

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
AFFORDABILITY AND STUDENT LOANS COMMITTEE  
NEGOTIATED RULEMAKING SESSION 1, DAY 3, MORNING  
OCTOBER 6, 2021

On the 6th day of October 2021, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. JEFFRIES: Good morning. This is Commissioner Cindy Jeffries with Federal Mediation and Conciliation Service. I will be your (inaudible) facilitator for this morning's session. Welcome back, everyone. Welcome to those that are listening in on the live stream. At this point, I am going to do a roll call for the record of the primary negotiators at the table this morning, and I will do that by constituency. When I call your constituency, please give your name how you want to be addressed, and we'll move forward this rather quickly. Okay? So, from accrediting agencies.

MS. PERFETTI: Good morning. Heather Perfetti.

MS. JEFFRIES: Good morning, Heather. From dependent students. Dixie, Greg? Okay. Moving on. Federal family education loan lenders and/or guaranty Agencies.

MS. O'CONNELL: Jaye O'Connell. Good morning.

MS. JEFFRIES: Good morning, Jaye. Financial aid administrators at postsecondary institutions.

MR. BARKOWITZ: Good morning. Daniel.

MS. JEFFRIES: Good morning, Daniel.

Four-year public institutions of higher education.

DR. DORIME-WILLIAMS: Good morning.

Dr. Marjorie Dorime-Williams.

MS. JEFFRIES: Good morning.

Independent students.

MS. MARTIN: Michaela Martin.

MS. JEFFRIES: Good morning, Michaela.

Individuals with disabilities or groups representing them. Bethany or John?

MR. WHITELOW: John is here. I was expecting Bethany, but I will sub in until she gets here.

MS. JEFFRIES: Okay, so the alternate, John Whitelaw will substitute for Bethany Lilly until such time as she arrives.

MR. WHITELOW: Yeah if that's okay.

MS. JEFFRIES: Thank you. Minority-serving institutions.

MS. GONZALEZ: Good mor -- good morning. Noelia Gonzalez.

MS. JEFFRIES: Noelia, thank you. And Noelia will be serving as the lead negotiator today in the absence of the primary. Private non-profit institutions of higher education.

MS. SABOUNEH: Good morning. Misty Sabouneh here.

MS. JEFFRIES: Good morning.  
Proprietary institutions.

MS. BARRY: Good morning. It's  
Jessica Barry.

MS. JEFFRIES: Good morning, Jessica.  
Qualifying employers on the topic of public service --  
oh, I'm sorry. Scratch that. That is an advisor and a  
non-voting member. State Attorneys General office.

MR. SANDERS: Morning. Joe Sanders on  
behalf of state Attorneys General.

MS. JEFFRIES: Good morning, Joe.  
State higher education executive officers, state  
authorizing agencies, and/or state regulators of  
institutions of higher education and/or loan servicers.

DR. TANDBERG: Wow. That is one long  
name for a category. This is David. I'm here.

MS. JEFFRIES: Hi, David. Thank you.  
Student loan borrowers.

MS. CARDENAS: Good morning,  
everyone. Jeri here.

MS. JEFFRIES: Good morning, Jeri.  
Two-year public institutions of higher education.

MR. AYALA: Good morning. Bobby Ayla.

MS. JEFFRIES: Good morning, Bobby.  
U.S. military service members, veterans, or groups

representing them.

MR. HAUSCHILD: Hello. Justin Hauschild.

MS. JEFFRIES: Thank you, Justin. Can we circle back? Dependent students.

MS. SAMANIEGO: Dixie.

MS. JEFFRIES: There, Dixie. Welcome. Okay. And then last but not the least, the Department of Education.

MS. HONG: Good morning. Welcome back, everybody. Jennifer Hong.

MS. JEFFRIES: Okay. Did I miss anyone?

MR. ROVENGER: Good morning. Josh Rovenger for legal assistance organizations on behalf of students and borrowers.

MS. JEFFRIES: Hi.

MS. LILLY: I'm Bethany Lilly on behalf of organizations representing people with disabilities and people with disabilities.

MS. JEFFRIES: Okay. I apologize for that oversight to both of you. It was not intentional.

MR. ROVENGER: No problem.

MS. JEFFRIES: Okay. So, moving on, we do have a very robust agenda today. The plan is to

complete the borrower defense to repayment-- both issue - all issue statements of number six, seven, and eight. And then move to PSLF. This is subject to change since that is a robust agenda. I'd like to remind all committee members that in respect to the BDR packets there is no proposed regulatory text at this point. So, it will just be discussions on the sub-issues within each of those papers, and a temperature check on the concept of what is there. Please, along the protocol, please remember you will have up to three minutes to speak and to try to the best of your ability not to repeat something that's already been said. Al -- also, I want to remind committee members and/or tech people that Kayla will be the tech person for discussions today, so if you have problems or questions please contact her. Kayla, did you put your information in the chat? Okay. You should find it in there. So, along those lines can we go ahead and get started with the completion of moving through issue statement number six? My notes show that there is an em -- we are at emphasis on group process.

MS. HONG: Excellent. Thank you. Thank you, Cindy. Real quick before we jump into that issue, I just had a quick announcement. I wanted to acknowledge, as you all know, that the Department has made a major announcement this morning regarding public

service loan forgiveness, and several immediate and temporary relief efforts to assist borrowers and provide debt relief to those working in public service. This is why we switched the agenda around to (inaudible) before -- excuse me, before P -- PSLF, because we wanted this message prior to our discussion around PSLF. So, I just -- I want to request that we finish discussing all the issues for BD and then we'll go into PSLF today. We will have someone from our office of Federal Student Aid come and talk about the announcement and have a more detailed discussion on what the Department is doing for borrowers. We feel this will inform the regulatory proposals we have on the table. So, if we could just hold the discussion and questions regarding that public service loan forgiveness announcement until we finish borrower defense, we will be happy to go into more detail with you all about today's announcement. And with that, I can just jump into as, as Cindy had mentioned, we left off on emphasis on group process, so I think we took a temperature check on admissions. Now we are on emphasis (inaudible) group process in the borrower defense to repayment paper regarding the adjudication process. In brief, we want to bring the group process back and make it a default approach. So, we propose to identify and define groups based on occurrences such as actions by the

federal government, State Attorneys General, other state agencies or officials, or other law enforcement activity, any losses related to educational programs filed against institutions for judgments rendered against institutions, individual borrower defense claims with common facts, and requests by Attorneys General or law enforcement organizations. So, individual applications covered by a group process would be adjudicated through that group process, and the Department would request additional information from institutions. Decisions on whether to approve claims associated with the group would only made by the Department with institutional recruitment operating through a separate process. And we'll talk about institutional recruitment a little bit later. So, I already see hands up. So, I will put myself on mute.

MS. JEFFRIES: Thank you, Jen. David, you had your hand up first, and then we'll move to Joe and then to Justin.

DR. TANDBERG: I'll just reveal my ignorance here. I don't know what we're referring to when we say group process, what it is, what it's used for. If we could just back it up and talk about what it is we're talking about here so that I can better understand what's being proposed.

MS. HONG: Sure. Thank you, David.



Basically, in 2016 we had a group process that individuals with -- individuals could -- they could basically process a group borrower defense claim, for example, in the case of Corinthian Colleges. Once we knew that there had been a borrower defense claim approved we could apply it to all individuals that were affected, all borrowers that were affected. That was rescinded in 2019 and so we want to bring that process back.

MS. JEFFRIES: Okay, Joe?

MR. SANDERS: Hi. Good morning, everyone. State AGs just want to voice strong support for this provision. The group process allows our offices and others who work in this area to submit evidence that there were many instances of fraud or other bases for borrower defense to repayment. Oftentimes there are repositories like State Attorneys General other than individual borrowers that are going to have access to evidence that the borrower would not be able to get, and we think that this evidence should be considered by the Department. You know, we think this is a great piece to have back in. We voice our strong support for it. One minor question. The emphasis on group process section of the issue paper refers to requests by Attorneys General or law enforcement organizations. Does the Department

contemplate regulatory agencies like a, a state authorizer, or a state banking regulator to fall within the organizations that could potentially make a, a group application?

MS. HONG: Yes. The short answer is yes. We wanted to make that as encompassing (inaudible) as possible to include those agencies.

MS. JEFFRIES: Okay. Thank you, Joe and Jennifer, your response. Justin.

MR. HAUSCHILD: Yeah. Thank you so much, Cindy. (Inaudible) just want to voice strong support for the group process. I, I think it's important to recognize and, and I'm preaching to the choir here a little bit, but you know, when it comes to the group discharge process, oftentimes, you know, we're aware of instances where thousands of service members or veterans have attended institutions and have been impacted by a similar strain of conduct that, that is kind of a common threat. And so, we think it's more than appropriate that the discharge be used. I mean it's I think, you know, appropriate to consider the fact that when there's other enforcement actions, the necessary basis is kind of already established, right? We have the date range of the effective students, the type of fraud. A lot of it is already laid out when there's enforcement action

against an institution, and, and we think it's appropriate that those students who are coming to that institution have, have access to a (inaudible) on a similar basis. Thank you.

MS. JEFFRIES: Thank you, Justin, for that. Josh.

MR. ROVENGER: Thank you. The legal aid community also strongly supports the return of the group process provision. And as has been said, it's particularly important to ensure that individuals who might not even know that they're entitled to relief get the relief that they are due. We would ask and think it's particularly important that in addition to requests by Attorneys General or law enforcement organizations that other third-party entities are also included in the group process and have the ability to make these requests, in particular, legal services organizations, consumer advocate groups, and student organizations and borrower collectives themselves. We think this is an additional way that will ensure that everyone who has been subject to widespread fraud obtains relief even when they individually are not aware that they are entitled to the relief. And then as a practical matter, we think the more expansive the group process, the less burden there actually would be for the Department.

MS. HONG: Thank you, Josh. If I could just jump in there. Anytime you guys have a suggestion for language or to expand what we've added here if you could just drop it in the chat just to ensure that we capture that suggestion.

MR. ROVENGER: Sure. So, I'll, I'll draft something up and circulate it later on.

MS. HONG: Thank you.

MS. JEFFRIES: Thank you, Josh. And thank you, Jen, for reminding people to put it in the chat. Jessica.

