

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
AFFORDABILITY AND STUDENT LOANS COMMITTEE  
NEGOTIATED RULEMAKING SESSION 3, DAY 4, AFTERNOON  
December 9, 2021

On the 9th day of December, 2021, the following meeting was held virtually, from 1:00 p.m. to 4:00 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: Welcome back, everyone from lunch and the break. I am Cindy Jeffries, I will be facilitating this afternoon for you. All parties are present, so I think we're ready to go. At this point, we want to move on to the Borrower Defense papers. There are three issues involved there. Issue six, which is adjudication, issue seven, which is post adjudication and issue eight, which is recovery from institutions. They are in one document, but when you get to consensus, the consensus will be on the individual issues. Okay. Persis, you have your hand up.

MS. YU: Yes, we have not concluded the Income Driven Repayment conversation when we went to lunch.

MS. JEFFRIES: Well, we are treating that like we have any other of the issues that did not get to consensus in the fact that it did not pass consensus. It is tabled. It is in the list of things to circle back to if time permits.

MS. YU: That is not what we agreed to before we left for lunch break.

MS. JEFFRIES: What what is it you think we agreed to?

MS. YU: Before we left, Brady asked

if we could do a consensus check while I still had my hand up and Justin still had his hand up, and we said that we would take the consensus check and then we would return for those who were voting no would have the opportunity to then explain our votes.

MS. JEFFRIES: Okay, we can do that, but I am going to remind everyone of your protocols. Okay, and in your protocols, it states that in order to make the best use of time, which is running short for the committee at this time, that your comments be limited to new information and not repeating something that's already been said. So if that in with that in mind, Persis, if you have something new to add, please, please go ahead and share.

MS. YU: Well, as we were allowed to explain our votes and I am going to and I do want to commend the Department on two of the changes, in particular about adding defaulted borrowers for Income Based Repayment and counting payments before consolidation. I think that those are important improvements. They are not specifically about the EICR plan, though, and so I would like to separate as we think about how the Department has proposed here, separate those two components. I think those are very important, but they really don't get to the bottom line

issue of the income contingent or the expanded ICR plan, which we've been talking about here. I wanted to again remind everyone of what the Department said its proposed goals were. And so in again, the first issue paper we talked about, the Department asked said the IDR plans offer forgiveness of remaining balances after 20 or 25 years, while this may be appropriate for some of those with higher balances, this could be too long to repay for borrowers who have low loan amounts or who have low incomes for long periods of time. Again, we have seen no movement on this issue. We still have 20 years. I have proposed several different models in order for us to get cancelations sooner, especially for the lowest income borrowers. We have not seen movement. This is an area that is critically important that we need to get people out of debt faster. It is extremely disappointing that the Department has been unwilling at this point to move on this on this issue. And the last piece that I want to say is just in terms of simplicity. I think it was a stated goal for simplicity, and this just simply doesn't do that. We we we have consensus that we don't like it, basically. And the one holdout seems to be the Department of Education. So while I like some of the changes that the Department has made, they frankly don't do enough, and the EICR plan just does not help us at

all. And so I I encourage the Department to basically start fresh. It had goals. They were good goals that we need to be following, but this plan doesn't do it. So that's what I have to say and thank you for your time.

MS. JEFFRIES: Thank you, Persis.

John, do you have something new to to share?

MR. WHITELAW: Yes, very briefly. I think just as we went to lunch, the vast, we took the vote. The vast majority of negotiators voted no. And then we were sent off to lunch with the quote, the holdouts will have an opportunity to speak when we come back. It is disingenuous at some level to characterize a vote where the vast majority of folks voted thumbs down and a tiny number of people voted thumbs up as being a holdout. I dare venture that if Persis's for want of a better word proposal had been put up for a vote, there would be a holdout, but it would be a single holdout, namely the Department. And so language matters. And to characterize a situation where almost everybody disagrees with the proposal as a holdout just seems an unfair characterization and not helpful in allowing us to try to reach consensus. And I will hold my other remarks as they are, they were more specific about these proposals that we just find extraordinarily disappointing. Thank you.

MS. JEFFRIES: Thank you, John. Okay. Seeing no other hands unless any other persons or committee people who were not in agreement with it have something new to add as to why they were not comfortable going with consensus. We will move on to BD at this point. Aaron? Please turn your camera on, thank you.

MR. WASHINGTON: Thank you. So before we move to Borrower Defense, I just wanted to say that we are we think we are very close to reaching a consensus on Prison Education Programs. And we can't continue that conversation right now because we want to get to Borrower Defense. But we would ask for specific citations in the regulations so we can solve this issue and hopefully get to consensus before we close before we close out. So this specific request goes to goes to Heather. If you could put specific citations in the regulat, in the in the the proposal for a Prison Education Programs into the group chat, the Zoom chat, that would be really helpful for the Department to take back and contemplate whether we can, whether we can make changes there that would help us get to consensus.

MS. JEFFRIES: Thank you, Aaron.  
Heather.

DR. PERFETTI: Aaron, Michale, let me know before we broke for lunch that you all were looking

for some language, I'm not working in the chat, I'm working in the document that was distributed and dated December 8th. I'm happy to circulate that once I directly place some track changes or red lines into that document for you and others.

MR. WASHINGTON: Thank you.

MS. JEFFRIES: Thank you, Heather, for clarifying that.

MR. WASHINGTON: Just one more clarifying question, do you have an idea of when we would be able to, the Department, will be able to see that, Heather?

DR. PERFETTI: I don't I can't estimate right now, but I am working on it so I can give you an update at some point this afternoon, and hopefully we'll have something to bring forward soon.

MR. WASHINGTON: Thank you.

MS. JEFFRIES: Okay. Thank you. Alright, with that, it looks like we're ready to move on to the Borrower Defense. So if we I'm going to turn it over to Jennifer from the Department of Education.

MS. HONG: Great, thank you, Cindy. So we are at Borrower Defenses to repayment for this afternoon. I know we had a lot of discussion IDR, we're hearing you clear as a bell on your feedback, and we

will continue to take it under under consideration as we move this process forward. Thank you for that. I'm going to ask us all to reset because Borrower Defense is an important rule. I think it's important to all of us on the committee, certainly important to the borrowers that we heard from in public comments. So let's reset and look at some of the proposed changes here. I don't think that you'll tear this one up, Persis. There's three documents, three documents in front of you. Again, they're the same documents as we had in session two, except with the changes, there's the general BD rule and that is forty five pages. That's the biggest document. Then you have a misrepresentation document and then another document on aggressive recruitment. So just to keep in mind, when we take consensus check, we're taking three consensus check and the first one we're going to take is on adjudication, which takes us all the way through the two addendum documents, misrep and aggressive recruitment all the way up to page forty two I'm sorry not forty two, all the way up to page through page thirty five and then which will take us to reconsideration. We'll take a consensus check on reconsideration all the way to page forty two on recovery. But at this point in time, I'm going to go through the document flag any changes from session two



to section three, but also just kind of remind us what has changed even from session from the initial proposed text. Should I start or should we take Josh's, Josh's, do you have a question?

MS. JEFFRIES: Josh, do you have a question?

MR. ROVENGER: Yeah, just in terms of process, would the Department prefer us to wait till you finish going through or as we're hitting certain sections, if we have specific comments, would it be beneficial to have that discussion at those points?

MS. HONG: Because it's so, so much here, I'm assuming that it might be helpful to take it at logical stopping points. So what I could do is I could speak up to page. Well, it's going to be a lot of discussion up to the federal standard because that'll include the misrep. So why don't we why don't we let me go through the changes all the way through the federal standard? And then we could take a pause for questions.

MS. JEFFRIES: Thank you, Josh. That was a great question. Thanks for the clarification, Jennifer. Okay, so you want to do you want the document cued up?

