

MS. TAYLOR: Yeah. That's great, Thank you. So, like Ed mentioned, the bankruptcy standard has been exceedingly difficult for many borrowers to meet. And it's not- the undue hardship standard is not the appropriate standard to apply in this context. However, there are some principles that are raised in the bankruptcy guidelines that might be helpful. One of which is that the bankruptcy guidelines set the current ability to pay at whether the borrower can afford to pay under the standard repayment plan. The Department could use

that to provide certain thresholds to determine who should be eligible for relief. In addition, the bankruptcy guidelines look at past inability to pay and uses that to presume that the borrower will not be able to pay into the future. The Department could use that to automate relief for borrowers who have been in \$0 IDR plans, who have used extensive periods of deferments or forbearance, or have had low IDR payments for a period, you know, potentially as short as three years or more, to say that these borrowers also will likely never pay down their debts in the future. In addition, the bankruptcy guidance also has a presumption that borrowers 65 and older will not have a higher income in the future and will not be able to repay. The Department could apply a similar presumption here that borrowers 65 and older under a certain income threshold should also be automatically entitled to relief as well. And lastly, the presumption that if a borrower has a disability or chronic injury impacting their income potential could also be a useful presumption here. Notably, the bankruptcy guidance does not require that the borrower submit a statement from their doctor. It's enough that they submit documentation establishing that they have a disability or chronic injury impacting their income potential, and we would recommend that the Department

potentially broaden this to include caregivers. We heard yesterday from a caregiver who expressed that the burden of caregiving was also limiting their income potential as well. So again, we do not recommend that the Department adopt the bankruptcy guidelines explicitly, but some of these principles could be useful in trying to provide streamlined or automated relief to populations that we've been discussing throughout both of our sessions.

MR. ROBERTS: Thank you, Kyra. Lane, please.

MS. THOMPSON: Thanks, Brady. I'm looking at three. There's been a good faith effort to repay their loans. And I'm thinking back to our first session when we were talking about collectability. And similar to what Kyra said about folks who have been in \$0 or low minimum monthly payment plans for an extended period of time, to me, that shows a pretty clear effort to repay loans and also indicates that they're not likely to be collectible. So just kind of wanted to tie that in there, that there are some parts of hardship where it has to do- where it's easily determined by the fact that somebody has never made the standard payment. Thanks.

MR. ROBERTS: Thank you. We'll turn to John next.

MR. WHITELOW: I think Ed was in front

of me.

MR. ROBERTS: Oh, was he? I apologize.  
Ed, go ahead.

MR. BOLTZ: I wanted to also following [inaudible]. There are other good things in the student loan guidance that was issued, including the statements and admissions by the Department of Education and Justice that good faith efforts to repay can be looked at through people's failed efforts to get into various programs. Because oftentimes they were, you know, there have been findings by the CFPB and the Department of Education itself that oftentimes they were discouraged both directly by servicers from participating in any of the Income Driven Repayment programs or just the general tenor they never even got as far as seeking that assistance, because it was such a dispiriting process. So, I think the guidance can show how the failures to enroll in these programs are not always the fault of the borrowers as well. Thank you.

MR. ROBERTS: Thank you. Now John.

MR. WHITE LAW: Now I'll go. I want to echo the comments of Kyra that we do not people- for folks with disabilities, we do not think that the Department should be limited in any way by the overly narrow standard of the bankruptcy court, although there

are absolutely some parts of it that are welcome. I would also want to note, and I think this is implicit in Kyra and some other folks comments, but I want to make it very explicit and flush it out a little bit and this is especially true for students with disabilities. To the extent that the process for claiming hardship is cumbersome and difficult, that in some ways is as important or more important than what the substantive requirements are. As an attorney who has represented folks with disabilities dealing with Social Security waivers which again not substantively the same, but a parallel system where you have to show hardship in order to have the waiver granted, where the Social Security Administration, which it has for decades, requires extensive documentation, people fail the test not because they're not eligible, but because they can't comply with it. So the test- so any of and I know this is the, you know, the sort of the broken record of many of us automation, automation, automation to the extent that you can use readily identifiable proxies for hardship, we strongly encourage the Department to do that. And then secondly, even where the Department is going to require people to assert certain types of hardship, we strongly implore the Department to allow self-certification obviously under appropriate penalty, but not require

burdensome provision of evidence, which we all know that folks will not do. And think one little example, [inaudible] to them, dear John, we see that you have a defaulted loan, we see that you're eligible to get total and permanent disability discharge, you need to apply hundreds of thousands of people could not get through that system. And so, it is incredibly important in this that to the extent that it can be automated, great. And to the extent that you require people to step forward and say something just as important as what the rules are, is minimizing the extent of the documentation and requirements you put on folks to claim hardship. Thank you.

MR. ROBERTS: Thank you. Wisdom, please.

MR. COLE: Yeah, just to echo some of the sentiments, but also add to this conversation, I think the Department should also explore alternative standards or tests that may be more suitable for assessing hardship in the context of student loans. It could seek input from further experts like us. I think that understanding the limited capacity for individualized review the Department has and may need to establish a clear and objective criteria for assessing these elements. This could involve setting income

thresholds, defining what constitutes as minimal standard of living, and specifying what qualifies as good faith efforts to repay. These criteria would help ensure consistency and fairness in the evaluation process.

MR. ROBERTS: Thank you. And as always, if folks have feedback like that, if you just want to put it in the chat as well, just so its codified. Yael, please.

MS. SHAVIT: Thanks. I just wanted to hearken back to some of the comments made yesterday during the public comment period that I think illustrate why the standard and the Brunner test is far too high a standard and is frankly inapplicable to the nature of the student debt crisis as we're experiencing it now. We heard from a number of people who talked about how their student debt burden was keeping them from making a number of decisions and taking a number of actions in their lives that they would otherwise have wanted to do, like starting a family, being able to branch out to a different type of profession and the like and think this is a reality that we hear in our office consistently, that people who are trying to pay their student loans are left stagnant because of the extent of the burden that they're facing and think that this test doesn't capture that. And applying it in this context, I am concerned,

not only would prevent relief from getting to a lot of people who need to do it, but would also sort of formalize a system wherein people are expected to remain stagnant in their lives and maintain the standards that are not at all the reason why they pursued their education and, frankly, run contrary to the goals of the student loan system. Thank you.