MS. BARRY: Good morning, everyone. I think, you know, what Jen said that there are certain instances, obviously, that a group process would make sense. You know, Jen brought up Corinthian Colleges, and obviously, when there's a large number of students who were all defrauded in a similar way this makes a lot of sense. What, what concerns me is it being the default approach especially with some of the new categories that we are thinking about adding that are very intricate and there's going to be a lot of nuance in those. I think that there -- that this shouldn't be the default, but there should be the option to use it.

MS. JEFFRIES: Thank you, Jessica. I have Daniel and then Josh. And after that, I think we'll

take a temperature check on the concept of this.

MR. BARKOWITZ: Thank you, Cindy, and thank you, Jennifer. I also and our constituency supports the group process.

MS. JEFFRIES: Daniel if you can hear me you froze up. I'm going to go ahead and move to Josh. If you get your audio repaired, we will bring you back on for comment.

MR. ROVENGER: Thanks, I, I just had a follow-up question to Jessica's comment that the group process shouldn't be the default approach. And I'm wondering, Jessica, if you could say a little bit more about that just because to my mind, if, if our concern here is getting relief to the widest array of borrowers, I, I don't know why we wouldn't have it be the default approach.

MS. BARRY: Sure. I think, you know, Corinthian is an -- a -- an example where there were a large number of borrowers, but I think if we open up this process there are going to be a lot more one-off type of situations. So, I would just want to make sure that we're really considering each claim and, and making sure that we're giving them the attention that those students deserve.

MS. JEFFRIES: Josh, did you have a

follow-up to that? I see you put your hand right back up.

MR. ROVENGER: Yeah. I guess -- I guess wouldn't that -- what about the group process, though, would make it more difficult for the Department to focus on whether the institution provided -- an institution committed widespread fraud? I guess -- I guess I'm just not clear what impediment it would create for the Department to have it be the default.

MS. BARRY: I just think each claim should be considered on its merits.

MR. ROVENGER: And again, I guess I -- so, so I, I hear that, but if, if the goal here is to provide relief to as many borrowers as possible and we're facing a situation like Corinthian or ITT or the art institutes and the Department is considering the specifics of the school and how it impacted it let's say every student who attended the school, I mean, why -- in this instance, why shouldn't it be the default?

MS. BARRY: I didn't say it shouldn't be the default in that process. I just don't think it should be the default for the entire process.

MS. JEFFRIES: Jen, you raised your hand. Did you have something you wanted to say on that?

MS. HONG: Yeah. I just, you know -- I

just wanted to add that, you know, the reason that we want to emphasize a group process as a default is, is because to date almost all the approved borrower defense claims that we have come about through common evidence including information obtained by State Attorneys General. So, right now in the absence of a group process, we are adjudicating individual applications off of that common evidence. So, we think having the group for -- group process upfront better reflects how the evidence we get works and it's just a -- just a more sensible path for, for borrowers and for the Department.

MS. BARRY: Do you think that will always be the case in the future?

MS. HONG: Well, based -- if, if we're to predict the future based on, you know, what we've seen to date, that -- yeah, that seems -- that's exactly why we're proposing the remedy is because we have -- most, most of the applications that we adjudicate are based on common evidence.

MS. JEFFRIES: Okay. Thank you.  
Daniel, welcome back.

MR. BARKOWITZ: Sorry for the signal interruption. And what I was just saying is in general I would support this proposal or this part of the proposal. My question is whether we're missing an opportunity to

include adverse actions by accreditors as a reason for inclusion in the group process. So, the adverse action by an accreditor is usually a result of significant problems at the institution, and I wonder if that is a legitimate or specific reason we could include as a group process inclusion. And I'll type the language around that in the chat.

MS. JEFFRIES: Thank you, Daniel. I'm showing Jeri, Michaela, and David, and then we will take a temperature check. So, Jeri?

MS. O'BRYAN-LOSEE: Okay. I think I just want to agree with Joe, Justin, and Josh. And me not being a lawyer I just have a couple things. So, in a group process if there isn't a problem, if there's nothing to be found, nothing will be found and it will take a lot of time to clear people who are good actors, let's say, if they are good actors. And I also want to point out that the support for this from me comes from the communication to the students who are affected. Like this will make it easier for people who don't have, you know, appropriate internet access or don't look at the bottom of some web page to see that there's something going on or, you know, it's the most inclusive way to have relief for the most people. So, I just wanted to throw that in.



MS. JEFFRIES: Thank you, Jeri.

Michaela?

MS. MARTIN: Yeah, I -- my question -- I just have a question relating to what Jeri mentioned which is how does this impact the institutions and Jessica's concerns about how each claim needs one, but like do those claims have any bearing on that institution? And will this impact what the institution's responsibility is? Because my understanding was that this was purely between the student and the Department of Education regarding their loans, not anything related to the inst -- like directly to what they need to do.

MS. HONG: Michaela, that's a great question. I mean, we -- this is precisely -- we'll get -- we'll get to this later, but this is exactly why we want to separate the concept of recovering from the institutions because we believe that this adjudication process is about the borrower. So, so yes. I mean, this is -- this process is about the borrower. There is a piece about institutional recruitment which we will get to later. But, but you're absolutely right, and we believe that that's just a cleaner way to approach it by separating the adjudication process and institutional recruitment process. So, there are implications for institutional improvement but we can talk about that

later.

MS. JEFFRIES: Thank you. Seeing no more hands, I am going to move for a temperature check for tentative agreement on the concept that has been put forth here. So, by (interposing) --

MR. TOTONCHI: There, there is a -- Heather (inaudible). Heather, can we take a take a temperature check?

MS. JEFFRIES: Oh, I'm sorry. Yeah. Heather, can we go ahead and take the temperature check and then come back, or is it something that you'd like to put out there first?

MS. PERFETTI: So, I think that's up to you as the facilitator. I certainly had a, a comment to make, but I'm happy to hold it if you feel you need to take the temperature check.

MS. JEFFRIES: Okay. Thank you for that, Heather. As a reminder, put your thumbs up clearly so that we can see them. If 100 percent you can live with it, or no, you cannot. So, let's go ahead and see those thumbs. Okay. We have one thumbs down. Jessica, do you want to share with us your serious reservation on this?

MS. BARRY: Yeah, just for the reasons that I've already stated.

MS. JEFFRIES: Okay. Heather, did you want to comment now?

MS. PERFETTI: Sure. Thank you. So, I did just want to present a question and also add some insight into the adverse action comment that was made by someone else. So, an adverse action is the withdrawal of accreditation not warning, not probation, not show-cause. It is removal of accreditation by an agency that is also subject to appeal. And as you can imagine, the timing of how long that may continue is dictated by each agency, but the timeliness of decision, a final decision, is dictated by the processes of each agency. So, I think that would play a role in this particular set of circumstances. I appreciated the question about the impact upon institutions. My question is more for Jennifer from the Department is how are accreditors notified of institutions that are coming to the attention of the Department relating to borrower defense, because accrediting agencies also have standards that speak to these very issues of misrepresentation and trying to think through an agency that may take action as a result of some of this coming to our attention. Is there a current process for notification to the accrediting agency? Or how are we involved in the regulatory triad piece?

MS. HONG: So, yeah. I mean, my, my answer is yes, I think there are -- the success of all this depends on the spoken communication that we have with the triad, with the states and accrediting agencies. And it's interdependent so I would assume that our, our Department would reach out to the accreditor as well. But I can confirm that a bit later if you give me time.

MS. JEFFRIES: Thank you, Jennifer. I'm going to take one more comment on that -- on this, and then we're going to move to individual applications. Dixie, do you have something new to add?

MS. SAMANIEGO: Yeah. My -- I have a question for Jessica, really. So, you know, I saw that you put your, your thumb down and I just want to like get into that. Like I feel like I'm picking up what you're putting down, but is the point of this not like -- is the point of this emphasizing the group process not to help and support students who have been defrauded, right? And so, what it feels like from your comment is that you're not really in support of that and so it's confusing for me because why wouldn't we? Is that not why we're all here to center students in these conversation -- and so -- in these conversations? So, I really want to see if you have a new or a new perspective or a new, you know, comment from what you previously stated. Because for me,

as a student, that's really confusing in terms of like that not being the default. Like shouldn't the default be we're here to support students? We're here to make -- making these claims easier for them especially when, you know, when a lot of these times these -- the infor -- like the information or the evidence that students gather is not like enough by itself in one case? And so, they need other students to -- like other students who have (inaudible) like who have gone through this and their evidence, right, to also support them? So, I'm just confused as to where you stand and why you stand there. So, if you have anything new to add, please enlighten me, enlighten us. Yeah.

MS. BARRY: Yeah, sure. And thanks, Dixie. Thanks for asking me instead of just assuming how I feel. I really appreciate that. No. In cases where students have been defrauded, obviously, I want them to get the relief that they -- that they deserve. They, they definitely deserve to have that relief. I just want to make sure that we're considering all the facts in those cases. And that's the reason why. And, you know, this is the very first, you know, couple of days of the negotiations. I, you know, I know it's been questioned of whether I'm here in good faith. I am here in good faith. I'm, I'm voicing my concern for some of these

things up front. That doesn't mean that certain negotiations as I learn more from students like you and from other people on the committee that I won't, you know, start to change my mind on some of these things and make compromises that are best for students. So, thank you for asking me the question, though. I really appreciate it.

MS. JEFFRIES: Thank you both. So, with that, I'm going to move on to the individual applications piece. So, Jen, do you want to outline that for them, please?

MS. HONG: Sure. This is for -- this is actually non-regulatory. It's probably more of a sub-regulatory remedy, but we just wanted to share it with you guys to see your thoughts. In, in brief, our current practice is to deny an application if it -- if it doesn't state a claim. And rather than -- rather than continue with that practice, we just wanted to provide more guidance on the front end of what is the claim and provide some examples. Just having more kind of touchback with the Department on the front end with borrowers to give them guidance on the individual applications on what it means to state a claim rather than to outright deny the claim just be -- because it doesn't, you know, fulsome state a claim. So, that's all

this is. This does not need to be in the regulation, but we did want to share that we were going to provide that back and forth up front.

MS. JEFFRIES: Thank you, Jennifer.  
Justin and then Bethany.

MR. HAUSCHILD: Thanks, Cindy. I would just -- and I think I had previously perhaps brought this up at the wrong opportunity but wanted to just reiterate this idea of the Department liberally construing these. I think it's consistent with what the Department frankly is, is currently proposing, and simply just to ensure that applications aren't being denied on the basis of technicality or not meeting, you know, maybe form requirements and things of those nature. So, things of that nature, excuse, me. Thank you.