MS. HONG: Yes, that'd be great. Okay, so right off the bat, the first few pages are all

technical changes we find that we needed to make conforming changes to other relevant sections of the text. So again, page one termination emergency action proceedings. We've had a technical conforming changes to cross references. Same with page two. We've added the technical change to include a new subpart D all the way through page three and four appropriate deletions. So we're hearing again, we added on page five the new cross-references for the proposed BD rule. Page, 6859 668.91 on page six, again, same thing conforming changes, deletions as necessary and then that will take us to, back to the actual document that you all had in session two which begins here on page eight. So everything prior to page eight is conforming changes and then subpart D again is where we're proposing to add the new the new rules for Borrower Defense to repayment. Page nine another conforming change under forbearances. Okay. So this takes us to 685.206 and we are at page 10. Now we're getting to the actual substance of the rule. Actually, this is. Yeah, this is this is the 2019 rule, and this is just clarifying that paragraph (e) only applies to those. The previous rule, so we talked about we wouldn't be able to remove the 2019 rule, but we're clarifying that it's applicable for loans first disbursed on or after July 1, 2020 and before the

effective date of the new rule that we're proposing July 1, 2023. So that is technical and takes us make conforming changes all the way through page 17. Page 18 discharge of a loan obligation, we've added a new for, for discharges of a loan based on Borrower Defense, Borrower Defenses. Again, just technical conforming changes. Page 20, 685.300. Again, adding technical change to include the new rule for remedial actions regarding the repayment of funds to the Secretary, we have to add the new subsection subpart D to ensure that that is captured under there and then the new subpart D, page 22. This is when we get into the actual substance of the new proposed rule, everything before that was to make conforming changes on existing language. Okay. And just as a reminder, these are for Borrower Defense applications received on or after July 1, 2023 and to applications pending with the Secretary. So we had some discussion on that. Okay, so right off the bat on page 23, this is the definition section on the Borrower Defense rule. One of the things that was discussed in great detail in session two was the inclusion of other organizations in addition to states. And so what we've done here after our discussion is we've inserted language. I believe it was legal aid that had proposed this and I'm going to go over that with you. This is a

new seven at the bottom of page twenty three. The three term third party requester means would include a state as defined in 600.2, a state attorney general, a state oversight or regulatory agency with the authority from that state, or romanette two a legal or legal assistance organization that A, employs attorneys who are full time employees, two provide civil legal assistance on a full time basis and three, are continually licensed to practice law. And B, is a nonprofit organization that provides legal assistance with respect to civil matters to low income individuals.

MS. JEFFRIES: Jennifer, for some reason, Aaron, stop screen sharing. So the participants can't see it. Aaron, are you there?

MR. WASHINGTON: I'm here. Can you all just give me one moment (inaudible). I apologize.

MS. HONG: Thank you for your patience. We've had some technical difficulties during the lunch hour for me as well, so I'm glad I'm actually here to see your faces. Well, while Aaron works on that, I just wanted to say that this this definition of legal assistance, we've got it. We've got them from the whole FFEL, from the HEA, from FFEL language section 428, the Civil Legal Assistance Attorney Loan Cancellation Provision. So we've pretty much borrowed from that

statutory definition to include a process by which third party requesters can put forward a a group.

MR. WASHINGTON: I'm back. What page would you like me to go to?

MS. HONG: If you could go to page 23? We're on the third-party requester definition.

MR. WASHINGTON: Thank you.

MS. HONG: Thank you. Okay. Alright. So I read the definition, we can discuss it. Let me go ahead and keep going here. Let's see. So all this these additions, you guys have already seen this. On page 25however, we have included violation of state law and we've defined it here. Violation of state law, borrower has a Borrower Defense to repayment under this subpart. If the Secretary identifies an act or omission school attended by the student that relates to the making of the loan for enrollment at the school or the admission or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable state law.

MS. JEFFRIES: Jennifer, I know you said you wanted to wait for it to open up and breaks, but Josh has his hand up.

MS. HONG: Sure. Yeah, we could be more fluid about it if that's.

MR. ROVENGER: I'm just getting in line. I'm happy to wait. I'm happy to defer if you prefer.

MS. JEFFRIES: Okay. Okay, Josh, thanks.

MS. HONG: And so that is the general section. So we're going to move over here one second. Actually. Just one second here. Let me. That's Okay. Let me go over the federal standard here, and then we can refer to our other documents if we could scroll back up. Oh, Okay. After after we've defined, we've inserted the term for third party requester, we've defined the federal standard. The first one, we've gone over all of these, except I just want to point you to the aggressive recruitment and misrep language. So we've codified aggressive and deceptive recruitment tactics under 34 CFR Part 668 subpart R, which is the additional documentation. We also knew for for this session is that we have ensured that the school's breach of contract and failure to perform had to be related to the making of Direct loan or provision of educational services for Direct loan was received. And that's that amendatory language that you see under three. That's always been the case substantively, but we just wanted to make that clarifying point for you all. So at this point, I'm

guessing many of these points may be related to the misrep document or the aggressive recruitment document. Nothing changed in terms of misrepresentation, if you can cue that document, so we could just, so they could see it. And then and then we can take a pause there on the federal standard. So this is the misrepresentation document, which cross references part 668 under general provisions. And what we're doing here is we're cross referencing in the BD regs misrepresented, definitions of misrepresentation and omissions in Subpart F. You've seen this document, we discussed this document and we didn't make any changes between two and three. Under the nature of educational program or institution for, 668.72, actually, we did some wordsmithing misrepresentation concerning the nature of an eligible institution. Educational program includes, but is not limited to false, erroneous or misleading statements concerning and then everything that follows. And then on page four, sorry, we did make minor changes on page four. Under (q), the highlight, "assistance to provide the student to obtain a high school diploma for the GED" as another misrepresentation. That can be used as a basis for a BD claim. And again, these are all codified under 668 in the general provision section. And moving on to page six of the misrep documentation documents, we

have a piece of employability of graduates. And again, just to remind you, this has all everything that we talked about in session, in session two regarding licensure pass rates, employment rates, actual rates that institution discloses are inflated and then some examples of what that might be. Happy to discuss that. And then in terms of omission of fact on page seven, again, this is all part of misrepresentation. We just deleted "knowing" the word, "knowing" under misrepresentation. Now we did receive. We did receive some feedback on that language from you, Joe, and I think if we could, we'd be happy to discuss that here. I don't think we were able to give you feedback on it during in between sessions because we received it fairly recently. So we're happy to discuss your proposal on omission of fact. Here. Well, why don't we take a why don't we take a pause there and see what Josh and Joe.

MS. JEFFRIES: Okay, I just want to make a note here that Michale is coming in as a accrediting agencies at the table for this. Okay. So Josh.

MR. ROVENGER: Thanks. So before going into specifics, just very big picture. I think the Department has made a lot of additions. This set of proposals that are really meaningful improvements to the



BD regs. And while we certainly don't think it's perfect right now and hope that the Department remains open to improving it, this really does go a long way in centering the borrower and ensuring and ensuring that they have a pathway to relief when they're when they're victimized by a predatory institution. We're, I want to start, is on a very kind of technical issue with respect to the definition of third party requester and legal assistance organization. And just to start off again, we are very appreciative of the Department taking this proposal because it will ensure that borrowers who might not otherwise have a pathway to relief can be represented by a legal assistance organization in a group effort. I am curious why, so I understand why the Department drew on the definition from elsewhere in. But I'm curious as to why the Department thinks that both A and B in seven romanette two is necessary. Just because I guess as I read it, I think it's a pretty technical, but I think it's a little clunky right now, and it almost could just be B is a nonprofit organization that provides legal assistance with respect to civil matters to low income individuals without a fee. You know, not not a major substantive point, but I think it's unnecessarily burden, bulky as it's currently drafted. And then the other other piece of this section that I

just wanted to flag relates to the inclusion of the state the violation of state law constituting a BD claim. We're definitely happy to see this as part of the definition section. One question I would have for the Department is whether an individual who applies on their own and not through a group process would be able to assert the violation of state law in the initial first instance. As I read the reg, I think they can, but I just wanted to ensure that that's the Department's position as well.

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

MS. HONG: So, yeah, just real quickly, just so and we'll get to the individual group process. Is your concern I know you said the clunkiness, but is it is there an issue with regarding the full time requirement?

MR. ROVENGER: No, it's just I just don't see why, I guess I don't understand why any of that in A is necessary, it's more just a question of why any of that needs to be included and where a legal assistance organization can be defined just by B alone, not a not a major sticking point for us.

MS. HONG: Yeah, I think the idea was we were trying to rely on language that already existed.

And since this definition existed in the HEA, we've used it here.

MS. JEFFRIES: Okay, thank you, Jennifer. Joe, you're in the queue next.