MR. ROBERTS: Thank you. Kyra.

MS. TAYLOR: I second everything that Yael just said. I would also just like to note that we do not think that the three standards that have to be met to satisfy the Brunner test should be applied here. The Department should not require that borrowers demonstrate good faith to be eligible for relief here. However, like I said before, the principles underlying the bankruptcy guidelines here could be used to automate or at least streamline relief for deserving borrowers and could be broadened to capture as many people as possible that satisfy how the Department defines hardship.

MR. ROBERTS: Thank you. We'll go next to Jalil.

DR. BISHOP: Thank you. I know the Department, you know, has asked for evidence so, you know, part of what I've spent time doing is trying to read through some of the academic and law journals on

just bankruptcy and what happens with student loans and a piece of this what I find interesting is that we're having a conversation about how to provide relief and what's already established, you know, hardship standard. And the Department is questioning should we use something from bankruptcy? And I think what's important for us to understand how strict and how high of a burden it is for a borrower to get relief through bankruptcy is that, you know, looking at an article out of the Duke Law Journal that we see that there's a success rate of 0.1% when using some of the tests that are in question here, that we know that there are a quarter of a million student loan borrowers who file for bankruptcy each year. In this particular law journal, they looked at 500 bankruptcy proceedings and saw that it was not only about how high of a burden it is to overcome these tests, but also many borrowers have already been sent the message that is impossible to get your loans discharged through bankruptcy. So think taking anything from this process and communicating that back out to borrowers has not only the legal burden they have to overcome, but also just the messaging that this is not a real relief policy, that if you're going to make them have to prove that they're poor, if you're going to make you don't have to go through multiple tests to prove their hardship, or if

you're even messaging the program like that is likely going to end up like bankruptcy, where some borrowers don't even include their student loans in some of these proceedings because they already believe that there's no way that they're going to get a discharge. So, I am very much against the idea of these tests being a part of the messaging or even the regulatory text, because I think it has a deeper danger of sending a message to borrowers that this is, once again another relief program that simply isn't going to work. And they have a lot of evidence because they can look at what happened during bankruptcy proceedings so far, where again, the success rate has been 0.1%. And I'll be happy to share that law journal with the Department and the facilitators.

MR. ROBERTS: Thank you. Sherri, you're next.

MS. GAMMAGE: Yes. I want to go back to Kyra's comment to expand this conversation on bankruptcy. First of all, I'm for automation and simplification, and I say so thinking about disabled borrowers and older borrowers who may not be computer literate. And so, a lot of these forms or the filings depend on one being able to be accessed, not only computers and technology, but able to wade through and understand the language in those. Also going back to

senior borrowers, using the data, the Department is interested in data and so using the Department data that was provided us, you know, 1.48 million people over the age of 62 entered repayment more than 65- more than 15 years ago. But of those, 1.6 million have non Parent PLUS Loans, 60% don't have enough savings to cover three months of expenses, 4 to 6% face a drop in retirement income because of the Social Security offset, 9% are forgoing medical care to pay for students loans. And even pre-pandemic, people over 62 were on 65 rather were twice as likely to be behind on student loan payments and in default. And of that number, 114,000 have Social Security garnishments. This primarily affects Black, brown and red households, women of all races, and ethnic groups who are also caregivers who have interrupted their careers earlier to care for disabled children, aging parents, and sick relatives. And so I would- we're going to look at and it's an undue burden going back to what Jalil said, to have to people to prove how poor you are, when actually you are actually poor and not have access to the resources or waivers or believe you don't have access to waiver programs because of the what's been happened to other folks, what they've heard in the community and because of the some of the language that are in the regulations.

MR. ROBERTS: Thank you, Sherri. I see Lane next.

MS. THOMPSON: I'm thinking of another way that bankruptcy could be used to look at hardship. So, when somebody has Federal student loans and they file a bankruptcy, generally those loans get put into a bankruptcy forbearance. I think it makes sense to discharge all loans that have a bankruptcy forbearance showing on them, because clearly those are somebody who had financial hardship. So just kind of throwing that out there is maybe another a proxy for how we can use the standard without actually making people prove it. Another thing I just wanted to mention, kind of similarly to that, is that there is a lot of data- some of the Department already has some that's available on the internet regarding people's wages over time. By which I mean it's pretty clear that most standard incomes have not increased significantly over, let's say, the last ten years. So just kind of throwing that out that, you know, if you want to look at folks tax returns over ten years and say, okay, well, it looks like their income never increased, I don't think that they are going to see that in the future. Just one more thought.

MR. ROBERTS: Thanks, Lane. As we kind of begin to duck into the subject of question two. Ed, do

you want to be the final comment on question one? And we can kind of transition right into that next discussion topic. Oh, you're muted right now, Ed. Sorry.

MR. BOLTZ: I'm sorry. I did want to reiterate something that Kyra raised earlier and contrast it again with bankruptcy. Is that under the guidance, the Department of Education and his lawyers at the Department of Justice are no longer going to be arguing that the determination of what whether someone has the ability to repay student loans is based on the applicable Income Driven Repayment Plan. Routinely, we would see before that they would say, oh, everyone can afford \$0 a month. So, you don't need a forgiveness of your debts through bankruptcy. The guidance changed that, you know, so that now the Department of Education and Justice, they look at what a standard ten-year repayment would be of the full amount of the balance, rather than this IDR, which is a more realistic approach. And instead of trapping people in a 20 or even 25-year repayment cycle where they're paying nothing for or minimal amounts for extended periods of time, it looks at what the original contract would have required, which is the standard ten year. So, I hope that that is carried through, because that is one of the good examples from the bankruptcy context. Thank you. And I'll step off then and cede back to Jessica.

MR. ROBERTS: Great. Thanks, Ed. Tamy, go ahead.

MS. ABERNATHY: So, in listening to all of this discussion, we really would like more concreteness from you guys. You say things like streamline and proxies. We need specific ideas and what that would that exactly means. So, where you can expand on that a little bit or give us more definitive, concrete information? That's really what we're looking for here. This has been very, very helpful for us as we're, you know, collecting ideas for where we want to go with this particular issue. And it's, you know, we just need a little bit more from you guys. And so, we thank you for the dialog so far. But going forward, if you could be more concrete that would be really helpful to us going forward. Thanks.