MS. JEFFRIES: Thank you, Justin.  
Bethany.

MS. LILLY: I want to support Justin's proposal and I also want to say that I think this is a great idea. I think trying to understand legal processes can be incredibly complex for folks and they are often not going to understand the basics required. And so, I really appreciate the Department being willing to be -- do more of that proactive outreach when folks raise an issue. And I wish all federal agencies did similar

things.

MS. JEFFRIES: Okay. Thank you, Bethany. Joe.

MR. SANDERS: Jennifer, are you thinking something along the lines of, for example, releasing the, the bases for past successful applications? Is that what's sort or envisioned here?

MS. HONG: Yeah, I think so. I think it's a matter of kind of furnishing some raw examples of what constitutes a claim and just providing more guidance on the front end to assist borrowers in filing their applications. Did you have some further ideas on that, Joe?

MR. SANDERS: No. I think that's a good idea. Along those lines, you know, we think that -- and this may be getting too far afield from this section, so I'll be brief. Having the basis for the denial, right? When you deny somebody letting them know why they were denied and presenting some reasoning would also be a positive step along these lines to provide some transparency to the process. And then my last question on this is just I'm wondering how the response from the school meshes with the post-adjudication issues which I'm thinking we'll be getting to later today.

MS. JEFFRIES: Sorry about that. Thank



you, Joe. Heather, and then I'd like to take a temperature check on that.

MS. PERFETTI: Thank you. I was just curious if there is related data that the Department has or can provide?

MS. HONG: You mean in terms of denials based on that student claim? Yeah, we -- I -- we, we could check back. We have those data. I'm not sure (inaudible).

MS. PERFETTI: And I think this ties to what was stated earlier. If it proceeds then there's a response from an institution and so how does it track along the continuum in terms of numbers and processing if that's available?

MS. HONG: Sure. We'll make a note of it.

MS. JEFFRIES: Thank you. Our last comment by David and then we will temperature check this for tentative agreement on the concept.

DR. TANDBERG: I just want to check in because I believe Jennifer said this wasn't regulatory or it was sub-regulatory and more information also. Do we actually need to do a temperature check if this isn't -- if this isn't regulatory and this is negotiated rulemaking? I -- I'll say I support this. I think it's

great, but if it's just informational I would propose that we move on.

MS. HONG: We'd support that as well. We just -- we, you know, we wanted to -- things come up in these discussions and sometimes, you know, sub-regulatory things are related to the overall process. We just want to come share with you. I, I, I agree we really don't need a temperature check on this one.

MS. JEFFRIES: Okay. Unless I hear any objection from any other committee member, we will not do a temperature check on this as it is informational, and we will move to process based on prior Departmental action. Jennifer?

MS. HONG: Okay. Thank you. I, I should (inaudible) -- I think we're on evidence solely from applications. They're, they're (inaudible).

MS. JEFFRIES: Oh, I'm sorry. I'm sorry. Yes.

MS. HONG: Yeah. No problem. So, so the past two sessions on rulemaking raised questions on whether a borrower's application or a group of applications should be considered sufficient evidence. I think this was broached earlier yesterday in terms of what constituted evidence and sufficient evidence maybe to Justin's claim as well. So, what, what does the

Department base its information, its evidence on when it receives a BD claim? And we are guided by the principle that the borrower defense application in it of itself is a form of evidence. So, statements made by borrowers in a borrower defense application could provide evidence for areas where the borrower would have knowledge of the issue. And an example of that would be a borrower's interaction with admission staff, for example. That said, we would continue to -- we would like to continue to seek evidence from the institution, the Department, and any other relevant sources and consider any of that evidence as applicable plus what is in the application. Multiple applications asserting similar claims could be grounds for a group process or additional forms of corroborating evidence. And then when I, I talked about evidence from the Department that is going to be the next issue in terms of expanding what we consider for borrower defense, some information that we already have from program reviews. That's the next issue. So, I open that up to discussion.

MS. JEFFRIES: Thank you. Any comments? Josh and then David.

MR. ROVENGER: Thanks. This is -- it's more just a clarifying question for the Department. Is this saying that if all you end up at the end of the day

with is a borrower defense application, that alone could be sufficient to grant the -- to grant the borrower defense but notwithstanding that, the Department still wants as much evidence as it possibly can get? Is, is -- am I understanding this correctly?

MS. HONG: Yes. That, that is correct after we've gone to the institution and asked them or they provide any additional evidence to the contrary.

MS. JEFFRIES: Thank you, Josh, and Jennifer, for that Department response. David?

DR. TANDBERG: Yeah, apologies. I think -- I, I was processing whether Josh's question answered my question and I, I, I, I believe it did. Essentially, you would -- the Department would be willing to consider the merits of the claim based solely on the application if no other evidence is forthcoming. That doesn't presuppose what the Department's decision would be though, right? I guess that's a question for Jennifer. Just I'm (interposing) --

MS. HONG: Yes. (Interposing). Yes.

DR. TANDBERG: Right. Okay.

MS. HONG: Yes, that's I think how you characterized it was correct. And if I'm over-speaking, I know (inaudible) jump in here. But yeah.

DR. TANDBERG: Right.

MS. HONG: That's, that's right, David.

DR. TANDBERG: Okay. Thank you.

MR. DAVIS: Not, not to get too legal on this, but yes, a student who got the evidence in -- solely in the application, meets the standard of -- standard that we end up with, yeah, on, on its own, that's possible.

MS. JEFFRIES: Thank you. Michaela and then Jeri and then Justin.

MS. MARTIN: I wanted you to kind of like clarify or like just also, sorry. I think that it was asked if the actual, you know, if it was just the application that's being considered. And it was like yes, but if we talk to the colleges or if we have other things, and I would imagine that that probably is to ensure that these colleges don't typically close quietly, right, or like these kinds of issues. So, are you saying that like if what's in the application like, you know, what is essentially evidence but not in the like was introduced in this other kind of like did that, that was the case? It's not like someone's going to write the application and you'd be like, oh, looks great and pass it? Because I know that there are probably folks within this board that are having that concern right now is they're saying someone could fill out an application and

then that's it. Not me. I, I don't (interposing) --

MS. HONG: Right. So, that's next. So, we want to -- the, the institutions will have due process. In other words, they will have the opportunity to provide, you know, (interposing) evidence. However, if it's favorable in the absence of other evidence, a borrower defense claim could be approved solely based on an application. That's what this is saying. It is possible.

MS. MARTIN: Thank you.

MS. HONG: Mm-hmm.

MS. JEFFRIES: Thank you. We have Jeri and then Justin, and seeing no further hands after that, I will call for a temperature check.

MS. O'BRYAN-LOSEE: (Inaudible). I just want to just get a little clarification when you say any other relevant sources. Would that be something like accrediting agencies where the, you know, the colleges may have been on probation or, you know, whatever, but our notice does that include something like that?

MS. HONG: Yes, certainly could. Mm-hmm.

MS. JEFFRIES: Thank you. Justin?

MR. HAUSCHILD: Yeah. Thank you, Cindy. Just want to say that we are supportive of this,

this provision, and we think it's more appropriate that, you know, the personal (inaudible) attestations of borrowers at these institutions be considered -- of, of these borrowers at these institutions be considered evidence. So, thank you.

MS. JEFFRIES: Thank you, Justin. Jessica, and then the temperature check.

MS. BARRY: Sure. I just had a question for Jennifer. So, if we go with just using applications, how will the Department monitor fraud? How will that be handled?

MS. JEFFRIES: I'm going to ask you to put that question into the chat, Jessica, so that she has a chance -- the Department has a chance to look at it and, and respond. Thank you. Let's go ahead and take a temperature check for tentative agreement on the concept surrounding evidence solely from applications. Let me see your thumbs, please. Okay, seeing no thumbs down, that is a positive temperature check on that. Thank you very much. Okay. Now let's move to process based on prior Department action. Jennifer.

MS. HONG: Thanks, Cindy. So, this is again we want to codify a process to consider information from existing Department findings as a basis of borrower defense claims. So, again, just on the same topic of the

evidence we would look at final program review determinations, what we call FPRDs or final audit determinations, FADs, to reveal that an institution, you know, misstated job placement rates, and if that's the case the Department may use those findings to grant borrower defense discharges to affected borrowers. In the case of findings based upon either one of these program review determinations or audit determinations, the institution would not provide an additional response because they had already done so as part of the program review and audit determination process. So, they already had an opportunity to respond in -- through that process as well. So, that is -- I mean, we have the authority to do this already. We just wanted to codify it in regulation.

MS. JEFFRIES: Okay. Thank you, Jennifer. Josh?

MR. ROVENGER: Thanks. So, so we're generally supportive of this. One question I had is why the Department settled on that May standard. And, and I ask that because to my mind if a final audit determination, for instance, reveals widespread fraud that would satisfy whatever standard we settle on for the borrower defense, it seems to me that at that point if we know it satisfies a borrower - the borrower defense



standard, then the Department should have to grant the borrower defenses based on that finding. And, and so I'm just interested in hearing how the Department settled on the standard.

MS. JEFFRIES: Okay. I think that I, I want to thank you for that, Josh, and the Department may need some time to look into that, and, and give a response. So, if you want to capture that in chat, please feel free to do so. David?

DR. TANDBERG: So, is this only in instances where the institution misstated job placement rates? Or are there other violations or issues that would allow for prior Department action to be considered? Because as it's written --

MS. HONG: Oh, no. Yeah. I'm sorry. That was -- that's just an example we've provided that might be a (interposing) program revealed.

DR. TANDBERG: Okay. Oh, I see. Yeah, you have the sub-clause, for example. My, my apologies.

MS. JEFFRIES: Okay. Anyone else before we go to temperature check? Heather.

MS. PERFETTI: I just had a question more for Jennifer. Is this based on a timeframe? Or is it just any prior Departmental action in the history of the institution?

MS. HONG: Oh, I think -- I think the timeframes will be relevant depending on, you know, the claim that the borrower is stating by when, when there has to be (inaudible) between, you know, any kind of misstated job placement rates, for example, and the claim that the borrower is asserting in terms of when, when this occurred, right? So, we would be okay with that if, if it's re -- if it seems reasonable that based on the statements (inaudible) occurred during the period that the borrower attended the school. It seems like that would follow. We would use that information to support the borrower's claim against the institution. So, I guess as, as to the relevancy of the time period that the borrower attended the school and when the misrepresentation occurred.