MR. SANDERS: Hi. Thanks. Just wanted to really set out some framing here on Borrower Defense and not just about session three, but about sort of what the Department has put forward consistently throughout the rulemaking. You know this this is a big improvement over what we have now. That's a big improvement over multiple versions of the rule that we've had in the past. Consideration of state law claims, consideration of group applications. These are big picture benefits to borrowers. And so just want to credit the Department for their recognition of these principles throughout and then working through the details with us in this rulemaking. On the definition of omission, I understand that I got that to you during the process here. I took a survey of a bunch of my constituencies to kind of try to get a, you know, we had talked about sort of a best in class definition. And so I think after looking at several states talking with multiple AGs, the assistant attorneys general with expertise in the area, what I submitted there is, I think, the most borrower friendly standard primarily comes from Massachusetts. If the

Department would take a look at that and if any of that language can be can be integrated, that would be great, but want to acknowledge the Department's removal of "knowing" which was really the sort of the basically, we had with that with that section, so happy to talk through the details on my proposal if you guys have questions on that.

MS. HONG: Thank you, Joe, and it was, you know, I think this back and forth with state AGs and formulating that section was very helpful, and thanks for reminding us, yes, we did remove the "knowing" upon your council that that would be a good thing to do, and we didn't believe we needed it to set the bar that high either.

MS. JEFFRIES: Thank you, Jennifer and Joe. Jessica.

MS. BARRY: Yeah, thank you. I want to start by saying I completely support having standards that provide relief to borrowers who are defrauded and when financial harms result, but I just continue to have significant concerns with this proposal. It's critical that the initial claim adjudication process includes equitable standards and due process protections for both borrowers and institutions to reduce the likelihood of erroneous discharges. This means that a process that

favors neither students nor institutions gives both parties a fair, equal and meaningful opportunity to be heard, and is designed to ensure that it will be administered fairly from one administration to the next. I know we've been concerned in other areas on that, a process that lacks equitable standards and due process protections, or that favors a discharge for reasons that may have no bearing on the quality of the educational services provided to the student or the outcomes they receive will facilitate erroneous discharges, thereby harming students, taxpayers, schools and potentially even borrowers. The Department's current proposal does not include equitable standards and due processes for both borrowers and institutions. That is true of the process for initiating claims, evaluating claims and reconsidering them after initial adjudication. Although I have a number of more specific reservations to the proposed language, given my three minutes, I'd simply point out that while I'm again in support of providing relief to borrowers who have been defrauded and harmed, I can't support a rule that doesn't include a fair, equitable, and impartial process for determining whether fraud has in fact occurred and for measuring financial harm to students when this is the case. I have some specific examples, but I'll let another person speak and

I can get back in line. Thank you.

MS. JEFFRIES: Thank you, Jessica.

Next, we have Misty.

MS. SABOUNEH: So in session two, I talked a little bit about the record retention and just the security risk that it imposes on both students and schools by having to retain records for too long. And I appreciate the amended language that now says six years from date of separation from the institution. But there's three sections, subsections that basically waive that limitations period, and I'll drop those in the chat just for the Department's reference. But those three sections, I think, are probably what would keep me from a thumbs up. So I just wanted to call that out because my intent is to reach consensus, if at all possible on this topic. Thank you.

MS. JEFFRIES: Thank you, Misty.

Michaela.

MS. MARTIN: Yeah, I am wondering a bit about what Jessica means is an equitable process because I feel like for like on the one end prioritizing an institution, right, which at the end of the day is just a building. It's a corporation. Granted, I know there might be what like maybe some board of directors behind that, right? But that's a relatively small amount

of people compared to the thousands of students who have been defrauded by institutions and still have no degree or recovery for their student loans. The other thing I wanted to say is that like, how are you seeing (inaudible) due process? Because the agency itself does have to follow due process requirements and when they're adjudicating claims. So while that might not be laid out in great detail here, from my understanding like that's still to some extent does occur to a large extent, not some extent that does happen. And then also, like you mentioned, that you would give examples and I have serious reservations about these examples that you're about to give because in prior sessions, you've given examples and given no indication of what they are or any proof that they're occurring and they tend to be very obscure one-off outliers. And I really have struggled with taking them on and being like, oh yeah, this happened and I'm like but did it? Or like also where and how often is that happening? And I'm sure that we're about to do this again. And I just as folks are listening, I don't want folks to think that some of these examples are happening on a large scale and that they're not being addressed appropriately because when those things happen, there is recourse and there is within the provisions for them to not be having the

consequences that you kind of allude to theoretically could happen under these provisions.

MS. JEFFRIES: Thank you, Michaela. Jessica.

MS. BARRY: Sure, I ensure that the examples that I had given have been real examples, in many cases, the school doesn't want me to use their name and I respect that. The examples, I'm going to share now are actually related to the actual text. So I'll just start jumping into those and then we can I can open up for questions. So my first is on page 22. The Department proposes to adjudicate claims concerning conduct that had occurred prior to July 1, 2023, using standards that took effect on or after that date. As I mentioned in my closed school discharge comments on Monday, such retroactive application of the rule is prohibited by law, absent express statutory authority, we propose that the standards apply to claims submitted on or after July 1, 2023. My next example is page 24. None of the proposed standards located in 685.401 B one through five, which includes misrepresentation of fact, breach of contract and aggressive and deceptive recruit recruitment tactics. Not one of these proposed standards requires the Department to make a determination of reasonable, actual reliance by or material harm to the



borrower. As articulated, they would permit the granting of a full discharge, even if the act or omission by the school was unintentional and the borrower neither relied upon it nor suffered any material financial harm. We proposed the Department incorporate elements of actual reliance, materiality, and financial harm related to the claim into the standards. Another example on page 24, the favorable judgment standard, proposed at 685.401 B5 romanette one, does not require that the favorable judgment include a determination that the institution engaged in conduct that would constitute a Borrower Defense or any finding that the borrower reasonably relied upon or was otherwise impacted by the conduct and suffered material harm. We proposed the Department add language that favorable judgment must be related to conduct that would constitute a Borrower Defense claim. I have other examples, but again, I'll let somebody else talk. I don't want to take up all the time.

MS. MACK: Cindy and Josh, you were both muted.

MR. ROVENGER: Yeah, I think I'm next, I'm just going to jump in. So on retroactivity, I mean, as I read this proposal, the Department is only recouping from schools if the loan is dispersed after July 1, 2023, and that the standards for deciding the

claims for applications that are pending are only related to whether the individual gets Borrower Defense relief. And so the question I would have for Jessica is what what interest does your constituency or do you have at all in that if the point that relates to school accountability are plainly not retroactive? I mean, as I understand the law on retroactivity there, certainly you can't retroactively rule make in a way that's disfavorable to a borrower and that takes away rights and benefits that have accrued. But there's nothing in the law as far as I'm aware. And if there are other cases that you know that are different, but there's nothing that I'm aware of that would preclude the Department from being more generous specifically to the borrower. Moving on to the question about reasonable and actual reliance, and I know we've hit this at prior sessions, but you know. One, I'm just curious how that relates to due process at all, because it's not really a question of due process. It's it's a concept that some states have in their consumer protection laws, although a significant number do not for good reason. And so if that is related to the due process, I'm interested in just learning how. Would also be interested in hearing why proprietary institutions believe that a more stringent standard as compared to a significant number

of state standards that do not have actual reliance should be utilized. And then the final point in all of this that I would raise is, you know, there's kind of two components here. There's should the borrower get relief and then is the Department going to go after the school for recoupment? And so I frankly don't understand what the proprietary school's interest is when it comes to whether a student should get relief because a school defrauded them. I get it that like when it comes to the school having to pay for their misconduct on the back end, the school certainly has a due process interest in that. But I'm not, I'm not aware of any (inaudible) against that for-profits would have on the specific question of whether a borrower was entitled to relief.

MS. MACK: Joe, please go ahead.

MR. SANDERS: Thanks. I'll be brief in the interest of time. Agree with what Josh said. On the question of actual reliance, my state and many others don't require actual reliance under our UDAP statutes. So to the extent that the Department wants to make a best in class federal standard for borrowers, actual reliance shouldn't be in there. I agree with Josh that the separation of whether the borrower gets relief and whether the Department recoups from the school should really alleviate a lot of institutional concerns with

this section, because the two things are different queries. So that would go to the idea of retroactivity, that would go to the idea of due process. And I think, quite honestly, were any institution to sue on this, there would be questions of standing as to whether they would have standing to raise a claim against the borrower process when there is a separate process for institutions. So. That's what I have to add to Josh's well-founded points.

MS. JEFFRIES: Thank you, Joe.

Michaela.