MR. ROBERTS: Thank you, Tamy. Jalil.

DR. BISHOP: Well, first I'll say it would be also helpful, you know, in return, if the Department also can be a little bit more just clarifying and I think, you know, jump in to give us, just as you just did, Tamy, a little direction of things you're still looking for. I think that helps throughout the conversation. So, thank you. I think on the piece of trying to be very concrete, I think back to the

conversation where Ben Miller responded to the question around GE programs. I think it's important for trying to ask this question around how to zero in on hardship. The same calculations that, from my understanding of the Department's able to already do, we should expand that to borrowers overall, trying to understand again, what does it mean using already available data to the Department to calculate. What does it mean not to have received a benefit from your degree, and not only for GE programs, but expand that principle to other borrowers so that they can get relief? We also can use a Pell Grant as a proxy to offer relief to borrowers both who received a Pell Grant themselves, but also to their parents. We saw from the Department of ED data that was sent out to us that 59% of Parent PLUS Loan borrowers since 2000 also received- their children received a Pell Grant, meaning that we're talking about a Parent PLUS borrower that is not a middle class rich parent, we're talking about a Parent PLUS borrower the majority of them whose children also received a Pell Grant. So that's another concrete measure that the Department has that they can use to deliver cancellation. We have talked about age. I think age is another place where we can look at borrowers over a certain age, borrowers who are receiving Social Security, Medicare without the premium. These other

measures that we're hoping the Department is able to use to automate and really direct relief to borrowers with and using records and data that either the Department has or is able to get access to through an MOU and so forth. So, I think another piece that the Department brought up that I just want to really underscore is that, again, borrowers have a ten year standard repayment, and that should really be shaping the regulatory text of how we're determining relief. Not looking at IDR that the Department has had to repeatedly acknowledge has not operated in a way that would allow that to be really an accurate way to understand repayment history or payment processes for borrowers. So just want to underscore that that ten-year repayment really should be the standard in which we determine hardship. Borrowers process through repayment and so forth, not IDR due to the many issues that we already know are well documented with these programs. And even if SAVE exists, as I said yesterday, it is new and it right now does not have evidence that is not going to go down the same path as many of the IDR plans that we have seen before.

MR. ROBERTS: Thank you, Jalil. And again, as folks offer those specifics, saying them in a comment is really helpful and then codifying them in chat as well. Just you don't lose record of them. We'll go to

John next.

MR. WHITELOW: I want to get clarification from Tamy as to whether, again without comment on the merits of whether the Department would agree with this specific example but is this the type of thing you want I was thinking, for example anyone who gets ACA coverage, health coverage with a subsidy that's a again, I'm not asking you to say you like that as an example of someone that would be eligible for a hardship relief, but in terms of giving you specific categories as proxy for hardship, is that the sort of list of things that you want us to provide you?

MS. ABERNATHY: John, thank you so much. That really is a helpful example. A little bit more of an explanation why. And yes, absolutely. This is kind of a helpful explanation why and a rationale as to why you consider that particular component something we should consider. We are open to all of your suggestions; I mean within reason. I don't want to say, you know, obviously we can't say yes, we're going to go down this road. But John, you spoke very well. Yes, we would consider that among a bunch of other concrete items that you guys bring to us. This is exactly the kind of dialog we want to have around this topic, around this issue. So, we do really appreciate you putting that out there. So,

thank you so much. You're a trailblazer.

MR. ROBERTS: Alright. We'll go to Kyra next.

MS. TAYLOR: Tamy I appreciate your request for more specificity from us, but I think it would be helpful if the Department could provide examples of data that we could use for proposals as well, because it is difficult for us to be able to speculate about the data sources that the Department already has access to. Particularly with other Federal agencies or potentially even in some cases, state agencies.

MS. ABERNATHY: So, we will take that under consideration Kyra and perhaps be able to get back to you later this afternoon about some of that information. Thank you.

MR. ROBERTS: Alright, Yael.

MS. SHAVIT: I actually was about to say the same thing, Kyra, so I won't belabor the point, but I would ask more broadly, you know, in addition to any specifics about the data that the Department already has access to. Also knowing what like MOUs or access, you know, agreements already exist with other agencies in addition to that can help us think more broadly as well about what data those agencies have that we may be able to propose for you.

MR. MILLER: If can respond on that just very quickly. So, when we do data sharing agreements with agencies, we have to list the specific purposes for the data sharing. So, I would not necessarily assume that we can just re-leverage what already exists there. So, for example, like we have a data sharing agreement with the Social Security Administration to help us identify borrowers who are eligible for total and permanent disability discharges. And in August of 21, we changed that, so we automatically discharge those folks when we identify them with an opt out. That entire agreement is written for the purpose of TPD discharges. So, if we wanted to reuse any of those, you're basically talking about either a new or totally amended data sharing agreement that as a general matter, take probably a year plus to stand up. So, I would sort of not assume that any data we're getting from another Federal agency can just inherently be leveraged for this purpose. And so, I would think about more in terms of what do you think are indicators we might want and concreteness around them and then we can look at what it would take and the feasibility of like, could we stand those types of things up.

MS. SHAVIT: You know, that's helpful context and I'm aware of it, right? I think there's sort

of a question of what do you already have that you can use? But also, you know, this portion of the regulations is intended to be forward looking, right? And not merely retroactive. So I think if we have access to the information about what data exists that you've been able to get for other purposes, recognizing that you would not immediately be able to use that data for a new purpose, it could inform, you know, what may be an option down the line. And I think giving you, you know, as many ideas as possible would be helpful. But certainly, we shouldn't only go with the data that's sort of publicly available. Right?

MR. MILLER: I mean, as a general matter, right? So, we have the match with SSA, which you can use for permanent disability discharges. You know, we're in the midst of matches with the Office of Personnel Management and Department of Defense to get data on the PSLF. We have matches with the Department of Defense for information about who's in hostile fire pay zones, which we use for other things. I think you got to kind of tell us what data points you want, and we can figure out what's there, but we really need concreteness here. Like John gave us a lot of concrete stuff in this session. Last session, when we hear stuff like streamlined or automation, like we need to know what you

actually want and the thresholds and like how you would think about the rationales there because we have to write them to justify the reg.

MS. SHAVIT: Do you have carceral information? Federal carceral information?