MS. JEFFRIES: Thank you, Heather and Justin, Jennifer. Seeing no other hands, let's move for a temperature check for tentative agreement on the iss -- sub-issuse of process based on prior Departmental actions. Can we see your thumbs, please? Okay. So, it's a positive temperature check for TA on that one as well. Alright. Let's forge ahead here, and the next subcategory in this is borrower, borrower status during and after adjudication. Jennifer?

MS. HONG: Yes. So, as a default

option, we propose that when a borrower initially files a BD claim that they be placed in forbearance if they want a re -- repayment and if there were indeed fallout that would stop collections while the Department adjudicates their claim. Borrowers would still have the opportunity to opt-out on forbearance or subcollections, and this would apply to all of the borrower's loans even if not all of them are related to the BD claim. And then claims that have been in forbearance for more than 180 days would stop accumulating interest. Now after the adjudication happens, we propose several options for the borrower's status. If, if we approve the claim, the borrower's loans will stay in interest-free forbearance while the loan balance is discharged in accordance with the amount of relief that's provided. If we provide -- if we grant partial relief or deny the claim, the borrower's loans will stay in forbearance or stop collections for 90 days after the partial discharge to give the borrower an opportunity to request reconsideration under the new proposed reconsideration process and also to help ease the borrower back into repayment and collect -- collection activities. If the borrower does avail themselves of the reconsideration process, they will remain in forbearance or stop collections while the Department reviews reconsideration

costs.

MS. JEFFRIES: Okay. Thank you, Jen. Questions? Comments? Marjorie and then Jaye.

DR. DORIME-WILLIAMS: Please, Jennifer, and I, I want to say I think that the (inaudible) I really appreciate these efforts to make this easier for borrowers. I just wanted to know if there's any rationale behind the 180 days to stop accumulating interest and then on the other side 90 days for, for relief for borrowers before they would have to start paying again. I, I don't know if that's mandatory, if there's some rationale behind that the Department's choice of those time periods.

MS. HONG: I mean, there's, there's always a rational basis and that is just to -- that was the timeframe that we identified that would give them enough time to kind of get back on their feet and start back into repayment or, you know, stop collections whichever status they have-- just to give them some time.

MS. JEFFRIES: Okay. Thank you. Jaye?

MR. TOTONCHI: Really quick before Jaye, just want to recognize that Suzanne has come on screen for state regulators as the alternate.

MS. JEFFRIES: Jaye, please proceed.

No?

MS. O'BRYAN-LOSEE: Oh, I just put my hand down since they're speaking. So, sorry. Just a question. So, as (inaudible) holders we are receiving notice from the Department to put borrowers in forbearance currently, and -- but a, a situation where we would basically have subsidy during forbearance isn't something that exists in the program. So, I just would like some clarification on billing, you know, how, how the Department anticipates that would work if it were applicable to file. Or is this specifically direct loans?

MS. JEFFRIES: Okay. Would, would you like to place that question in the chat for Jennifer to take a look at? Thank you, Jaye. Josh?

MR. ROVENGER: Thanks. So, I've just two points to raise. And the first I want to pick up on Marjorie's point about the interest stopping after 180 days. We would urge the Department to eliminate the 180 days and just stop interest at the time the borrower applies for borrower defense and is put into forbearance. By, by asserting that claim the borrower is essentially saying this loan was invalid from the beginning and the Department should be put in no worse -- that the student should be in no worse position making that claim to the Department. The other topic I'd like to talk about

within this, this sub-issue is there needs to be some sort of redress put in here when the Department collects unlawfully for a borrower defense applicant who is in forbearance. We've seen this happen not only just based on Department policy but in violation of court order. The last Secretary of Education and the Department was held in contempt of court for unlawfully collecting on borrowers who had applied for borrower defense. They garnished the wages of over 2,000 borrowers or offset their taxes and they demanded payment from 45,000 borrowers who had submitted a borrower defense application and not only should have been in forbearance but there was a court order saying the Department couldn't collect on that. And so, to kind of underscore why there needs to be some sort of redress put in here if the Department unlawfully collects, I just want to, want to highlight the story of a borrower who submitted an affidavit in that case. So, this borrower attended Everest College believing it would be a better -- a path towards a better life. She applied for borrower defense in 2016 and was part of that class action. She was waiting on her tax refund of about 5,000 dollars and was going to use it to (inaudible). In violation of the court order and in contrast to the Department's policy about keeping those in forbearance, the Department seized

that tax -- that tax refund. As a result, she was charged certain late fees. She fell behind and she had to take second -- a second job despite a disability. She had to borrow 3,000 dollars from family and friends and 600 dollars from a local lender. I can't underscore enough that there are harms beyond just a collection when the Department unlawfully collects even when a borrower should be in this forbearance status. And so, I think it's really important that we discuss some sort of redress in that -- in that situation.

MS. JEFFRIES: Thank you, Josh.

Jennifer, did you have a response to something or --

MS. HONG: Just real quick. I was listening to Josh. I, I saw June's (phonetic) question about interest capitalization. Remember that interest would not be capitalized when the loan's in forbearance (inaudible) for Joe. Joe asked that question. Yeah. And to his point, for forbearance situations it's interest-free for the first (inaudible) for the first 180 days and that's the proposal. Thank you for sharing, Josh, everything else. We'll take it into consideration.

MS. JEFFRIES: Thank you, Jennifer.

We're going to take two more comments or questions, Suzanne and then Daniel, and then we will do a temperature check for tentative agreement on this.

MS. MARTINDALE: Yes, thank you. So, I, I would support there being no interest accumulation at all. I appreciate that you would not capitalize it but I'm concerned about any accumulation of interest for a borrower who's so distressed they'd filed a claim. In addition, I don't see anything in the issue paper other than in the section talking about the notion of full versus partial relief. I think we should presume that if a borrower stated a claim, they get full relief. They've already taken on the burden of debt. That should be financial harm enough, so if there's going to be any concept of partial relief, I hope we can talk about what that would be and what the methodology would be behind it. Thank you.

MS. JEFFRIES: Thank you, Suzanne. Daniel?

MR. BARKOWITZ: Thank you. I also support the, the no interest and I, I, I have a question for the Department. Is it possible, rather than choose forbearance as the option, to put students in an affirming status, which by definition for students who are in subsidized, would include no interest and then, you know, allow for the opportunity to not assess interest during this period. I echo what Josh and others have said around the issues here, that students have



already raised substantive issues and we don't want the loan accruing interest during this timeframe while the documentation and decision is being made.

MS. JEFFRIES: Thank you, Daniel. So, let's go ahead and take a temperature check for tentative agreement on the borrower status during and after adjudication. Can we see your thumbs, please? Okay, I see two, three thumbs down, Joe, Josh, and David. Can you give some input to the committee, Joe, on yours?

MR. SANDERS: I just agree with Suzanne that we don't think there should be any accrual at all.

MS. JEFFRIES: Okay. Thank you.  
Josh?

MR. ROVENGER: Yeah, for me it's no accrual and also I'd like further discussion on some sort of remedy if the Department unlawfully collects in the forbearance.

MS. JEFFRIES: Thank you. David, I believe you were the other one.

DR. TANDBERG: Yeah, exact same reasons as Josh.

MS. JEFFRIES: Okay. Thank you.  
Alright, with that, let's move on to limited periods for borrowers. Jennifer.

MS. HONG: Okay. For the next issue

here, we just want to eliminate limitations periods for borrowers. You know, we, we find that there, these limitation periods have been incredibly confusing for borrowers and they had operational complexity for the Department. They also make borrower defense discharges different from other programs, like closed school and that can result in borrowers needing to choose between programs. We think as long as a borrower still has an outstanding student loan, we should not apply a statute of limitations. However, we would keep, we would retain a special limitation for the Departments recovery from an institution.

MS. JEFFRIES: Thank you, Jennifer. Questions, comments? Josh and then David.

MR. ROVENGER: Thanks. So, we are definitely in support of eliminating limitations periods. Often, a borrower is not even aware of either their right to relief or some of the evidence beyond the limitations period that was put in. And I, I would be curious to hear from the Department why this would be limited to individuals who have an outstanding direct loan (inaudible) and -- I'd be interested in hearing that from the Department.

MS. JEFFRIES: Okay. Thank you. Alright. Do you want to put that in the chat for the

Department to have a chance to review and -- David.

DR. TANDBERG: I had the same question but I want -- I don't know if Jennifer has a response now. If she does have a response now, I'd love to hear it. Otherwise, I can certainly be patient.

MS. JEFFRIES: Thank you. Jessica.

MS. BARRY: Yeah, I'm just concerned with rec-recordkeeping from institutions being able to really respond to these and maybe some of the other institution's representatives that are here could talk about this. There is a three-year recordkeeping rule now and so if a claim comes in that's 20 years old, it's, it's going to be really hard for institutions to have the records available to really be able to respond to the claim.

MS. JEFFRIES: Thank you. Jessica, or I'm sorry, Jennifer.

MS. HONG: Thank you for that comment, Jessica. I just wanted to talk about having an outstanding direct loan. So, that, that's actually, that's actually meant to be more generous and less restricted than what we had before. So, so long as you, so long as you just have an outstanding direct loan, then you would still be able to submit a borrower defense claim.

MS. JEFFRIES: Thank you, Jennifer.

Daniel?

MR. BARKOWITZ: I think the response -- so I'm going to respond to Jessica as an institutional representative and financial aid representative. I think the issue here is it ties back to the institutional liability period. I'm pleased to see a limit on institutional liability under this section. If a borrower's repayment is 25 years or longer, it's nearly impossible to find records in that period of time. So, when we come to the institutional liability section, the number that I recall is a six-year period, which it seems to me is mostly reasonable given the audit timeframes and it's really three years beyond the potential audit for that period. So, as long as there's a tieback here between the two pieces, I think there's reasonable (inaudible) that would make sense. And I, and I would support, you know, again, in, in both instances an expansion of the limitation period here as long as there's a corresponding understanding of the institutional liability portion associated with that.

MS. JEFFRIES: Thank you, Daniel.

Josh?