MS. MARTIN: But I have part kind of question, maybe kind of a legal question, so like I am just a little law student, but from my understanding, this isn't like totally doing away with the idea of needing a presumption or just creating with the reliance. We're creating a presumption of reliance under circumstances in which a student is defrauded because we say that under these types of situations. Right. You can presume that somebody relied on it. For example, when a student goes to an institution and they're told either they'll be a day student or a night student, and then they go to an institution and then that is not actually the case, right? Is maybe a bad example, but like if you go to an institution thinking, I'm going to be a day

student now, all of my classes are offered at night right? They're, like, how am I going to prove that I relied upon my day classes and that that is what caused me harm? Right. So instead, we say, is that there's a presumption that at the point in which a student was told these things that we can, we can just say that that they that they relied on them on those statements and not fraud. Also, the thing with presumptions is typically they're rebuttable, right? So even though we say we don't have an explicit requirement for presumption, we're not saying that you can't then as an institution, if you're being held liable if say, well, no, that's that's not the type of thing that we would say a student can recover for, right? There is more to this process, I think saying that there's no due process and there's like it's like making it sound like people don't have opportunity here to have a back and forth in that. I just don't believe that that's the case at all. And then I also am wondering why it is that it is only the for-profit institutions that are speaking up right now, as if this is somehow a for-profit versus student scenario because it's not, right? Also, I just I think it just looks really bad, like it really shows it like this that it looks like for profits really just are what people want to say that they look like. And I just hope

that that isn't the case, and I just hope that you can articulate if there is any moving on this for you, Jessica because it doesn't sound like there is, it doesn't sound like you've come here to do anything other than to say no.

MS. JEFFRIES: Thank you, Michaela. Daniel, you are up next.

MR. BARKOWITZ: Thanks. I just want to dig in a little bit to something Misty asked. I don't know if we're here yet. Based on the read through. But can I ask the question about group process? It's on page 31 or do you want me to hold that Jennifer? What would your preference be?

MS. HONG: Can you hold it?

MR. BARKOWITZ: For you, I will hold it.

MS. HONG: Thank you.

MR. BARKOWITZ: You're welcome.

MS. JEFFRIES: Thank you, Daniel. Appreciate it. So seeing no more hands and that section Jennifer, how would you like to proceed?

MS. HONG: Now, just keep going and get into the group process, and Daniel can ask his question.

MS. JEFFRIES: Okay.

MS. HONG: Okay. Okay, so that's the federal standard. We've included a legal definition for it and third party requesters to include state, state AGs, state authorizations.

MS. JEFFRIES: Excuse me, Jennifer. Aaron, could you please cue the document?

MS. HONG: Oh, thank you.

MS. JEFFRIES: Thank you.

MS. HONG: Thank you, Aaron. So now we just wanted to make that conforming change in the group process to include third, a third party requester initiated group process inclusive of all the third parties that we identified in the first part. We will consider a request to form a group upon request from third party requesters. The third party requesters must identify the group in their application to the Department and also include an analysis of why third party requester by the third party requester and why BD claims should be approved. Also provide evidence beyond sworn statements that support each element of the BD claim being made and to the extent possible, the names and other identifying information about members of the group. Also new for session three is that at the bottom of page 26, we may consolidate multiple group applications across institutions, so we've just made

that explicit in the regulation. On top of page 27, we said that we would respond within 270 days to materially complete third party requests. And that response will include whether the Department will form a group upon the states' or upon the third parties' requests. If the Department chooses not to form a group, why it did not and other info needed to go forward with a group formation request. Also new under a new six subsection six on page 27 is that a third party requester can petition the Department to reconsider formation of a group for reasons other than that and other than what the Department had already formed a group that includes members of the proposed group, so reconsideration request to group formation must be received within 90 days of the initial decision. And we've struck out, we struck out the provision that the Department will include in the response a definition of the group and that's under romanette three in the middle of the page. Okay, so move to the borrower status after group formation. Again, this is text that we have before, but we'll designate a Department official borrowers who had a BD application pending will be scooped up with this group formation and then they'll be put into forbearance or stop collection status as as applicable. New for session three, borrowers that that Department can



identify both defaulted and non-defaulted, we'll go ahead and place in forbearance ourselves and stop collection, respectively. Every effort will be made to identify the group members, but in some cases, some borrowers may not be identified in the initial group formation. On an opt-in basis such borrower, who is not initially identified, will be granted forbearance, stop collection as appropriate. We will retroactively apply those benefits and no other consequences shall apply. And that's why it's important for the third party requesters, to the extent possible, help us identify the individuals that constitute the group. I will stop there for group process. Those are the additions we made under 685.402 for the group process for Borrower Defense.

MS. JEFFRIES: Okay, thank you. Aaron, if you could stop share for now. Thank you. Josh.

MR. ROVENGER: Does Daniel want to go first because he technically was-.

MR. BARKOWITZ: Thank you, Josh. And I'll wait. I just want to highlight for the negotiators because I think there's some confusion here. There are two groups and there are two group processes, and I understand why the Department's separated them and they have different sets of rules. So my question is actually on the other group process, which is the one that's on

page 31, 32. And that's a group process Secretary (inaudible). So I just want to just so everyone's clear, there are, in fact, two group processes as envisioned in this document.

MS. JEFFRIES: Thank you, Daniel.

Okay, Josh.

MR. ROVENGER: Thanks. So big picture again, we're just thrilled that the Department has included additional third party requesters in here. No, I think as our prior proposal suggested, I think this can be streamlined in a lot of ways, but can certainly live with what how the Department has laid this out. I think the biggest problem we have right now with the proposed regulation relates to evidence beyond sworn borrower statements. So I understand why the Department is including that requirement. My concern is, I have a few concerns about this. First, you know, if a legal aid rep, for example, was able to pull together nine hundred affidavits from borrowers, like the advocates did in the Sweet case and present that as part of a Borrower Defense application with nothing more, then this regulation would say that's not sufficient, even though every affidavit described similar, even if every affidavit describes similar conduct. And so I'm concerned that there can be, you know, consistent

statements by borrowers describing exactly how a school operated that wouldn't be sufficient for a group discharge because of this, this requirement. And so just just to put a finer point on it, you know, we've heard a lot from Brooks' borrowers and they all shared very similar experiences about how this school took advantage of them and lied to them. And with this requirement, if if I put together an application with them and only, because the school was long gone, only was able to submit all of their affidavits, the Department would be saying that that's not sufficient for a group discharge and that doesn't just as a matter of kind of evidentiary standards and what would be sufficient in court, for instance, that just doesn't sit right and seem right to me. There's also, frankly kind of the more normative element to it, where it almost feels like the Department is saying to borrowers like your voice isn't enough. And I don't think that's what the Department is intending here. But I think that's how it was to my mind. It comes across by including this requirement. And then the final thing I would note on this is so I understand from an efficiency standpoint the Department (inaudible) applications that are fulsome and give the Department what it needs to make decisions. I would just note, even if a group application comes with affidavits describing

similar conduct, that still puts the Department in a better position to make decisions than it would have been if it was acting kind of sua sponte and with nothing before it. I will come back on for a few more minor points.

MS. JEFFRIES: Thank you, Josh.

Jessica.

MS. BARRY: Yeah, thank you. I just want to come back to the Borrower Defense statute, does not contemplate a Borrower Defense claim outside of a collection proceeding, much less authorize the Department to proactively certify a group of borrowers and initiate a proceeding without any claim filed or any showing that a borrower relied upon or was harmed by some act or omission of the institution. We propose that the group process elements of the proposal be removed to ensure each claim is reviewed on its individual merits to ensure equity for borrowers, institutions and taxpayers.

MS. JEFFRIES: Thank you, Jessica.

Josh.

MR. ROVENGER: So I just first have to ask how it would be inequitable to institutions to have a group process just put that question out there because to my mind, it seems like it's focused on one, making

the process more efficient for everybody and two, ensuring borrowers that wouldn't otherwise have relief, get relief. And I think at least everyone has stated that they have the borrower's interest in mind. So I don't see how getting rid of the group discharge process would change that. But moving on to the specific questions I have, so in terms of providing a response to material complete applications, can the Department shed light on what what would constitute a material complete application and or whether it intends to provide kind of some regulatory guidance on that? Just because I'm concerned that a future administration that doesn't want to adjudicate third party requester claims will say, well, this isn't material complete, so I'm just not reviewing it at all. And so just just want to ensure that that can't happen. On a similar note the 270 days, you know, we'll get to the timeline, which again thrilled that the Department has put a timeline in. Two hundred and seventy days seems excessive to decide if a group is required in light of the two years of additional time that the Department would have to decide claims. So just just wanted to flag that issue. But my real question is about the material complete language.

MS. JEFFRIES: Thank you, Josh.

Jennifer.