MR. MILLER: That I do not know. We can look into that.

MR. LEGAARD: I believe I do. And the answer is no.

MR. ROBERTS: So since we're already sort of on the topic, I just want to clarify for the record that question two the sort of the topic of that which is many of the forms of hardship identified, such as familial wealth or significant expenses for medical or childcare, are not obtainable from the Department's administrative records. Given that what types of administrative data might be available to the Department related to the areas of hardship identified? So just in keeping with the conversation that we've been having, the suggestions are most appreciated. With that, I think see Wisdom's hand next.

MR. COLE: Yeah. I added this in the chat. But just recognizing particularly for Black borrowers because they are starting at a weaker economic threshold. The amount of educational debt that goes into

taking out student debt in itself is a hardship. I think that making sure the Department considers the borrower's inability to repay the student loans and the student loans itself being the hardship that they're facing, and then recognizing factors such as high interest rate, inadequate employment opportunities in their field of study. That is something that's common when we see Black borrowers taking out this debt and trying to get jobs in the workforce to pay that back out. I think factors such as financial aid and enrollment record, public assistance and benefit data, demographics on household data, even financial aid application data can be used in this process.

MR. ROBERTS: Thank you, Wisdom, and thank you to everyone continuing to populate the chat with additional suggestions. Lane.

MS. THOMPSON: I think Wisdom did a really good job of bringing this back into the conversation, but I just want us to be really thoughtful about the fact that in applying for student debt, there's a FAFSA form that has to be filled out and that that indicates that there's a need for that debt. You know, most folks who do not take student loans have some kind of familial wealth or have some other way to fund their college. I know there's been a lot of talk of people who

didn't go to college, and I just want to kind of throw out there that for a lot of folks who have student debt, it was the only way they were ever going to go to college. And so, it was already means tested, right? Like maybe having the student debt is the hardship. You had to be poor to get it in the first place. So, unless you were able to pay it off, maybe you're still poor. So that's kind of just a more general thing. And then the more specific thing I kind of wanted to add in as well is there is data that the Department has. Let me give two examples. One is borrowers without a permanent address. So that could be someone who is homeless. And that's why they don't have a permanent address. Borrowers whose address shows as a prison, or another category would be I lost my train of thought there, but yeah. Borrowers who have certain attributes that are showing on their records. Thank you.

MR. ROBERTS: Thank you, Lane.

Angelika.

MS. WILLIAMS: Yes. Going back to the conversation about proxying the data and utilizing the tools that are in the realm of the Department, which are what we call COD, the common origination and disbursement system in NSLDS and going back to this topic of using that data that's in those reporting tools from the

different institutions, I want to highlight the Borrower Defense to repayment. As we know, and we've seen from recent news that there's a list of schools that were involved in that process in having the borrowers complete an application, right? When we know that there was some common aspects of individuals who were subject to employment issues based on the particular list of schools. We do know that the institutions report the student's field of study or program of study into the U.S. Department of Education's systems. So, using the concept of proxying data and using automation, there should be a way to find all the individuals that were in the same program once you identify the trends. And reaching out to those borrowers, instead of having the borrowers reach out to you to say, hey, I was also in the program at the same school, subject to the same situation once the trend has been identified. And so, I think that's where we're going with the conversation of using automation with the systems that are within the realm of the Department of Education, not so much as outside agencies. The institutions are reporting that amount of information, a large amount of information to the Department that could be used in conjunction with the Borrower Defense to repayment process, to eliminate the need for those borrowers that were subject to the same

conditions without them having to fill out the application.

MR. ROBERTS: Thank you, Angelika. Lane, I see your hand next.

MS. THOMPSON: I remembered what I was going to say. I think that folks who have had Federal benefits offset would be a good proxy for hardship. So specifically, Social Security is a benefit that can be offset for defaulted Federal loans. And in order to do that, offset the Department has some kind of forms about it. So that was what I was thinking of. As folks who have had Federal benefits, offset are obviously struggling to repay their loans.

MR. ROBERTS: Thank you, Lane. Kyra.

MS. TAYLOR: I just wanted to- I raised this in the chat, but the Department can certainly look at the data underlying borrowers who have been in default to provide automated relief to those borrowers that could use that data to determine the groups of borrowers, satisfy the Department's definition of hardship, and also and or will never repay their debts. So, either they satisfy the Federal claims collection standards, or they satisfy this new definition. In addition, the Department might look to the estimated family contributions, as I believe others have raised

earlier, to determine a threshold that establishes that that borrower doesn't come from familial wealth and will struggle to repay their debt because they will not have any kind of safety net underlying them as well. So that would be another data source, potentially within the Department's possession, that could look to. And then last, the Department could also look at historical use of IDR, as I mentioned before, to determine a threshold to provide borrowers with relief.

MR. ROBERTS: Thank you, Kyra. Jalil.

DR. BISHOP: I'm just wondering if the Department is able to tell us if they are unsure. So, you provide us a list of hardship categories in the issue paper. Are you able to tell us if you don't feel confident, or you have a low level of confidence around any of these hardship areas when it comes to having the administrative data to identify these folks? So that way there's, you know, for example, the Affordable Care Act subsidy is an area where you don't have that data, we, you know, can just be made aware of that? Versus I'm assuming, you know, who received the Pell Grant and who didn't.

MS. ABERNATHY: I would think we would have to look at that on a case-by-case basis. And, you know, we're going to explore any suggestions that you

give to us. We're going to explore what we have, what we have access to, what our methods to gain access to that information is. So, think we can't speak any more about that. But we will look at each one of the ideas to know how we could leverage the data we have, or ways to get that data through a different method to use that.

DR. BISHOP: Thank you.

MR. ROBERTS: Anyone else have any comments or suggestions for consideration of this committee as it relates to potential administrative data sources? I see, David. I see your hand raised. Go ahead.