MR. ROVENGER: Thanks. So, first, I'll just echo Daniel's point that so long -- I mean, I,

I hear Jessica's concern but if we're going to, as the Department proposes, completely bifurcate the borrower defense process with the recovery against the institutions, then I, I don't see how that concern outweighs the really significant harm that the limitations periods would, would've had with (inaudible) for students. I also want to respond to the Department's point about direct loans. So, appreciate that, that this would be broader. I am concerned though, one, the implications for (inaudible) borrowers and, two, for someone who has entirely paid off their loans and then submits a borrower defense claim, they're still--they have been subject to the unlawful action of the school the same way as someone who has an outstanding direct loan. Their loan is equally invalid and so, I, I would urge the Department to eliminate any limitation period for them as well.

MS. JEFFRIES: Thank you, Josh.

Alright. Seeing no additional -- okay, one additional. Michaela?

MS. MARTIN: Yeah, I just wanted to make a comment that the, the question about the records doesn't sound like it's coming from a place that's really -- this is a to-this is another issue where it's completely separate from like the liability or any impact

on the institutions and the impact on the student. And so, if the records don't exist at the institution and the student submits a request, that, you know, is it like a prima facie case where like on its face you can see that the application is valid and the school doesn't have any info and they find that they're, you know, like that student just doesn't qualify. Then, they don't qualify and that sucks and I, I wish that student maybe submitted the request when the institution still had records. However, that has no bearing on the institution itself and I just would really love to see a perspective that comes from ensuring that the student has access to resources.

MS. JEFFRIES: I'll give Jessica the floor and then we will take a temperature check on, on the limitation period for borrowers. Jessica?

MS. BARRY: Yeah, sure and I appreciate that comment, Michaela. A student should definitely be discharged of their loans if there was fraud, even if it was a long period ago. I'm not saying that. It shouldn't be. But there is reputational damage that comes when a, when a claim is processed and approved and so we just want to make sure that institutions have the ability to respond to, to claims if possible.

MS. JEFFRIES: Thank you. Josh and

then a temperature check will be taken.

MR. ROVENGER: Yeah, I just want to briefly respond to that last part. I may -- the Department can correct me but I don't believe any borrower defense claim has actually been granted against a school that still exists today. And so, I don't believe there would be any actual evidence reflecting any type of reputational harm if a school, if a borrower defense is granted.

MS. JEFFRIES: Thank you, Josh. Okay. So, let's go ahead and take our temperature check for tentative agreement on the limited period for borrowers. Let me see your thumbs, please. Okay, looks like a positive check on that one. Thank you. With that being said, let's keep moving on here to institutional response process.

MS. HONG: Thanks. So, we're just going to, we're going to build in some timeframes for an institutional response process that would be required of the institution. Again, as we've mentioned several times, this would be separate from the process used to access liabilities to the institutions. And, generally, what we're thinking about for both individual and group claims is that institutions would have 60 days to respond to the Department's requests for relevant evidence. The

midpoint of the current timelines generally afforded for responding to program reviews. So, that's where we get that, those 60 days. If, if the institution did not have evidence, it would provide an affidavit to that effect, certified by the institution's leadership. If the institutions waive the institutional response process or choose not to respond, the Department will assume the institution does not contest the allegations made by the borrower.

MS. JEFFRIES: Thank you, Jennifer. Open for discussion. Heather and then Marjorie.

MS. JARVIS: Thank you. Jennifer, I just wanted to verify what the current institutional response time is for institutions and then if you have a sense for how many fall into these categories of not responding or responding with evidence.

MS. JEFFRIES: Thank you, Heather. I think that may be a question that they need a little time for so please put that in the chat. Appreciate it. Marjorie?

DR. DORIME-WILLIAMS: So, this is specifically about not having evidence and so I'm not sure if that's common and what's to stop an institutional leader from simply falsifying a statement saying that they have no evidence to provide. I think that there's



some concern about how that's established and if there are other processes besides simply because the president said so.

MS. JEFFRIES: Okay. I, I think that if you'd be so kind as to put that in the chat, that they can look further into it. Appreciate it. Any further questions or comments before -- okay, Heather.

MS. JARVIS: The other question that I had is whether it's an individual or a group process. Does that warrant more time for an institutional response or not based on your experience with processing borrower defense? And that's for anyone on the committee or Jennifer.

MS. JEFFRIES: Anyone? Thank you, Heather. It doesn't seem to have an immediate response so, again, please be so kind as to put that in the chat. Alright. Seeing no further hands, let's move -- okay, Joe?

MR. SANDERS: Very quickly to Marjorie's point about, you know, what's to keep leadership honest in that affidavit and one thought that comes to mind is that the Department could consider whatever the response is as binding in the post adjudication process. So, if they say we don't have anything, there could be some kind of limitation on them

then providing evidence in the post adjudication period.

MS. JEFFRIES: Thank you, Joe.

Alright, no further hands. Oh, Daniel?

MR. BARKOWITZ: Sorry. Thank you.

Very quickly. The concern around the 60 days, I just wanted to address around the group versus individual. Generally, the group, if there's a group filing, it would be under one condition or one status or one issue, which could be responded to, I think, within the 60 days. I have, I have little concern around the ability to respond in that timeframe since the underlying issue would be similar. If it's multiple issues, then, then I would ask the Department for some, some understanding but, again, with a, with a group coming under one particular issue, I don't think there's a, there's a concern around the 60-day timeframe.

MS. JEFFRIES: Thank you, Daniel.

Alright. One last question or comment with Jessica and then we'll move for the temperature check.

MS. BARRY: Yeah, I just wanted to support Heather in her cons-in her question. I know for a really small school, if it was a very complicated claim and there were lots of students involved, it would take a lot of time for small schools to respond. So, I think it's just something we should consider.

MS. JEFFRIES: Thank you, Jessica.

So, let's go ahead and move for a temperature check for tentative agreement on the institutional response process subcategory. Let me see your thumbs, please. Okay, it looks like we have another positive temperature check. Thank you for that. Alright. Just a few more subcategories in this one. Time to process and adjudicate applications. Jen?

MS. HONG: Okay. We just wanted to get your thoughts. You know, we, we strive for expediency and thoroughness in administering the borrower defense claim process and we just wanted to get some general ideas on establishing reasonable timeframes for the adjudication. If we could just spend a few, few minutes talking about what folks are feeling in terms of a reasonable timeline to adjudicate BD claims and would that be the same, would that timeframe apply both to individuals versus group claims. Should the clock stop or reset on an individual claim if it's captured within a group process before the Department issues an adjudication decision? And how should the Department treat evidence or cases that are in ongoing unresolved or settled litigation because I know that that's, you know, been an issue? So, those are the questions we wanted to kind of get somebody around in terms of times for

processing adjudicated applications.

MS. JEFFRIES: Thank you, Jennifer.

Josh?

MR. ROVENGER: Thanks. So, with respect to the first question, I think, you know, I'm, I'm open, very open to hearing what others think as to a reasonable time constraint. For me, the most important thing here is, number one, there is a specified time in the regulation that the Department has to decide these claims. And, number two, that there's a penalty if the Department procedurally violates that regulation. And what I would propose is that the Department grants the borrower defense if it doesn't decide it within the specified time limit. And the reason why this is the most important thing to me is I cannot emphasize enough how much the Department's inaction compounds the harm that borrowers are facing already by virtue of the way they were treated by their school. It impacts their ability to financially plan for the future. It impacts decisions they make related to their families and it causes them to lose trust in their government entirely. And I, I had a lot, lot of the kind of concrete, like very specific thoughts that I'll share as the conversation gets going but I, I just want to use my, the rest of my three minutes here to convey to the entire

committee what some borrowers who have been waiting four or five years have said about this process. I mean, they've done this in affidavits in the Sweet litigation which challenged the Department's delay in deciding borrower defense claims. So, one borrower says it becomes overwhelming and depressing some days, especially when I'm working so hard each day just to make ends meet. Another says not because of the way they were treated by the, well, because the Department's failure one way or another, whether to grant the borrower defense claim quote I won't buy a house. I stopped fertility treatments. I don't have the future I was promised. Another said the continued inaction of the government is what has caused me to lose faith. Another said when I first submitted my borrower defense claim, as I, I was told it would take six months to decide. Six months turned into a year and now it is four years later and I have no decision. It's disheartening to want to do the right thing, follow the rules, get an education, and then contribute to my community with a small business, that gives back to the local economy and then have such an uphill battle to even get any information. Another borrower, hard to imagine a future that doesn't end in financial ruin. Cannot purchase a home. Cannot figure out a payment plan within budget that'll ever get me out

of this debt due to the interest. No way to plan for retirement. No way to plan for my children's college fund. Do not foresee a way for myself, my wife, or my parents (inaudible) debt. Again, I cannot emphasize enough the importance of the Department recognizing that there should be some specified time limit in the regulation and, two, there being real consequences if the Department doesn't live up to that time limit because of the compounding harm that its inaction causes on borrowers.

MS. JEFFRIES: Thank you, Josh.

David?

DR. TANDBERG: I just really appreciate, Josh, thank you sharing both your insights but, in particular, the quotes from those who have been harmed by this process. Just really, really helpful. I guess I'd want to know if, if, Jennifer, more about the details of how this process is carried out within the Department. I mean, who's hearing these claims, adjudicating these, these, these claims and, and what might lead to such prolonged delays? I, I guess for me I understand the process but it's, but actually the nuts and bolts of how it's carried out. I'll be honest, it's a bit of a black box and I'm sure if it is for me, it's much more of a black box for many other people.

MS. JEFFRIES: Thank you, David. That sounds like a question that's going to need a little bit of delving into so if you could please put that question and/or information that you would like to see in the chat box, I would appreciate it. Michaela?

MS. MARTIN: Yeah, I don't, I don't mean to like rehash old topics but I also want to take the moment to acknowledge that Josh had to share student stories because we don't have a student on this committee to speak for themselves. And that I feel very passionately about that. And as a single student parent and, and a lot of these closed schools, they really -- that's how they get you, right? They play on parents and especially single moms. Like oh, you'll have time to go to school because you can go online and you can do these things. And having to navigate all of that and then finding out that everything that I've been working for didn't matter. Like, I feel like (inaudible) I can't imagine actually going through that and I just (interposing).

MS. JEFFRIES: Thank you, Michaela.

Oh --

MS. MARTIN: Thank you.

MS. JEFFRIES: Sorry. Thank you, Michaela. Justin?