MS. HONG: Yeah, so thank you, Josh. And I know throughout this rulemaking there's been an interest to include these time frames and, you know, regulate the Department, where that's really not where we're generally try not to regulate the Department, I understand the concerns behind that. And but frankly, if if an administration wanted to come and disregard the rules, we've seen that happen before. So I don't know that putting getting so specific in the regulations is necessarily the solution there. So to your first question, yes, we could provide something more subregulatory on what a complete what constitutes materially complete application. There was a lot of back and forth about timeframes. There's real hesitancy to include include those timeframes. But we have and we've landed on kind of what we what we believe are reasonable targets for us to meet.

MR. ROVENGER: Okay. Can I respond really quickly to that?

MS. JEFFRIES: Sure. Thanks. Go ahead, Josh.

MR. ROVENGER: So yeah, I think so I think I think subregulatory guidance on that would be helpful just so that advocates can ensure that they're providing everything that's needed. And hear you on the

timeline point. I think, you know, if this is what's doable, it's what's doable and just having something in here to tell the borrower exactly when they're going to be having, getting a decision is so critical, and so we greatly support the Department's inclusion of the timelines.

MS. JEFFRIES: Thank you, Josh. Joe.

MR. SANDERS: Yeah, I just briefly want to touch on a point that Jessica made about implying that there was some kind of an issue with considering a group versus going borrower by borrower by borrower. So as a state AG, if I bring a claim in court and I show that there's been a violation of my UDAP statute, I don't have to prove the elements for every borrower. We can get relief for for any borrower that we can show was included in harm by a given cause of given practice or systemic conduct. So I think that the efficiencies involved in the group process far outweigh any concern about addressing each claim, in turn, that's not standard practice in courts, it doesn't have to be standard practice for the Department here and the efficiencies that come with adjudicating a group far outweigh any benefit that would come from looking borrower by borrower. That's just inefficient and would just block relief from from getting to people. This is

not a practice that's outside of norms, and the Department should absolutely use it here.

MS. JEFFRIES: Thank you, Joe. Michaela.

MS. MARTIN: Yeah, I just wanted to make a comment on the use of saying like equity on behalf of the institutions, and that if we were going to talk about this as a measure of equity, I would appreciate that if we also recognize that the students who are disproportionately affected by this, especially from for-profit colleges, are student parents, especially single student parents and students of color who have higher rates of enrolling at for-profit colleges and much higher rates of taking out an egregious amount of student loan debt. And so in terms of of equity, I believe that focusing on the student's ability to recover and also wanted to mention that like, you know, saving taxpayer dollars by not allowing people to have group claims, we're actually spending more of everybody's resources, including the institution, each individual student, and the Department. And so we will actually be spending more in adjudicating these cases by not having a group discharge process.

MS. JEFFRIES: Thank you, Michaela. Joe, do you have your hand back up or is that from



before? Okay, thank you. Okay. Seeing no other hands Jennifer, do you want to move on?

MS. HONG: Yes, we can proceed, and I just want to touch back to Daniel's point about separating out the group, the other group process. We didn't really, I suppose we didn't. It doesn't necessarily have to be long or in the section that we put it in. And I'd have to go back to see if that was a deliberate choice or not, but it could conceivably be under the group process section. It's just another way in which a group process may be adjudicated. So but we'll get there. Aaron, if you could cue the language on page twenty nine of the main document, this is an individual process for Borrower Defense. And as you can see here, nothing has changed from session two to three. I I'm not going to go over it, and in general, individual borrower submits an application, provides evidence, supporting documents, documentation, we'll put them on forbearance, stop collections. And that's the individual process. Nothing, nothing new from session two. Okay, now we're going to move to Daniel's question that he had on group process based on prior Secretarial final actions. Nothing has changed here. We talked pretty extensively in session two on what this means, basically in forming a group process under 402B. We can

also consider if information that we obtain through a final program review determination or final audit determination defined under section 668.112 A or B. Any failure to meet an admin capability requirements, loss of eligibility on CDR due to CDR fines, limitations, suspension, other emergency actions. That that may relate again to the federal standard, including misrep, aggressive recruitment or omissions of fact borrowers. Any other final actions just making explicit the Secretary's authority to utilize this information and for an individual to base a BD claim on any of these misrepresentations. And no changes there. Page thirty two, the institutional response piece. Nothing has changed here, either. Just to refresh our memory, we're going to notify the institution of basis for group or individual defense, Borrower Defense claim, notification waives any limitation period by which the Secretary may recover (inaudible) from the institution, we'll request a response from the institution within 60 days. We talked about this last time and then either the institution submit an affidavit to us on a form approved by the Secretary and certify that under penalty of perjury. And if you don't, and if the institution does not respond, the Department official shall presume that the institution does not contest the Borrower Defense to

repayment claim. And I'll pause there because I see Daniel's hand up.

MS. MACK: Thanks for walking us through that Jennifer. I want to note that Bethany is back at the table for her constituency of individuals with disabilities or groups representing them. Daniel, can I turn it over to you?

MR. BARKOWITZ: Yes, I just want to echo Misty's concern and see if I can help maybe by asking a question, but thank you Misty for raising this. So as I see there are three different groups or two different ways, there's a group as defined by a third party or the Department can define, there's individual, and then there is group by Secretary action and where I want to particularly focus on is on B1 of section 405. The way I think Misty reads B1 and I would echo that we need, I think, better understand this, is that the statement is waives any limitation period. So just so I understand if we are in year eight beyond which a borrower has left the institution and the limitation period we know is six years, is that waived or is the intention to waive the expiration of any limitation period by notification? I don't think the I don't think the intent, I want to be clear. I don't think the Department's intention is to say the limitation applies

or the limitation applies, not when someone submits a claim because it essentially essentially this clause then wipes out any limitation period ever. I think the intention is it waives the expiration of of the limitation period. So that that's a that's a call, I typed that language into the into the chat. But I think really it would be helpful to say, waives the expiration of any limitation period from that point forward. That's really the the key issue here, I believe.

MS. JEFFRIES: Thank you, Daniel. I want to note that Emily is taking the table representing that veterans and service members. Emily.

MS. DEVITO: Thank you, and I think actually Daniel's question may have alleviated my concern. I would just want to have an understanding that private and nonprofit institutions, if there was a notification within the six years that you are amenable to maintaining those records in perpetuity with the understanding that the argument was based on concerns for the information and protecting the student, that there is an understanding that if the student has indicated that there's information that they would rely upon, that I would certainly hope then institutions would agree to waiving any sort of recordkeeping constraints. And I also was hoping to maybe get clarity

on and I guess we'll get there. The wanting to also strike in totality 685.407 F but is it better to pause that until we're further down the line? I just want to know if your interest is to strike that in its totality or only the parts that are concerning reporting.

MS. JEFFRIES: Okay, thank you.

Daniel, you have raised your hand, did you want to respond to Emily?

MR. BARKOWITZ: I just want to respond to Emily. And just to clarify for the Department. I view this as no different than being notified of a legal issue and being asked to maintain records from a from a case of law. So at that point, once notified institution has an obligation to retain records related to a legal case. I don't view this any differently. But I would have objection to that once the limitations period is over, somehow then waiving the limitation period, that's that's really the concern. So Emily, I support your your interpretation as you've expressed it, and I think you and I are in alignment.

MS. HONG: That's that's right, I mean, how you've characterized it is accurate. So but you're suggesting that we work this out a little bit to make it, to clarify-

MR. BARKOWITZ: Yeah, the language. If

your legal counsel is comfortable with it, waives the expiration of any limitation period. I think I think would then further clarify what the intention is, you're not waiving the limitation period, you're waiving the ability for the limitation period to expire. So you're waiving the expiration of any limitation period.

MS. HONG: Okay, we'll have, we'll contemplate that.

MS. JEFFRIES: Thank you, Jennifer and Daniel. Josh, thanks for waiting when they had that exchange.

MR. ROVENGER: Sure. Thank you. So my comments are about the individual process for Borrower Defense 685.403. And these are all things we've recommended before. But the first relates to charging interest for 180 days while the application is pending. In light of the Department's timeline for deciding these claims, I think we thought 180 days didn't make sense to begin with and don't see the need or the appropriateness for it any even more. And so we recommended the Department just stops charging a borrower's interest at the time the application is filed. Two, you know, again, I think we would like to see in the final regs some sort of action or remedy that the Department will provide if it unlawfully collects during a Borrower Defense

forbearance, just given the past history with the Department and unlawful collections. And then finally, for 685.403B would be would continue to recommend changing that language so that it makes clear that an application to the Secretary is self-evidence of a Borrower Defense application, and the borrower can provide additional evidence that supports the application. If the if the borrower chooses to.