MR. RAMIREZ: Hi. Yes, I also want to elevate students who have been eligible for SNAP benefits. I'm sure many of folks here know that college hunger affects your ability to work, including how it contributes to your well-being and how you're able to focus on school and just based off of some survey data that I was able to find on EBT recipients 61% of surveyed users are very or extremely stressed that student loan repayments restarted in October, and 59% don't know when their next payments are due. One quarter of surveyed borrowers say that they will have to spend less on necessities like groceries and rents to afford their monthly student loan payments. And so, if we're able to find some relief for students that have been eligible for

SNAP, I think that would be awesome. I'm sure it's an administrative burden as well, but hopefully we can consider that. And also wanted to elevate foster youth due to a lack of resources and support systems, just 3 to 4% of former foster youth obtain a four-year college degree. There's a huge disparity from the general population, and between 2 and 6% receive a two-year degree. So, if you want to get into specifics, I think those have been eligible for SNAP and also those that are foster youth should be considered.

MR. ROBERTS: Thank you, David. And just for the records sake David's an alternate negotiator for two-year borrowers. Jessica.

MS. RANUCCI: Hi. Just wanted to elevate a few comments in the chat about using Pell eligibility as a component of any hardship program. I think Pell eligibility gives a really important snapshot into a borrower's past family and hardship situation. And I think particularly combined with certain current circumstances, would really give the Department a real understanding of the borrower's past and present hardship that I think would be likely to be continued in the future. So think, for example, a borrower who is Pell eligible, who has Parent PLUS Loans we all know those Parent PLUS Loans are not eligible for the most

affordable repayment programs is someone who would have experienced, you know, past hardship and current hardship that would be likely to continue into the future. I think you also could consider for Pell eligibility certain specific categories of, for example, Income Driven Repayment eligibility, such as someone who was Pell eligible at the time of applying to school and then currently is on, you know, a \$0 IDR plan. That would be another example of a category of someone who might have had past and current hardship that is likely to continue to the future. And I guess just in the big picture, not to lose that think the Pell eligibility was a really good piece of the expanded relief available to individuals who have Pell eligibility was a very important piece of the 10/20 plan I wouldn't want it to get lost.

MR. ROBERTS: Thank you, Jessica. And I do just want to point out, I think Tamy responded to an earlier question on readily accessible sources of data that the Department has. Wisdom.

MR. COLE: I definitely agree with Jessica on the Pell eligibility. I definitely want to dive into the idea around looking at household size and composition. Information about borrower's household size and dependance can be important when assessing hardship related to familial responsibilities. We know from our

stories that we've collected in talking with Black borrowers, that oftentimes Black borrowers have to not only support themselves through college, but also have to support their families. And even when they graduate, that support in terms of familial support and the size of the household continues on. I think understanding and looking at marital status, right, marital status can impact a borrower's financial situation and the information that may be available through administrative records as well. I think essentially what we need to do is look at a combination of all of these data sources to really build a comprehensive picture of a borrower's financial circumstance. Not one of these will completely tell you the picture of a borrower, but in combination together, I think we can see the benefit for as many borrowers as possible.

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

DR. BISHOP: Yes. And I think that it's important for us to really consider, you know, what are we aiming for here, too? So, it's not about trying to create a program or a data point or a proxy that is going to be a silver bullet, I think to Wisdom's point is really about trying to create a set of tools that can capture as many borrowers who are experiencing hardship

as possible. And think that this is really important when we think about borrowers who are struggling, as someone who has worked directly with borrowers, helping them navigate this process, as someone who researched this, who has heard from over 2000 borrowers and some of the research I've shared with Department and most of these borrowers in my research are people who are enrolled in IDR plans. They are people who still are saying, I don't have a savings account. There are people who are still saying, I don't know how I can handle childcare expenses. There are people who are still sharing the experiences of not only having student debt for themselves as a low-income Pell Grant recipient, but also watching their parents who had to take on a Parent PLUS Loans as well. So, I think we need to not think about silver bullets, about how do we create really a arsenal of tools to make sure that we're providing hardship automatically and through streamlined ways using these proxies, but that we're doing it in a way that tries to capture as many borrowers as possible. And really remembering that we don't have a silver bullet solution here that we can't say, well, we're not going to do this because this group is already handled by this policy or that program or this relief. We really need to actually come up with ways to catch groups of borrowers in 3 or 4 different ways,

because that is how complicated and how burdensome having student loan debt is. And navigating our student loan system is. So I just want to emphasize that even if Pell is great to capture some of Parent PLUS borrowers, we may also need age, or we may also need to look at what type of Medicare or Social Security or these other pieces that we really need a set of comprehensive tools to capture borrowers in many different ways. And I really, really hope the Department can move away from what sometimes feels like, well, we already have a program for that, or we have a policy for that, or we already have what to me sounds like a silver bullet to address that. And we just have too much history and too much evidence. And many of us on this call have heard from too many borrowers saying your programs often do not work. So, I think this needs to be a process where we come up with 4 or 5 different ways to get at borrowers so that they can get the relief again that they need desperately, but often are legally entitled to.

MR. ROBERTS: Thank you, Jalil.

Looking at the time right now, if folks have any additional comments on questions 1 or 2, we can probably end the morning session on that. But if not, we can pick back up at 1 p.m. with question three. Would that work for the Department, Tamy?

MS. ABERNATHY: Yes, it would. Thank you so much. Now, I do have one thing to say, Brady. If it's okay?

MR. ROBERTS: Yeah, of course.

MS. ABERNATHY: We have been trying to work on the questions that we've received through the chat, those that we have not already answered throughout our discussions. We will be placing some of the responses to those questions in the chat going forward. We're trying to be mindful of what we said yesterday that we're going to try to answer as many questions as we possibly can from day one and day two of this session within our negotiations. So, look for some of those responses in the chat. We're going to try to do that while we break for lunch. And when you come back, you'll have some information related to the questions that some of you have answered. Thanks, Brady.

MR. ROBERTS: Well, thank you all. We will resume the live feed at 1 p.m. and pick up with question three, which I'll read just for the record. We might repeat it again, but we'll resume at 1 p.m. with question three. Which is how should the Department consider operational limitations and administering a hardship process such as limited resources, the need for allowing other agencies or external parties to provide

data, and the challenges in requiring borrowers to complete applications? So, with that, I think we can go off live and we'll resume at 1 p.m.

**Zoom Chat Transcript  
Student Loan Debt Relief Committee - Session 2, Day 2, Morning, November 7,  
2023**

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

From Soren Lagaard, Department of Education, OGC to Everyone:  
be right back

From John Weathers (FMCS Facilitation Team) to Everyone:  
Folks, if you are not a primary please turn off your  
camera. Thank you

From P - Kathleen Dwyer - Proprietary Institutions to Everyone:  
For those who withdraw and later enroll in another program - how  
would this be treated?