MR. HAUSCHILD: Yeah, thank you so much, Cindy. I just want to support what Josh has already said about a very specific timeline being included. What Josh raised about compounding issues is a very real thing. We, we have countless stories from veterans who've been impacted. I just recently spoke with one who attended ITT Tech, exhausted her earned VA education benefits, went on to take out additional federal student loans at the institution and then waited a ridiculous, frankly, period of time for those, for her borrower defense claim to be addressed. And during that time, there were difficulties paying for rent, paying for expenses related to children because of reliance on government assistance. All of these things are very real and compounding issues and so the need for a very specific hard deadline in the regulation I don't think can be overstated. Thank you.

MS. JEFFRIES: Thanks, Justin. Bobby.

DR. AYALA: Oh, just a thank you to Josh for sharing those stories again and echoing what Michaela said there. But I have a specific question perhaps for the Department. Do we have any data with regards to what the timeline currently is to adjudicate borrower defense claims? And do we have any data on the same process for group claims so that we could take a



look at that and look at perhaps the, some of the barriers that cause it to, to go on for such an extended period of time like we just recently heard?

MS. JEFFRIES: Okay. Again, Bobby, please put that in the, in the chat so that ample time can, consideration can be given to -- oh, Jennifer, you have your hand up?

MS. HONG: Yes, and I, I know someone else raised that question, Bobby, and we'll, we'll loop back on that one. I just, to the extent, if I could point you to question three, to the extent that some of these delays are due to pending litigation or ongoing litigation. Do, does anybody have any kind of thoughts to share with regard to the treatment of evidence? And, and also, Josh, I appreciate your thoughts on the borrower experiences and Michaela's thoughts. So, we are definitely eager to hear about more of those.

MS. JEFFRIES: Thank you, Jennifer. Yeah, gentle reminder that we're (audio) specific questions here the Department is looking for feedback on. And so, any new comments focused on those would be appreciated from what Jennifer just said. Marjorie?

DR. DORIME-WILLIAMS: So, I, I think that my question is about question number three and I'm not really sure what the Department is asking. It seems

that these are three very different cases and so is it what should they do with evidence with respect to other cases? Is it between individual and group process? Is it how long to hold onto evidence because I would assume maybe some of those timeline problems might come up because they have to reexamine perhaps individual cases that are related? So, I, I don't know if there's maybe a little bit more clarity that you could provide on that last question.

MS. JEFFRIES: Okay. Thank you, Marjorie. Josh? Oh, Jennifer, are you ready?

MS. HONG: Yeah, real quick. There's no current, there's no current timeframes in the, in the regulation to answer that question. As to clarifying these questions, Marjorie, this is all in the context of timeframes by which to adjudicate these claims. We realize, you know, we want to balance thoroughness and expediency. Sometimes, sometimes these delays are due to ongoing litigation and that's what, why question number three is, is relevant, Marjorie, in terms of trying to understand or garner ideas on how the Department should treat pending BD adjudication case, adjudications when there's pending litigation.

MS. JEFFRIES: Thank you, Jennifer.  
Josh?

MR. ROVENGER: Thanks. I'm just going to tick through my thoughts on each of the three questions real quickly. So, on the first one, in, in choosing a specific date, I think, you know, or a specific time period, I do think we need some more information from the Department, in particular for 2021. How long on average has it taken the Department to decide any claim? As I mentioned before, the biggest thing though for me for question one is a specified time limit, violation, a real remedy, and penalty if the Department violates that requirement. And that, frankly, should be retroactive given how long folks have been waiting. On the second question, so, so I, I think we understand that a group claim could take longer to decide than and individual claim. I think our concern would be if someone applies on their own and then gets moved into the group process, that they should receive really clear notice within whatever we decide for question number one, is that their claim has been moved over to that group process. So, they're not just sitting in this limbo of I don't know what's going on with my claim. On the final question, so certainly the Department should draw on evidence for cases that are ongoing, unresolved. I don't think that the Department should use that as a reason to hold off on deciding borrower defense claims and, in

particular, since the evidence or the elements of, of the claims in like a (inaudible) might be quite different than what needs to be established to satisfy the borrower defense standard that we settle on. I think one way, and I was going to propose this later on that the Department could address this is, so if the Department is concerned that there may be evidence that comes out in cases that would change a decision to deny granting, the Department should just make explicit in its regulations that it can always reopen a denied claim for reevaluation.

MS. JEFFRIES: Thanks, Josh. Justin?

MR. HAUSCHILD: Yeah, thank you, Cindy, Cindy. I'm going to apologize because I'm not specifically addressing one of the three questions but I, but I have my own question concerning the interest pause and how the Department reached a determination of six months as maybe opposed to just, you know, pausing immediately or something of that nature. Is there any clarification on that?

MS. HONG: Alright. So, I mean, (inaudible) six months or longer if you have a pending BD claim. You know, that, again, the, the point of this is to ensure that the borrower, you know, has an interest pause as we continue to adjudicate their claim.

MS. JEFFRIES: Thank you, Jennifer.

Joe.

MR. SANDERS: Hi. So, these are all really good questions, Jennifer. I am going to address a few key points in here. So, in number three, there's a question of settled litigation. You know, state AGs think that the Department should consider evidence from settled litigation. As the Department itself I'm sure is aware, there are a number of reasons why the litigation might settle. For example, State Attorneys General or another law enforcement entity might not choose to take a case to trial where an entity does not have the resources to fulfil the damages or restitution or civil penalties that are on the table and appropriate. So, the costs for the office greatly outweigh any actual recoupment and cases might settle on that basis. Similarly, there are factors like litigation risk or other complicating matters that might make a settlement the best option in the short-term but not be definitive on the question of whether there was wrongdoing that the borrower might have a claim on as a defense to the repayment of their federal student loan. As to number two, and specifically -- so, number two, you know, we think there should be a timeline for group claims but, you know, I'm certainly cognizant of the, the points raised by the proprietary schools and the accreditors said, you know, those are likely to be

more complicated. And so, certainly, I don't think it's unreasonable to have a longer time length for a more complicated claim that deals with more borrowers. As to the individual clock on the individual claims if it's captured within a group claim, again, these are all really tough questions so I think Josh's point of needing more information on these before we have definitive answers is a good one. I would just say I don't think it would be prudent or efficient to, for the Department to be required to answer individual claims where there's a pending group claim that might have much more robust evidence. Alright? So, a borrower might say, you know, I was defrauded. They made me feel terrible on the telephone and I was pressured into enrolling. That's, you know, a relevant thing that should be considered but then in the group claim you might have, you know, transcripts or recordings of phone calls that bear that out, right? And so, it would be we don't think it would be sensible to dismiss a borrower claim for, you know, insufficient evidence when you have this group claim that's much more robust sitting on it. So, based on the questions that we have here, those are my thoughts. Happy to give more when there's more information available.

MS. JEFFRIES: Thank you, Joe.

Daniel.

MR. BARKOWITZ: Thank you, Cindy. So, I'm going to make an assumption that the -- first of all, I want to echo what Joe and Justin and Josh have said. I, I agree wholeheartedly again that interest should not be accruing during this timeframe. However, the remedy the Department is putting forward that after six months interest should pause seems to indicate the Department thinks in some measure that six months is a reasonable timeframe. So, I wonder -- this is an I wonder question, I wonder if, if we look at the 180 days as a benchmark timeframe, subtract from that 60 days for an institution to respond, which we've talked about in process, and that would give the Department the remainder of the 120 days. Again, not, not giving up on the interest assessment question, I still want to return to that, but I wonder if 120 days is a reasonable timeframe given the six-month allocation for adjudication of individual borrower defense claims. That, if we're adopting six months as sort of a standard, maybe it is within that timeframe that we want an answer. I'm, you know, I'm, I'm cognizant of the default risk, I'm cognizant of, of Josh's point earlier about lifetime financial risks by these claims going on and on. I don't really have a good answer for number three but I think, you know, a

reasonable timeframe for the individual maybe that, that total of 180 days is a possibility. I also would like to see some data about what the current timeframe is but, but that seems to tie in well with what the Department has put on the table to date.

MS. JEFFRIES: Thanks, Daniel. Josh?

MR. ROVENGER: Thanks. So, first, I do want to echo Joe's point that if an individual submits a borrow-a borrower defense application and there's a group process that has additional information, you know, certainly that should be considered. Again, I just want to reiterate the point though that the borrower should be notified by the Department that that's why their application that they individually submitted might be taking a little bit more time to evaluate. I also just want to respond or, or note that to the extent the interest provision that we discussed earlier reflects that kind of the Department's starting point is 180 days and that the remedy for violating that would just be cutting off interest accrual and, to the points I was making earlier, I think that would be wholly inadequate to, to even come close to remedying the, the pain and harm that the Department causes through delay.

MS. JEFFRIES: Thank you, Josh.

Daniel.



MR. BARKOWITZ: And just to respond to Josh, I forgot to say in my comments that I did support the remedy Josh put forward which is if we set an individual timeframe and the Department doesn't respond in that timeframe, then the presumption would be a remedy of discharge. So, if 180 days, I agree with you that it's not, once we set a timeframe, it's not sufficient to just simply waive interest as a result of that. So, I'm supportive of that as well.

MS. JEFFRIES: Thank you, Daniel.  
Josh?

MR. ROVENGER: Thanks. And I, I appreciate that, Daniel, and I, I do want to just take, take the time to emphasize that that relief really should be resurrected given that there are 200,000 plus borrowers who have been waiting an unreasonable amount of time for their decision. And so, they should also not be left out if we decide on that sort of remedy.

MS. JEFFRIES: Thanks, Josh. Alright. Seeing no further hands, I think we can move to temperature check for tentative agreement on this. Before we do that, I do want to remind everyone to please put your questions or solutions into the chat box so that the Department can utilize those. Alright. Now, we have three more hands up and then we will do a temperature

check. David.

DR. TANDBERG: I'll be honest, I have no idea what we're doing the temperature check on because there's no official proposal on the table. There was just some questions asked and a bunch of ideas suggested, some of which I agree with, some were more of questions. And so, I don't know that I could vote in temperature check at this time.

MS. HONG: Cindy, if I could just -- David, I think, if we could just take a temperature check on the concepts, right? Because even building a process for a timeframe for adjudication, I think that's, that's the issue on the table.

DR. TANDBERG: That, that works for me.

MS. HONG: Okay.

DR. TANDBERG: So that we're saying do we want a process--

MS. HONG: Yes.

DR. TANDBERG: -with the timeframe.

MS. HONG: There you go.

DR. TANDBERG: Okay.

MS. HONG: Right.