MS. JEFFRIES: Okay. Thank you, Josh. Jessica.

MS. BARRY: Sure, I want to go back to the individual process, too, and just explain why that process for adjudicating individual claims does not afford institutions basic due process and fairness protection. I think this will provide some examples to explain what I'm talking about. The proposed individual process does not require the Department to timely notify the school that a Borrower Defense claim has been filed or to timely provide a copy of the claim that the result at the Department can notify the institution weeks or months after the claim was received. The proposed individual process does not require the Department to identify or provide to the institution the documentation obtained by the Department or otherwise supplied by a borrower in support of the claim, or to identify or

supply the records the Department official considers relevant to the claim. The draft rule does not guarantee or even contemplate an opportunity for institutions to request reconsideration. I know we're going to get into that a little bit further later. There's no time limitation whatsoever on a request for reconsideration, and we propose all of this. We just propose that the Department provide institutions basic due process and fairness protections when adjudicating individual claims by providing timely notifications, copies of claims, time limitation on the student reconsideration process, and a reconsideration process for institutions. And then one more comment I want to make on page 31. The draft standard at 685.404 B does not permit an institution the opportunity to respond to final actions imposed by the Secretary that are later used in the context of a group process. This means a final program review or final audit determination issued years before the regulation takes effect can be used as evidence by the Department in the context of a group process. However, the draft standard prevents an institution from responding, so we would like to see 685.404B removed.

MS. JEFFRIES: Jennifer. Did you have a response?

MS. HONG: Yeah, just a quick response



to that last point, Jessica, just remember that these are based on if these are actions arising from final program review determination or final audit determination that the response is built in from the institution. Because the institution will have a time, will have an opportunity to respond at the draft stage before it is final. So that's it's it's not an exclusion. It's built in, it's already built into the Secretary's final final actions. So if we if we were to add another response period, it would be a second, a second response from the institution. Also, I'm just I just wanted to see if to some of the others' point, others pointing out the bifurcated process that we've proposed to kind of pull the recovery piece away from the actual adjudication piece if that, if that gives you any kind of assurances, Jessica, in terms of some of your concerns.

MS. BARRY: I'll need to talk to my constituents before I can respond to that.

MS. JEFFRIES: Okay, thank you, Jessica and Jennifer. Josh, I just need to announce that Jen has come in representing student borrowers to the table. Okay, Josh.

MR. ROVENGER: Thanks. I'm just going to pick up on Jennifer's last point there, and I know

they're going around in circles on this. But the bifurcation of the processes here is pretty critical, I would think, for a claim of due process protection. I mean, we say due process that has a very technical, legal meaning, which first requires you to show a property or liberty interest. And I'm not aware of any cases, maybe you are Jessica and I'd be interested in seeing them, that would provide you or your constituency with a due process interest in the Borrower Defense adjudication process as opposed to the recoupment process.

MS. JEFFRIES: Okay, thank you, Josh. Okay, seeing no other hands. Jennifer, are you prepared to move forward?

MS. HONG: Yes, thank you, Cindy. We're moving right along here. So that's institutional response on page 32, if we could cue page 33, we have made some changes to the Adjudication Borrower Defense application section. Okay, down toward the middle of the page, new subsection E, we've included a state standard review for group claims prior to denial. So this is in an advance of a written decision we may conduct or the Department can conduct a second adjudication using the state law standard. And this is limited to. This is limited to third party requesters as defined under

685.401 (a)7 romanette one that requests a second adjudication process may request a Department official to conduct an analysis under standards from that requester's state in the case of a partial approval or denial under 685.401(d). We ask that you submit the specific state standard to be considered as well as a legal analysis supporting why the third party requester under 685.401(a)7 romanette one believes that the claim should be approved under that state standard and any additional information reasonably requested by the Secretary for the purposes of adjudicating claims under the State standard. So this is limited again to states and state AGs. Okay, moving over to page 34.

Adjudication timelines. These are timeframes that we've inserted here. We said that for group claims. We're going to say two years from notification from the Department or reconsideration, and we will be able to extend one more year for additional review under state law standard, it's two years for individual claimants, two years from submission of a materially complete application package and application timeframes don't apply to reconsideration request. We will provide interim updates one year after the start of the clock and will include the Department's progress and expected timelines. And I want to draw your attention to the very

last part of that section six on page 35. Any loans covered by BD claims will be deemed unenforceable if the Department does not meet these timeframes. So. I'll open that up to discussion.

MS. JEFFRIES: Okay, thank you.

Jennifer. Aaron, if you could stop share, please. Thank you. Joe, you're up first. You're on mute, Joe.

MR. SANDERS: These points may bleed over somewhat into reconsideration, which I know is the next page, but. Just wanted to touch briefly on the consideration of State law claims in a group application prior to denial. We appreciate the Department providing this this opportunity for group claims to consider the state law claims up front. Certainly something that we're interested in and we appreciate the Department including that. You know, as we've stated in the previous sessions, we do think that this opportunity should also be afforded to individual borrowers. And we've urged the Department to continue to consider that and we think the reconsideration process is likely to be a bar to individual borrowers filing claims. And, you know, want to, maybe it's best to hold my reconsideration comments until we get to that section, unless you want to hear him now, Jennifer. I'll hold them.

MS. JEFFRIES: Thank you, Joe. I just want to note that Justin is returning to the table representing veterans and service members. Josh.

MR. ROVENGER: Thanks. There are a few things I want to talk about with respect to adjudication and will start with one that was really critical to my constituency, which is respecting the timeline, and I can't understate how important this change is given the Department's past practice and the need for borrowers to know when they're going to have a BD claim as a claim decided. I mean, just just this past Tuesday, Mr. Figueroa provided public testimony about how he submitted his application in 2016. Still haven't heard back. And so I think the Department's inclusion of this timeline is a real signal to borrowers like him that they take the harm caused by the delay seriously. I also really appreciate that the Department has put some meat on on what it means that the Department violates that timeline and to have the loan deemed unenforceable. I do have a question for the Department with respect to that freezing, though. I think we have questions as to what that practically means. So for example, if a borrower was in default at that time, would the borrower have renewed eligibility for Title IV funding? Similarly, is the Department going to be making updated reports to

credit reporting agencies in response to the loan being deemed unenforceable? And similarly, like is the Department, even if it deems the loan unenforceable, still going to decide the Borrower Defense claim to fully discharge the loan. You know, I think I think it would be helpful for the Department to spell all of that out or frankly, to draw on some of the ideas in the Student Borrower Protection Center memo on the Department Settlement and Compromise Authority to simply just discharge the loan. So there's no question about the implications of what happens if the Department doesn't doesn't follow through. So that's issue one. Issue two relates to the state standard. I'll just I'll just pick up on where Joe left off that, to my mind if so, so we're thrilled to see that the state standard constitute a violation of state law constitutes a Borrower Defense claim. To my mind, if an individual applicant put a violation of state law in their initial application, that would constitute a Borrower Defense. And if the Department did not consider that in the first instance and only did it on reconsideration, it would seem to me that that individual would have a pretty strong APA claim to challenge the Department's failure to consider it in the first instance. And so I would urge, like Joe, the Department to consider expanding

that initial consideration to individuals who similarly launch a state law claim in their BD application. And then the final final point, I'll say on this section is we continue to have concerns about the contents of the denial notice, and we continue to urge the Department to consider expanding the language that it has for the requirements of denial notices.

MS. JEFFRIES: Okay. Thank you, Josh. Daniel.

MR. BARKOWITZ: So since I was one of the people who also with Josh, pushed for a timeline, I want to express appreciation to the Department for setting a timeline here. I think it's very useful and very helpful, and I appreciate the movement between week two and week three. So thank you to Department for setting some timelines that are that are clear. I also need some clarity on what unenforceable means. So, for example, I added some proposals to the, to the chat, which would be could we at the end of that clause if the Department's deeming the loan unenforceable, I echo Josh's concerns about defaulted students and credit bureau reporting. I also would add the concern about institutional recovery. So if it's throughout, if the Department has basically not been able to process the claim, then there should be a specific statement that

institutional recovery is waived in that case, because the Department has not adjudicated the outcome so, but otherwise, again, I'm in support of of this section. I appreciate where we've come from where we started.

MS. JEFFRIES: Thank you, Daniel.

Jessica.