From P- Kyra Taylor, Legal Aid Orgs to Everyone:  
We support the Department providing relief to borrowers whose  
schools failed the GE standards and encourage the Department to  
provide relief to borrowers whose cohort failed the GE rates for 1  
year, but did not ultimately lose Title IV eligibility

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:

Reacted to "We support the Depar..." with 👍

From (P) Angelika Williams: Private, Nonprofit  
Institutions to Everyone:

Following the discussion of cohort default rates, I suggest  
incorporating information about institutions that do not meet  
administrative capability standards and become subject to debarment  
and suspension certification. If a school or its principals face  
suspension, debarment, or are in the process of debarment by a federal  
agency, they lose their eligibility to participate in any Student  
Financial Aid (SFA) Program.

From P-Yael Shavit-State AGs to Everyone:

Reacted to "We support the Depar..." with 👍

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

I support the Department's provision of relief to borrowers who  
are unable to complete their program or institution due to the program  
or institution's loss of Title IV eligibility. I propose that the  
Department revise these regulations to include other circumstances in  
which the school or institution loses Title IV eligibility such as a  
termination or revocation action.

From P-Yael Shavit-State AGs to Everyone:

I support the suggestion to expand to those institutions that  
lose Title IV eligibility

From P - Lane Thompson - state agencies to Everyone:

would this language apply to borrowers who took out loans before  
2015, or only from 2015 forward?

From A- Susan Teerink - Private non-profit  
institutions to Everyone:

+1 Yael's comment

From P- Kyra Taylor, Legal Aid Orgs to Everyone:

We ask that the department strike "(iii) The borrower did not submit an acknowledgment under § 668.605." both because it creates unnecessary administrative burden on the part of the Department to verify who did or did not submit the form and because schools may have fabricated whether the borrower submitted the form. In addition, in our experience, borrowers may not have understood what they were signing when they were presented with these forms.

From P- Kyra Taylor, Legal Aid Orgs to Everyone:  
We are also in support of subsection (f)

From P- Jessica Ranucci (Consumer Advocates) to Everyone:  
Could you explain the difference between "may waiver repayment" in (f) and (g) versus "may waive the outstanding balance" in (b)-(e)?

From A-Edward Boltz-Consumer Advocates to Everyone:  
shall waive versus may waive

From A-Jalil Bishop-Student Loan Borrowers-Grad Programs to Everyone:  
Jalil coming in as primary

From P- Jessica Ranucci (Consumer Advocates) to Everyone:  
Ed Boltz is going to come in as primary briefly

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
+1 Jalil


From A - India Heckstall, Civil Rights Organization to Everyone:  
+1 Jalil in making the process automatic

From (P) Jada Sanford - Currently Enrolled to Everyone:  
+1 Jalil

From A- Susan Teerink - Private non-profit institutions to Everyone:  
+1 Jalil


From (P) Richard Haase - Graduate Borrower to Everyone:  
+1 in emphasizing as much automation as possible for this GE section as well

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
+1 Jalil

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
Reacted to "+1 Jalil" with 

From P-Melissa Kunes-Public 2&4 Yr Schools to Everyone:  
Automation is key in granting these relief opportunities.

From P - Lane Thompson - state agencies to Everyone:  
+1 Jalil on automating processes, providing relief to borrowers who did not complete their education

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
Reacted to "+1 Jalil on automati..." with 

From P - Wisdom Cole, Civil Rights to Everyone:  
+1 Jalil

From P - Ashley Pizzuti - 2yr Borrower to Everyone:  
Does that include borrowers prior to 2015?

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
Also +1 on expanding relief further to capture more borrowers who did not complete their programs

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
Waivers of discharge are unenforceable in bankruptcy because those would completely undermine all relief, particularly by the least reputable lenders, unless under 11 USC 727(a)(10) the bankruptcy

judge finds that: (1) the waiver must be approved by the court;  
 (2) the waiver must be in writing; (3) the waiver must be signed by the debtor; (4) the waiver must be reasonable, and (5) the waiver must be given after the order for relief (post-petition). ED should not allow waiver of GE by borrowers through an attestation entered into as a condition of the student loans, as such would certainly both be made obligatory by lenders and schools and would be buried in paperwork.

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 I'll step off for Jessica also

From P- Jessica Ranucci (Consumer Advocates) to Everyone:  
 Ed Boltz is coming back in for consumer advocates

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 SLAP & Attestation Queries: • How many Student Loan Adversary Proceedings (SLAPs) have been filed in bankruptcy cases since November 17, 2022? • How many SLAPs have resulted in a stipulation of discharge being entered? • What has been the average amount of time for a determination by the DOJ/ED? • Of those SLAPs where the DOJ/ED has declined to stipulate to a discharge, what percentage were based on each of the three prongs of the Brunner Test, viz. past, present and future analyses. That information would be helpful both in bankruptcy, including interfacing with the Office for Access to Justice at DOJ, and for evaluating its use outside of bankruptcy

From P-Vincent Andrews-Veteran & Military Groups to Everyone:  
 Agree with Lane. It's pretty well documented that salary increases for employees remains stagnant, and individuals in low to \$0 payments aren't highly likely to be eligible to pay over the next 5-10 years

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 +1 for John's comments. The process should be automated and easy to access.

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 +1 to John Whitelaw, especially as borrowers are also discouraged and impeded in getting legal assistance for any relief

From P-Carol Peterson HBCU, Tribal Colleges & Minority Serving Instit to Everyone:  
 +1 to John Whitelaw.