MS. JEFFRIES: Jaye.

MS. O'CONNELL: One thing I'm thinking

about are frivolous claims. So, if you get to the point where you, you have a timed box claim that ends up in a discharge if the Department doesn't meet the timeline. We're just familiar with bad actors filling the space to, to flood, you know, flood the Department with claims. And I'm not saying that against students, just something that we see sometimes in the, all the debt relief companies and things like that. So, just something to keep in mind as we're building the guardrails.

MS. JEFFRIES: Thank you, Jaye, for that. Josh.

MR. ROVENGER: Thanks. So, Jaye, to that point, I mean, if you have data on that, that would be really helpful to see because I don't think it's -- I personally am not persuaded just by the abstract idea that there may be instances of fraud that should, should dictate how we're making broad policy decisions. I mean, so, would be interested in like specific instances and examples and dates. More broadly, though, the Department of Education has this obligation to de-decide these claims within a reasonable time period and if the Department is not doing that, frankly, the Department should be held to account for not doing that. And if a few frivolous applications, frivolous applications get through, if that's the cost of the Department complying

with its statutory obligations, that's something I'm personally (audio).

MS. JEFFRIES: Thank you, Josh.

Alright. Let's go ahead and do the -

MS. O'CONNELL: Oh, can I respond to Josh's question? The data, I'm thinking specifically about the Fair Credit Reporting Act. There is a section where it enumerates how we respond to a frivolous credit claim. So, it, it was more in that name that there was a way that we are, I guess, guided through the regulation about how to respond so that they don't end up taking the space of the real claims.

MS. JEFFRIES: Thank you, Jaye. Josh.

MR. ROVENGER: Yeah, I, I appreciate that. I guess the, the main point I just want to make is I don't, I don't want abstract concerns about fraud to, to drive what we end up do, what we do here.

MS. JEFFRIES: Okay. Thank you, thank you all. Let's go ahead and take a temperature check for a tentative agreement on the concept here. Can we go ahead and see your thumbs, please? Alright. It looks like we are good on that one for positivity. Thank you. Alright.

MS. HONG: Okay.

MS. JEFFRIES: We've got treatment of

FFEL program loans. Jennifer.

MS. HONG: Yes. This is the last issue on the adjudication process for BD. This may go to Jaye's earlier question. Basically, we want to streamline the process for borrowers with FFEL program loans. We would ask -- right now, you know, we, we have to consolidate those loads into direct loans to process the claim. But if a claim is approved, we propose that FFEL lenders for FFEL, for FFEL loans be required to execute the relevant amount of relief, including relieving the borrower from further repayment of their FFEL program loan and issuing refunds to the borrower of amounts they paid. The lender would then submit a claim to the guaranty agency and the guaranty agency would submit a claim to the Department to repay the lender. Basically, this just accomplishes the same outcome as if the borrower consolidated without requiring the borrower to go through that process. So, it's much cleaner for the borrower, everybody gets paid and we just feel like it's a good option for FFEL program loans. Yes, otherwise, the process of consolidation has the effect of adding work for the borrower and this proposed claim process would streamline the process for, for those borrowers. So, eager to hear from everyone and, Jaye, as well regarding this proposal.

MS. JEFFRIES: Thank you, Jennifer.

Jaye?

MS. O'CONNELL: Yeah, so we, we definitely support streamlined procedures but the concern that we have is this statutory authority to provide borrower defenses to FFEL loans. So, 455H indicates that borrower defenses are applicable to loans in part D. So, while this process, you know -- we could -- it's a lot like a TPD claim but as we started to look at, at how that works, I mean, you would implicate an SLDS and federal reporting. So, I think the concern is if it's, if the FFEL loan truly by statute is not eligible for a borrower defense, what authority do we have to create a new claim process and run it through this preexisting reporting process?

MS. JEFFRIES: Thank you, Jaye.

MS. HONG: I think, I think through this process we're, we're no, we're no longer conceiving it as a FFEL loan through this proposal. I don't know if my - let me just if Todd has more to add on that in terms of this, you know -- currently, we consolidate the loan. It's a direct loan, we process it. But once, once the claim is submitted, the idea here is that it is, it is an eligible loan for BD purposes. But, if, if Todd has anything to add on that point, please go ahead, Todd.

MS. JEFFRIES: Todd.

MR. DAVIS: (Interposing) but I think this is important. I -- so there's kind of two parts to this, Jaye, and I think there's the overall authority piece and then the authority piece for the streamlining part. And, and just to not (inaudible) confuse anybody here but I, I think you're right on the 455H piece that the Department has taken a position that what we do on borrower defense on direct loans is consistent with the protections provided by the FFEL MPN, master promissory note. But those provisions don't allow Ed to adjudicate the defense, the defense to repayment on its own. It requires that the borrowers start the claim as a defense to collection of the loan by the lender. So, in this -- it came up in our last couple of sessions really, or couple of sessions or a couple of talks because sometimes, you know, as well that there, there does need to be a direct loan made and some outstanding dollar amount on the direct loan, I think. But then the - and I think what we're asking here is that we consider, you know, the broad regulatory authority for the loan programs kind of - is we would consider a proposed regulation within that and that we're just trying to ease the process for everyone here. In the past, we've asked borrowers to consolidate direct loans with their FFELs

before they applied for borrower defense and we're trying to kind of eliminate that (inaudible) if the Department owes money back to FFEL folks or guaranty agencies or lenders, you know, the Department can address that point later in the process if it needs to. I -- to, to make it easier on the borrower upfront and not have to do that extra step. I -- like, I hope that hit both parts but that's where -

MS. JEFFRIES: Alright. Thank you, Todd. Joe.

MS. O'CONNELL: Can I respond, no?

MS. JEFFRIES: Joe took his hand down. Did you have a direct response to that, Jaye?

MS. O'CONNELL: Yeah. I, I think some of it just the channel, you know, how, how we're repaid by the Department under our preexisting requirements and the lot is, this isn't that we, we don't want to make it easier but it, it's - if we're using federal billing like on our guarantor side, at least that, we have multiple hats. Like getting payment from Ed through that channel, the existing channels just seems inconsistent with sort of our accounting and uses of funds and, and I'm not, you know, probably not giving enough detail. But, so maybe there's just something else that we do in terms of the, how the repayment, you know, flows through or something.



I don't know what that would be. Probably more operational but, but thank you.

MS. JEFFRIES: Thank you, Jaye. Jeri.

MS. O'BRYAN-LOSEE: Hi. First, I just want to say I'm, I'm sorry that there's no one in BD that can speak specifically to this but as somebody's who's dealt with FFEL personally, anything that would streamline that process would be greatly appreciated by every person I've ever talked to in my life. So, that would be, that would be wonderful.

MS. JEFFRIES: Thank you, Jeri. Joe. Where'd you go, Joe?

MS. LILLY: Joe, you're on mute.

MS. MACK: Muted.

MR. SANDERS: Sorry, everybody. I want to echo Jeri. FFEL borrowers bear a lot of burdens that direct loan borrowers don't. For example, you know, all of the Cares Act relief, FFEL borrowers didn't get it. This is a -- the announcement by the Department today on PSLF, has issued (inaudible) provide relief to (inaudible). You know, I think that, hopefully, FFEL holders can get over the form questions here because I think it's, it's really placing (inaudible) function to say oh, well you're, the borrower has got to bear this administrative burden and we, we can't do anything about

that when you have the Department, you know, trying to make an effort to, to make everybody whole here, you know, in, in good faith. So, I appreciate Todd's feedback. Appreciate Jaye's support of the concept generally and certainly hope that we can stop placing burdens, administrative burdens like this on borrowers and, and find a way to get this done to bring some parity between FFEL borrowers and direct loan borrowers.

MS. JEFFRIES: Thank you very much, Joe. I see no additional hands. I'm going to move this towards tentative agreement, a temperature check for tentative agreement on this. Could I please see your thumbs? Okay. We have one thumbs down. Jaye, can you please speak to your serious reservations on this?

MS. O'CONNELL: I think I just need more clarity on the, you know, how, how we're supported in this method when there's a statutory prohibition, then the same issues I raised previously. Thank you.

MS. JEFFRIES: Thank you, Jaye. Alright. That does conclude the subtopic and the issue paper number six, borrower, borrower defense to repayment adjudication process. We do have 10 minutes before your scheduled lunch break. Your next issue paper is number seven, which is a relatively short one on borrow, borrower -- blah, I can't speak now, borrower defense to

repayment post adjudication. Jennifer, do you feel comfortable introducing this in the time we have remaining?

MS. HONG: Yes, absolutely.

MS. JEFFRIES: Okay. Thank you.

MS. HONG: It is short so maybe we can even get through it. So, issue paper number seven, post adjudication for BD. Basically, after adjudicating a BD claim in accordance with process we just proposed and as outlined in issue paper number six, we would notify the borrower of the Department's decision, including any amounts discharged via decision letter. Again, that's sub regulatory. I think maybe it was Joe that mentioned that to, you know, make sure that decision letter is, clearly outlines what the decision is and the amounts discharged. So, that, that is what we're proposing. We wanted to address two issues specifically in this paper and one is the concern that borrowers have not received sufficient release under the current regulations. And two, that the 2019 regulations do not include a reconsideration process. So, that's, that's it for this paper. For, for, for the first subtopic, we propose to adopt a presumption of full relief for an approved borrow defense claim, I think as Kayla (inaudible) or maybe Suzanne brought it up. So, the presumption is full

release for an approved borrower defense claim. It is a rebuttable presumption of full release, meaning we are going to resume, assume full release unless there's evidence showing that the harm to the borrower is less than what they would receive from a full discharge, which could be held by the Department or provided by an institution. So, there's still possibility the borrower would receive partial release. However, the presumption is full release. Second subtopic -- well, let's just stop there and we could discuss that piece.

MS. JEFFRIES: Thank you, Jennifer.  
Josh.

MR. ROVENGER: Thanks. So, I, so I appreciate the Department's presumption of full release. It's not clear to me when partial relief would ever be appropriate or why the Department is maintaining a partial relief provision that isn't required by the statute. You know, to my mind, when a borrower defense is granted, the Department is agreeing that the loan is invalid and partial relief just doesn't rectify that, that claim. More practically, I think we saw from the last administration that if this discretion to grant partial relief is maintained, the Department can abuse it and deny full relief notwithstanding a presumption to individuals who are entitled to it. So, I would strongly

urge simply eliminating the possibility of partial relief, having it say full relief or if the Department or the group insists on having some partial relief method, I would then ask that we have some sort of high evidentiary standard to overcome any sort of presumption, make it clear we (inaudible) evidence that only partial relief is proper. But again, I, I, I struggle to see when partial relief would ever actually be appropriate.