MS. BARRY: Yeah, I just have a question for the Department, so can you explain why, why you've incorporated a state based standard into the proposal when the Department for the last several years through the last two administrations indicated that it was creating a federal standard and moving away from the state based standard concept because of extreme administrative burden? Can you explain that justification? It appears the draft proposal is contrary to the 2016 and 2019 rules.

MS. HONG: So that that is an outcome of the discussions that we've had here at this table. I think that we, you know, when we got really deeply into this, as you might recall with state AGs and with legal aid, and we were sufficiently convinced that we wanted that there could still be outstanding claims that we wanted to make sure that we were able to build a process that was both that we both will be able to administer but that was encompassing of other definitions of



misrepresentation or unfair practices that may be more better captured by by some states that have strong consumer protection laws. So that was yeah. That's a perfect example of how we've come a long way in this committee and in terms of taking your suggestions into serious consideration and seeing them reflected in the regulatory text. I would I would say that we were sufficiently convinced after after these deep and thoughtful discussions and our consideration of them afterward and in the intervening period.

MS. JEFFRIES: Thank you, Jennifer.  
Joe.

MR. SANDERS: Yeah, you know, I just want to second what Jennifer said explicitly here. We really appreciate the Department considering a state law standard and state laws go far beyond what has been captured here in the federal regulations, you know? Our office brings I'll use unfairness as an example, our office brings unfairness claims on a regular basis against institutions that would not be captured under these regulations. In addition, state law is broad and deep in terms of considering claims that that fall outside the scope of even consumer protection. So if we're talking about sexual harassment claims, if we're talking about civil rights claims, there's there are a

whole a student's experience with a school is immersive and touches on many parts of their lives. Students spend their entire lives in the case of traditional students within that institution, and so state law had built up over a long period of time provides recourse for all the different ways that that a student could be harmed when they're in that type of immersive environment, and so really just want to applaud the Department for recognizing the the breadth of protection that state law provides here and absolutely think it's founded and thank you for including it.

MS. JEFFRIES: Thank you, Joe. Josh.

MR. ROVENGER: Yeah, I'll echo that but also applaud the work of the state AGs on this issue, I think they've really provided substantial and sufficient evidence throughout this rulemaking process that would support the Department's change on this and that that has really been built up well throughout this process.

MS. JEFFRIES: Okay. Thank you, Josh. Anyone else before we move on to the last few pages? Jessica.

MS. BARRY: I have just one more question, so if the Department does not adjudicate a claim within two years and then the loan is discharged,

I wanted to just confirm that then that won't be recouped from the school.

MS. JEFFRIES: The Department may have may need a minute to answer that Jessica, so if you want to drop that question. Daniel, do you have a response to it?

MR. BARKOWITZ: That was Jessica, that's exactly the point that I raised, and I added that language I'd proposed to put at the end of six, which says, basically, if you go back to the end of the clause an institutional recovery of 685.409 is waived. So I propose adding that clause to the end of this of the statement to make that clear.

MS. JEFFRIES: Okay, thank you. Okay. I don't see any more hands. I think we can safely move on to the last several pages of the document Jennifer.

MS. HONG: Yes, thank you, Cindy. I've had trouble getting off mute.

MS. JEFFRIES: Yeah, I've had that trouble a couple of times this afternoon.

MS. HONG: Certain phrases becoming part of our lexicon, including you're on mute, you're on mute. Okay. Okay, so that's. That is adjudication, so when we take consensus check on issue, we've divided it up into three issues six, seven, eight, everything up to that point,

everything up to reconsideration will be issue six adjudication of BD claim. So that includes the federal standard, the inclusion of third party requester, individual process, group process, adjudication. And then now we're at reconsideration and then reconsideration now repeating myself, which is so unclear. Reconsideration through that table at the bottom of page 41 will be issue, BD issue six, so that's post adjudication. I think we described it in issue paper. Okay, so for reconsideration, some changes here since session two, new for session three under romanette one, we've included administrative or technical errors as a basis to request reconsideration. And then we've also included if a state or state AG, third party requester, request reconsideration, we ask that, you know, provide the applicable state law standard, why the state or state AG third party requester requests the state law standard review, why the state law standard would result in a different outcome and why the applicable state law standard would lead to BD. Also new for session three, if the Department official already reviewed under state law standard and it resulted in a denial, why its denial was incorrect. And this is existing, but we had the reconsideration request must be made no later than 90 days from the Department

officials' written decision. And also, this is straight out of session two. We just wanted to clarify that that the Department will designate a different Department official from the first Department official that conducted the initial adjudication, so the reconsideration will be adjudicated by a different Department official. And yes, I'll stop there for reconsideration. I see Justin's hand.

MR. HAUSCHILD: Thank you. So I'm just going to jump in facilitators, if that's okay. Okay, great, so.

MS. JEFFRIES: I'm sorry, Justin, I was on mute. Jennifer's problem. Sorry, go ahead.

MR. HAUSCHILD: No worries. No worries. So this is my first time (inaudible) the BD stuff so far. So we want to echo some of what Joe and Josh have already said in terms of some of the changes that have been made. But I want to talk here, of course, about reconsideration specifically. I wanted to thank the Department for some of the changes they've made here, particularly the addition of administrative and technical errors. We're supportive of that. I'd actually like to ask a clarifying question around that and then make an additional point with regard to paragraph F here at the end. So can I can I get a clarification from the

Department on whether or not they envision administrative or technical errors encompassing misapplication of the standard to the facts or the claim? Rather than, I mean, because otherwise, prior to this, it was mainly just new evidence.

MS. HONG: I'm going to let Todd stew on that for a second and then I I realized I left off F in my summary because that is also new and I just I just want to touch on it. I just, to reiterate a Secretary may reopen a BD application that was partially or fully denied at any time. Just making that explicit and then following the rules for placing a borrower in forbearance or stop payment collections. And to your question again, Justin, can you repeat? Can you repeat the question?

MR. HAUSCHILD: Yep. And I'll let Todd maybe Todd wants to jump in before I repeat. Okay, so my question specifically is whether the new language, administrative or technical errors encompasses the misapplication of the standard to facts presented or the claim as presented by the borrower. Yeah, so if the Department needs a little bit of time to get back me on that, feel free. The other question I have with regard to F here, it seems, so it looks like it's talking about. F only relates to the consideration of evidence

not considered in making the previous decision, which seems more limited than what the Department discusses more broadly here in reconsideration, because we're looking at administrative technical errors, you know, other evidence, a state law standard. So I'm just wondering if if that was intentional or if it would be more appropriate for the Department to instead say at any time to consider reasons as outlined in A1 under this provision. So just kind of wonky, technical but curious to get thoughts on that?

MS. JEFFRIES: Okay, thanks, Justin. Todd, did you have something to share? (Inaudible)

MR. DAVIS: Justin, I'm going to half answer your question the first one here on the, my inclination is that it would constitute an administrative error, the misapplication that you were referring to. But I would want to take a little time on this to make sure that we're. You know, I would like this to match up other places where the Department might have a reconsideration standard. You know, I think we want to encompass what you just, the misapplication of facts as a potential place here. Just the technical way that we write it in here. I want to make sure we're not hurting ourselves by not including it specifically, but I just kind of want to hope that eases your mind a

little bit on the bigger question. And then a couple other things while we're here and I don't mean to be in front of either Justin or Jessica here, Josh, all the way back on your definition for everyone. I had kind of gone back and forth with Josh in the chat quite a while ago about the definition of third party requester or other types of legal assistance organizations.

Generally, we agree with you, Josh, that that language is duplicative and I think we can trim it down. I think we do want to be specific to the language I put in there. Not necessarily. We might strike the whole thing and rewrite it, not sort of try to do it halfway. And I feel like I'm missing one more, but that's the first two. Oh, and then the other thing on the unenforceable, to Jessica and Daniel's discussion last time, the unenforceable versus BD discharge. You know, our position is that if something becomes unenforceable, you know, we could not go into a recoupment proceeding in that I'd be interested. Whereas if we grant a BD claim, then we can recoup. But I don't know that Daniel's language that says we waive it, I mean, I'm not sure that there's anything to waive. Once it becomes unenforceable, I think it's not, the recoupment is not there. So if other people disagree or have suggestions on, you know, other alternatives, but I hope that



answers the question a little more specifically.

MS. JEFFRIES: Okay, thank you, Todd.  
Jessica.

MS. BARRY: Daniel, did you want to speak to that because I was going to bring up something else?

MR. BARKOWITZ: Go for it, Jessica, you're fine. Thank you.