From P - Lane Thompson - state agencies to Everyone:  
 +1 to John automation is key, and the department has some data that could be used as a proxy for hardship

From (P) Richard Haase - Graduate Borrower to Everyone:  
 +1 on making sure process doesn't lead to people who are eligible not receiving relief

From P-Yael Shavit-State AGs to Everyone:  
 +1 to simplicity and automation

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 to John's comments re:automation and simplicity

From A- Susan Teerink - Private non-profit institutions to Everyone:  
 +1 automaton and simplicity

From A - India Heckstall, Civil Rights Organization to Everyone:  
 +1 to simplicity and automation

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
 +1 to simplicity and automation

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 to Yael's comment re: this standard being too difficult

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 +1 that ED needs to better publicize, including to the public and the US Department of Justice attorneys, that it has changed its stance regarding bankruptcy discharge

From John S. Whitelaw, (he/him) Advocacy Director, CLASI (Delaware) to Everyone:  
 Self-certification instead of documentary verification

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 regarding self-certification

From A-Jalil Bishop-Student Loan Borrowers-Grad Programs to Everyone:  
 +1 to self certification/reporting

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 re: Sherrie's comments the need to streamline relief for older borrowers and caregivers

From A-Jalil Bishop-Student Loan Borrowers-Grad Programs to Everyone:  
 +1 on if a person has filed/completed bankruptcy then discharge their loans. But do not make people have to clear the undue hardship/Brunner test

From P - Wisdom Cole, Civil Rights to Everyone:  
 +1 to self certification

From (P) Richard Haase - Graduate Borrower to Everyone:  
 modeling eligibility for student loan relief on bankruptcy criteria too closely means we're too little too late

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
 Reacted to "modeling eligibility..." with 👍

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 on re: providing relief to borrowers that have already completed bankruptcy and still have outstanding student loan debt

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
 +1 Edward on looking at the standard repayment rather than IDR

From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 Replying to "+1 on re: providing ..."  
  
 +1 and also making the bankruptcy guidance retroactive to older cases also, rather than requiring another bankruptcy


From A- Edward Boltz (NACBA/NASLL) to Everyone:  
 Iuliano, Jason, The Student Loan Bankruptcy Gap (October 21, 2020). 70 Duke Law Journal (2020), Available at SSRN:  
<https://ssrn.com/abstract=3715975>

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 The Department should provide relief to Parent Plus borrowers who themselves were Pell grant recipients and also to Parent Plus borrowers whose dependents are now current Pell grant recipients.

From P - Wisdom Cole, Civil Rights to Everyone:  
 The department should consider whether a borrower's inability to repay student loans is due to factors unique to educational debt, such

as high interest rates or inadequate employment opportunities in their field of study

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

Reacted to "The department shoul..." with 

From A - Jordan Nellums - Currently Enrolled

Postsecondary to Everyone:

Replying to "The Department shoul..."

+1 on providing relief to Parent Plus loan borrowers who have dependents that are also pell grant recipients

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

Replying to "The Department shoul..."

+1 to provide relief to Parent PLUS loan borrowers who were Pell Grant recipients and to Parent PLUS borrowers who dependents are Pell Grant recipients


From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:

The Department should consider discharging the debts of borrowers who have been in a \$0 or low-dollar IDR plan for 3 years or more


From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

The Department should consider asking borrowers for their job titles and look for trends among certain workforces and their ability to pay their student loans. This data can help us to understand certain types of hardship.

From P-Vincent Andrews-Veteran & Military Groups to Everyone:

Reacted to "The Department shoul..." with 

From P - Kathleen Dwyer - Proprietary Institutions to Everyone:

Reacted to "The Department shoul..." with 

From P - Lane Thompson - state agencies to Everyone:

+1 to Kyra - borrowers who have less than \$100 a month IDR payments for more than three years should have their debt forgiven


From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

+1 to Kyra's comment regarding borrowers who have a \$0 payment for 3 or more years.


From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

Reacted to "+1 to Kyra - borrowe..." with 

From P-Yael Shavit-State AGs to Everyone:

Reacted to "+1 to Kyra - borrowe..." with 

From P-Yael Shavit-State AGs to Everyone:

Reacted to "The Department shoul..." with 

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

Does the requirement for data sharing MOU extend to ED receiving data from state education agencies, or is the sharing of data between and among those implied?

From A-Jalil Bishop-Student Loan Borrowers-Grad Programs to Everyone:

1. Calculate the D/E rates/failed earnings premium for all borrowers not just those under GE programs

2. If you received Pell or a parent of a Pell grant recipient

3. If you have a set of hardships (however they are defined by the Dept) and have been in repayment for over 15 yrs

4. Educational debt that is much higher than the avg for a borrower cohort

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:

The debts of borrowers in default where 1) the Department's collection powers are only covering fees & interest, 2) 65+ with an income limit 3) Parent PLUS borrowers where the student's EFC was \$0

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:

4) the borrower entered default 3 or more years ago 5) the borrower was in receipt of means tested benefits

From P - Wisdom Cole, Civil Rights to Everyone:

Already means tested!

From A-Jalil Bishop-Student Loan Borrowers-Grad

Programs to Everyone:

Survey of Consumer Finance shows that the majority of student debt borrowers have zero or negative wealth

From John S. Whitelaw, (he/him) Advocacy Director, CLASI

(Delaware) to Everyone:

I would also note that even if cannot be automated these proxies are much easier to document than a long list of income and expenses.

From (P) Jada Sanford - Currently Enrolled to Everyone:

+1 Lane, Considering the need to take on debt a hardship

From Ben Miller - Department of Education (he/his) to Everyone:

Replying to "Does the requirement..."

Government to government matches (including state to federal) require a formal agreement.

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

Replying to "Does the requirement..."

Than you

From P - Wisdom Cole, Civil Rights to Everyone:

The department can compare data set with those who have debt and are on federal programing and can wipe the debt

From P - Ashley Pizzuti - 2yr Borrower to Everyone:

+1 To Angelika on BDTR comments.

From (P) Angelika Williams: Private, Nonprofit

Institutions to Everyone:

Reacted to "+1 To Angelika on BD..." with 

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

The Department should provide relief to borrowers over the age of 65 and/or who are retired.

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

Great question. Many of these targeted cohorts should be relatively easy to establish

From P - Lane Thompson - state agencies to Everyone:

data that could be used as proof of hardship: borrowers with both parent plus, and direct loans; borrowers with no permanent address/address in prison or jail, borrowers who reflect bankruptcy forbearance, borrowers over the age of 65, borrowers who have had federal benefits offset; borrowers who have had a \$0 IDR payment for more than three years

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:

Single parent households and/or students with one or more parents who are deceased, should be considered for relief.