MS. JEFFRIES: Thank you, Josh.

Dixie.

MS. SAMANIEGO: Yeah, so I'm reading in relief amounts the last sentence, this evidence could be held by the Department or provided by an institution or other party. What evidence would the Department of Education be asking and considering to, you know, be harmful or like would be proof that the loan that the borrower got would be less than harmful because -- why would they be filing in the first place if they didn't believe that the loan that they had taken out, right, was harmful? So, what kind of evidence does the Department of Education look for and does it have to be clear and convincing, right, like Josh just had stated, but for (inaudible)? What evident does the Department of Education look for in terms of, you know, (inaudible) was not harmful for them?

MS. JEFFRIES: Thank you, Dixie. If you could please capture that in the chat for, for the review, that would be appreciated. David.

DR. TANDBERG: Yeah. I would, I guess, just ask more directly. Well, first off, I disagree with what Josh said and so I'll phrase it as a question. What would be the circumstances where partial relief, relief would be appropriate? All (audio) I don't see them but then this isn't an area of work that I work in so maybe there, there are examples. But I, I -- so if you could provide some examples of where partial relief would be appropriate, that would be great. Otherwise, I don't see why it would be an option.

MS. JEFFRIES: Thank you, David.  
Jennifer.

MS. HONG: I think, I think the idea here is just having the presumption of full release. I think the, the point being is that we want to err on the side of the, the borrower getting, providing full relief to the borrower. That is what all this is about, right? We're addressing an issue about borrowers not receiving sufficient release. We can look back regarding possible examples. That clause is there just to maintain, you know, maintain the stance that there, there is a possibility that the institution might submit evidence,

that the Department might have information available to, to it that would suggest that partial relief might be warranted. But, again, I would think that that would be very limited circumstances. We've, we left that in just to, you know, maintain that due process on the institutional side. So, the point being is that we want to provide the presumption of full release for the borrower. That's, that's the point of this subtopic here.

MS. JEFFRIES: Thank you, Jennifer. I see two additional hands, Josh, and Bethany, and then I would like to move to temperature check for tentative agreement on this prior to your lunch recess. I will include Justin in that lineup of comments before. Thank you. Josh.

MR. ROVENGER: Thanks. So, so I appreciate that the Department had created this presumption and I have to imagine that the reason for proposing this presumption and I have to imagine that the reason it's doing so is because it recognizes that full relief is what should be given when a borrower defense claim is successful. I think if the Department wants to retain the ability to give partial relief, number one, it would be helpful to see concrete data or concrete examples that the Department is relying on here to

justify maintaining partial relief. And then, two, I guess I would respectfully push back on the Department's point that the, that it preserves like a due process element because the Department is going to be getting evidence from the school as to whether the borrower defense should be granted or not. And, and so I struggle to see how there's some enhanced due process protection with respect to the relief amount.

MS. JEFFRIES: Thank you, Josh. Bethany and then Justin and then we will do the temperature check.

MS. LILLY: I'll be very brief.

MS. JEFFRIES: Oh, okay.

MS. LILLY: Because I think Josh said a lot of this as did Dixie. I just don't understand what circumstances would justify partial relief and I need the Department to explain that to me before I would support partial relief being an option.

MS. JEFFRIES: Thank you, Bethany. Justin.

MR. HAUSCHILD: Thank you, Cindy. I, I'm just going to support what I think has already been conveyed by Josh but I would also like to see the data where partial relief would be appropriate. You know, I think when we're thinking about certain instances, right,



maybe even the majority of borrower defense claims being based on misrepresentations or omissions in that very beginning process dealing with recruitment enrolling at the institution, you know, that, that student would've taken out a federal student loan but for those misrepresentations in that very beginning stage. So, I think that's something that's, you know, it deserves some focus here in this, in this conversation. And then maybe this, I think this was raised earlier but some consideration of what the standard should be in determining when partial relief is appropriate. Are we talking about, you know, the presumption maybe only being overcome when there's an overwhelming amount of evidence that would, you know, tend to show that the borrower deserves less than what they would've received from a full claim? You know, it's, I think this needs a little bit more robust discussion in terms of some of the standards and data that would support, support this idea of partial relief. Thanks.

MS. JEFFRIES: Alright. Let's go to temperature check. I did indicate Justin was -- we were going to call for that afterwards. So, can we see a show of thumbs on the relief amounts for tentative agreement? Can I please see your thumbs? Okay. So, there are multiple no's on, on that one. If you want to take a few

minutes to identify why you were a no or if you're comfortable that you're, you know, you've already articulated what that is. Okay. I have one question for you. You have one additional item on this issue statement before you wrap it up, reconsideration of process. Is that something that you think you want to quickly discuss before your lunch or would you prefer to defer it to after your lunch?

MS. MARTIN: Would we still get an hour for lunch?

DR. DORIME-WILLIAMS: Could we say after lunch?

MS. JEFFRIES: After lunch? I'm seeing a lot of shakes on that. Okay. So, it is 12:01, so we will recess for lunch. We will resume promptly at 1:00 p.m. Thank you very much for your hard work this morning. And we will see you at 1 o'clock.

FEMALE SPEAKER: Thank you.

(Proceedings concluded at 12:00 p.m.)

Appendix

Department of Education, Office of Postsecondary Education  
Zoom Chat Transcript  
Affordability and Student Loans Committee - Session 1, Day 3,  
Morning, October 6, 2021

DISCLAIMER:

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

From Dixie Samaniego (ella/she) to Everyone:

wifi issues but I am here :D

From Kayla, FMCS Facilitator to Everyone:

Please direct message me if you have any tech questions/concerns.

From Kayla, FMCS Facilitator to Everyone:

kmack@fmcs.gov

From Michaela [P] Ind. Student (She/Her) to Everyone:

Thank you

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

+1 on Joe, Justin, Josh

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

For group process, consider adding "negative or adverse actions taken by accreditors".

From Joe (P); State AGs to Everyone:

Personal attestations from students are evidence and should be considered such.

From Jessica (P) Proprietary Schools to Everyone:

How will the Department monitor fraud if applications are accepted without supporting evidence?

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

My alternate Suzanne Martindale is going to join to ask a question

From Kayla, FMCS Facilitator to Everyone:

Thank you, David.

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

+1 to Josh!

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

+2 to Josh!

From Joe (P); State AGs to Everyone:

Would there be a capitalization event when loans that are not discharged exit forbearance, given the elimination of interest capitalization in issue paper 3? Does the answer matter if the loan is FFEL? Direct?

From Jaye FFEL agencies P to Everyone:

Is the forbearance provision - specifically re: stopping interest applicable to Direct Loans only? If applies for FFEL, need to understand how holders are reimbursed for interest charges because there is no subsidy during forbearance on FFEL.

From Misty (P) Priv & Non-Profit to Everyone:

Also support the no interest accrual at all.

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

I'm not sure I understood what Jen just said--are the first 180 days in forbearance already no interest?

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

Q: Default for accepted claims should be full relief - how would partial relief be determined?

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

Agreed on no interest for the same reasons as everyone stated.

From Josh (A), legal aid (he/him) to Everyone:

Why is the limitations period limited to having an outstanding direct loan

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

+1

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

+1!

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

+1

From Heather (P) - Accrediting Agencies to Everyone:

Institutional response: Current time frame to respond; #s of responses, admissions, waivers, etc.

From Heather (P) - Accrediting Agencies to Everyone:

Would group process require more time for institutional response?

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

Institutional response: What prevents an institution from falsely claiming that they have "no evidence"?

From Greg Norwood to Everyone:

Thank you for sharing, Josh!

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

Thank you for sharing their stories Josh.

From Joe (P); State AGs to Everyone:

Agree with Josh that holding claims in limbo is extremely harmful to borrowers. We get regular complaints from borrowers on this issue emphasizing how this uncertain financial burden puts their future on hold.

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

How are the applications adjudicated? Who hears these claims and what might cause these prolonged delays?

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

Agreed Michaela!

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

+1

From Greg Norwood to Everyone:

+1

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

+1

From Joe (P); State AGs to Everyone:

Agree with Michela. It is powerful to hear student stories. More stories directly from borrowers in this process would help inform the committee.

From Todd Davis - ED OGC to Everyone:

In re: Heather's earlier question about current Institutional Response timeframe: the current (2019 BD) reg at [https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-685#p-685.206\(e\)\(10\)](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-685#p-685.206(e)(10)) states "within the specified timeframe included in the notice, which shall be no less than 60 days.

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

In order to help us establish a reasonable timeline are there any data for past adjudication process timelines for both individual and group claims? Can we disaggregate data to help identify barriers to expediency to establish a reasonable timeline.

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

Had the same comment.

From Misty (P) Priv & Non-Profit to Everyone:

Same here not sure what we are voting on

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

Timeframe of 180 days for individual claims then subtract the 60 days institutional response, leaving the Department with 120 days to respond. As a remedy, if the Department does not respond in that timeframe, then the decision would be automatically approved.

From Michaela [P] Ind. Student (She/Her) to Everyone:

Is there data on that?

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

Have a generalized question on student impact for BDTR. If a student has been making payment, and the BDTR is approved, are previously paid amounts refunded or is the relief only the outstanding balance?

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

+ 1 Josh

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

Agree w/ Josh that I don't see a purpose for partial relief

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

Q: how would partial relief be calculated? And could this cause delays in processing, competing with goal of prompt adjudication?

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

Relief Amounts Q: What evidence does the Department of Education look for when considering the harm done to the borrower is less than what they would receive from a full discharge?

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

What are examples of when partial relief would be appropriate?

From Heather (P) - Accrediting Agencies to Everyone:

Data on full v. partial relief would be helpful along with examples.

From Joe (P); State AGs to Everyone:

I would like to see some specific language on the presumption.

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

For the reasons Josh outlined.

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

I think it was clearly explained



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

Agree with everyone's request for examples and data.

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

+1 ^

From Joe (P); State AGs to Everyone:

After lunch

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

Question on impact on aggregate limits. Does relief also provide an immediate reduction of aggregate loans so that a student may be able to borrow additional loans?

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

After

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

Michaela is asking all the right q's HAHA