From P - Wisdom Cole, Civil Rights to Everyone:

Reacted to "Single parent househ..." with 👍

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

Should be possible to use available data to identify Joint Consolidation borrowers

From John S. Whitelaw, (he/him) Advocacy Director, CLASI (Delaware) to Everyone:

Receipt of SNAP within a certain frame

From P-Vincent Andrews-Veteran & Military Groups to Everyone:

The Department has regularly identified active-duty and veteran members, and that data could be used to forgive debt after certain periods of time. I know the Department has been working to automate forgiveness for veterans with total disability, but this process could be more automated to include better tracking and automatic forgiveness for military or veteran groups.

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:

For Borrowers over 65 years: Discharge loans (ideal) or consider a waiver of capitalized interest payments for those over 65 in repayment for over XXX years. Why? They have demonstrated a record of payment available to the Dept of Ed using servicer records and though older aged people are working longer to pay their debt they are unlikely to repay full amount of student loans given their chronological age.

From P - Wisdom Cole, Civil Rights to Everyone:

+1 Foster Youth

From John S. Whitelaw, (he/him) Advocacy Director, CLASI (Delaware) to Everyone:

Receipt of Medicaid within a certain time frame

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:

Reacted to "The Department has r..." with 👍

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:

Reacted to "Receipt of Medicaid ..." with 👍

From John S. Whitelaw, (he/him) Advocacy Director, CLASI (Delaware) to Everyone:

Low Income Subsidy on Medicare Part D

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:

Reacted to "Low Income Subsidy o..." with 👍

From John S. Whitelaw, (he/him) Advocacy Director, CLASI (Delaware) to Everyone:

Cost-sharing for Medicare (QMB/SLMB/QI).

From Tamy Abernathy - Director, Policy Coordination Group, ED to Everyone:

We know these: attended institutions that closed. received a Pell Grant. have loans of their own and have borrowed parent loans are over a certain age. have loans that predate the switch to 100 percent Direct lending in 2010. We know this for some periods did not finish their programs. We do not know any of the others are on Medicare and do not have a Medicare Income-Related Monthly Adjustment Amount, meaning their income is below \$97,000 as a single individual. receive an Affordable Care Act subsidy, meaning

they earn less than 400 percent of the Federal poverty guidelines.  
 have significant child or dependent care expenses. have  
 significant medical expenses. have completed a chapter 11 or  
 chapter 13 bankruptcy process.

From (P) Jada Sanford - Currently Enrolled to Everyone:  
 +1 David, using SNAP

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 +1 for looking at borrower experience over the life course.

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 +1 using SNAP.

From P-Yael Shavit-State AGs to Everyone:  
 +1 using SNAP

From A - India Heckstall, Civil Rights Organization to Everyone:  
 +1 using SNAP

From P - Lane Thompson - state agencies to Everyone:  
 +1 on Pell eligibility

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 +1 on Pell eligibility.

From John S. Whitelaw, (he/him) Advocacy Director, CLASI  
 (Delaware) to Everyone:  
 Receipt of subsidized child care

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 +1 re: using Pell data as criteria for hardship, +1 regarding  
 Parent PLUS borrowers that received a Pell grant for their own debt or  
 where their child received a Pell grant, +1 re: SNAP benefits (and/or  
 receipt of other federal housing subsidies)

From Sarah Butts, (she/her) A- 4 yr. borrowers to Everyone:  
 +1 on Marital status and single parents/Head of Household. These  
 borrowers often work more than one job to support their families and  
 may have a middle class income. but still struggle.

From John S. Whitelaw, (he/him) Advocacy Director, CLASI  
 (Delaware) to Everyone:  
 plus 1 to Jalil non exclusive laundry list of indicators of  
 hardship, with a catch all for folks who have hardship but aren't  
 identified by these "proxies"

From P-Sherrie Gammage-4-Yr Borrowers to Everyone:  
 Loan Discharge or waiver of remaining balances for those who  
 receive an Affordable Care Act subsidy, are disabled or over 65  
 earning less than 400% of the Federal Poverty guidelines and have a 0  
 IDR payment plan for at least 10 years: Rationale: The circumstances  
 are unlikely to change given age and ability to continue to work  
 lessens with age or with disease progression.

From A - India Heckstall, Civil Rights Organization to Everyone:  
 +1 Jalil!!!

From A- Susan Teerink - Private non-profit  
 institutions to Everyone:  
 +1 Jalil - comprehensive list

From John S. Whitelaw, (he/him) Advocacy Director, CLASI  
 (Delaware) to Everyone:  
 But more than 4 or 5

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
 LIHEAP (an internet access federal program) also uses Federal  
 Housing Public Assistance, Medicaid, SNAP, SSI, Veteran's Pension &

Survivor's Benefits, and Tribal Program documentation to streamline eligibility

From (P) Richard Haase - Graduate Borrower to Everyone:  
+1 to Jalil!

From (A) - David Ramirez - 2yr Borrower to Everyone:  
+1 Jalil

From Kyra Taylor, Nat'l Consumer Law Ctr. to Everyone:  
Replying to "LIHEAP (an internet ..."

\* home energy assistance program

From (P) Angelika Williams: Private, Nonprofit  
Institutions to Everyone:

+1 Kyra

From A-Jalil Bishop-Student Loan Borrowers-Grad  
Programs to Everyone:

Replying to "LIHEAP (an internet ..."

+1 on these programs

From John S. Whitelaw, (he/him) Advocacy Director, CLASI  
(Delaware) to Everyone:

Section Vouchers; living in Public Housing; living in project  
based housing , USDA housing etc;

From A-Jalil Bishop-Student Loan Borrowers-Grad  
Programs to Everyone:

Anyone receiving a social assistance/entitlement program. Let  
them self report

From P - Wisdom Cole, Civil Rights to Everyone:

The Department can access data on a borrower's educational  
expenses, such as tuition and living costs, which can be used to  
assess financial hardships related to the cost of education. Data on a  
borrower's enrollment status can help determine whether they are  
currently attending school, which may affect their loan repayment  
obligations.

From Soren Lagaard, Department of Education, OGC to Everyone:

Please note the student acknowledgement referenced in 34 CFR  
668.605 is not a waiver of discharge, as some of the earlier comments  
suggested. This is a new part of the GE reg that was recently  
published. When that regulation is fully implemented, some current and  
prospective students will have to acknowledge via the Department's  
website that the program that they're enrolling in may not meet  
affordability standards under the new GE regulation.

(ED Note: Files are available on the Department of Education's [2023-2024 Neg Reg website](#))