MS. BARRY: Okay, great. So I just wanted to express our concern with the consideration language. The draft rule does not guarantee or even contemplate an opportunity for institutions to request reconsideration while granting a right to reconsider reconsideration to any individual or borrower from a group or to any state, state attorney general, or state oversight or regulatory agency. If an institution has new and relevant evidence that is likely to change the prior determination, it's in the best interest of the Department and the taxpayer that it be reviewed, and it increases the likelihood of a just and accurate outcome, which should be the primary goal of the claim process. Also, the draft rule places no time limitation whatsoever on a request for reconsideration by a state or state agency or by the Secretary, with the result that institutions could be required to defend a Borrower

Defense claim decades after it was first filed many times over. And even when a prior adjudication determined no responsibility on the part of the institution.

MS. JEFFRIES: Okay, thank you, Jessica. I just want to note that Emily is coming back to the table for veterans and service members. Josh.

MR. ROVENGER: Thank you. So I guess a follow up for Todd and possibly another question for Todd. So the first is on the on the unenforceable language. Is there any insight that you can provide as to what it would mean for the borrower because I just think that would be helpful as to how to our comfort level in that language? And then the second I put a question in the chat, whether I'm reading this reconsideration language correctly, that so A refers to the merits of the group Borrower Defense and then A1 refers to an individual or borrower from the group. So I get the individual from the group can seek reconsideration of a group decision. But can an individual outside of the group process seek reconsideration of an individual application? And then finally, I know I'm just going to tape record myself and play it on repeat here, but I still don't understand what the institution's property or liberty interest is

on reconsideration here as well, given the separation between the Borrower Defense process and recruitment.

MS. JEFFRIES: Okay. Thank you. I see a message here that some parties would like to take a quick, quick break, so Emily, could you hold your comment and we'll take maybe a 10 minute break and come back and pick up with yours and then finish up the BDR? Is that okay? Alright. Thanks. Okay, welcome back from that break, I hope everyone feels refreshed and had a chance to stretch, I know I did. So with that, we'll pick back up where we were at. We have several hands here. We just want to ask Todd, did you have a response to something that has been put out there or?

MR. DAVIS: No, you can go ahead with Emily. I can wait my turn this time.

MS. JEFFRIES: Alright, great. Thanks, Todd. Let's see, Emily, you were up when we took our break, so I'm going to jump over to you.

MS. DEVITO: Thank you. So I just wanted to get clarity. So F Under Reconsideration is one of the items Misty had shared earlier would need to be struck in its entirety in order for that constituency to reach consensus. I want one, I guess clarity. Is it the entirety of this language or is there just one particular part that's problematic? And is it like

Daniel mentioned before? Not really a matter of needing to strike this language, but just clarify on the before or after six years for the original claim and particularly for this section. With with clarity and language, if a claim is from pre six years and is denied that there is a level of comfort in maintaining those records in perpetuity in the case that that claim might be reconsidered after six years. So any clarity on this and also on the record for the previous the other sections as well.

MS. JEFFRIES: Okay, thank you, Emily. I believe I heard that was a question. Was that a question for Misty, correct? She's up next in the queue anyway, so Misty.

MS. SABOUNEH: Perfect timing. So thank you. I did kind of want to clarify and look back on my comments earlier because I do think we're aligned on an intent standpoint from what I'm hearing from Jennifer and everyone. It's more just the way it's the languages is. So the intent, I think, is if it is a six-year period and schools are required to retain records for six years. And recoupment can happen. The waive to the limitation period is where I have an issue. It's 685.405 B1. So if I could understand why this is here, because it seems like there is an intent to keep that

six-year window.

MS. JEFFRIES: Todd, I see you itching there to jump in. So please do.

MR. DAVIS: Well, this was one of the things I did want to kind of want to go back to. Misty, did you say B1, B as in boy?

MS. SABOUNEH: I didn't mean to not answer your question because I don't want to strike 685.407 F if we're just delineating that recoupment period is the six years. And if there was an open claim, that makes sense to have a file retention if it's reassessed, but it's really just the reopening at any point language.

MR. DAVIS: Yes, my comment might be helpful here. So in that regard, I do think we should go back. That was one of my two things here to go back to this particular provision. We do think of this in connection with like statutes of limitations in litigation, right? And when and we would call it, we would toll the limitations period as opposed to all the language we've been using. So maybe we could change this. I think the Department would be open to changing this to something like the notification in subsection A of this section tolls the limitation period by which the Secretary may recover from the institution under

685.209. Daniel, I see you nodding. That may be kind of what you were getting to earlier. I don't know if that helps in particular there. I can wait. I have one other small note, but I think it would be helpful just on the 685.407A, which was the question about can individuals and groups, are we being clear enough that everyone has the same rights to reconsideration? The Department did not intend to limit that to a particular group, and I think if we strike the word group, both places in 685.407A, we would probably get where where we intended to be. Thank you all.

MS. JEFFRIES: Thank you, Todd. I just want to circle back and Emily. Did you did you get your question answered, and Misty, do you two need more dialog?

MS. DEVITO: I think I do want and sort of circling back to before to just have a level of understanding on the record, I saw good visual clues, but that that your constituency's understanding is as Daniel shared, and that if someone has a claim within that six years, there is an acceptance that you would maintain those those records and that it's really just that which side of the six years it's on.

MS. JEFFRIES: Okay. Thank you.

MS. SABOUNEH: I just wanted to add

into along those lines, 685.409C2 is the other section that I put in the chat that we feel is problematic, that it appears to waive that six-year retention period and the ability to recover. So those are the two sticking points.

MS. JEFFRIES: Okay, thank you, Misty and Emily and Todd. Daniel.

MR. BARKOWITZ: If I can, we'll get to 609, 409 rather later, but in the in the section right here that we're talking about 407, this is my eagle eye comment for the afternoon, Jennifer, and you're welcome. If I look at 407 and the clause we're looking at the very last section. It references a section that doesn't exist. So at least that I can find. So it references 402D, Roman numeral II. I think that means because I can't find a Roman numeral II. I think that means 402D, I'm sorry. That would be Roman numeral two rather than Arabic numeral 2. Sorry, let me back up. So what's there is 402D the Arabic numeral 2. I think it means for 402D Roman numeral II because when I look for a 402D, the Arabic numeral 2, I don't see one.

MS. HONG: That's conceivable. And given your record here, I think you're right. I'm going to lean on you. We're going to I and then I'm going to suggest that we cue the document but the toll, the tolls

language and the deletion, you know, the clarification of the reconsideration and then this technical edit on the document. I just also wanted to add about the records retention issue. This was discussed extensively in the 2016 rulemaking, and I think we talked about this before about the types of documents that would be solicited from an institution related to a BD claim, not being those documents that are subject to the records retention provision. And I just want to put that out there again because we did talk about that. I think I forwarded the discussion in 2016 to you Daniel as well.

MR. BARKOWITZ: You did. And again, it alleviated my concern about the three year versus six year, and I want to again applaud the Department for moving from lifetime to six years. That is much more comfortable. I remind us we started a lifetime when we began this conversation, so I'm personally in my constituency very comfortable with a six-year limitation.

MS. JEFFRIES: Alright, thank you. Two things Justin is back in for veterans and service members at the table, and I want to remind those who have registered for public comment. Please log in early. We are approximately 12 minutes away, 17 minutes away, sorry from public comments, so we encourage you to log



in. Justin.

MR. HAUSCHILD: Yeah, just real quick. Circling back to one of my earlier questions around F, wanted just to get a response from the Department on whether it was intentional to limit the Secretary's unilateral authority under F to just considering evidence not considered in making the previous decision, or whether the Department would be amenable to changing that language to something along the lines of to consider reasons as set forth under A1. Which is more which is more expansive, obviously.

MS. JEFFRIES: Thank you, Justin. I'm going to encourage, given the number of suggestions and proposals want to encourage people to put them into the chat. So that they are not lost track of. Josh, you are next.

MR. ROVENGER: Thanks, I actually have a technical question, so I would like to call a caucus with some constituencies, but I'm happy to do it at 4:00 p.m. if that can be accommodated and if folks can stick around particularly interested in chatting with state higher education executive officers, financial aid administrators, two your public institutions, for year public institutions, private nonprofits, minority serving institutions, FFEL lenders and accrediting

agencies. I don't know if those folks can stick around at 4:00, but that may be the most efficient way to do this.

MS. JEFFRIES: Do I see any objections to that, people not being able to stick around?

MS. O'CONNELL: I have a 4:15.

MR. ROVENGER: I think it will be. I don't think it'll be long. And it also to the extent dependent students, independent students, student loan borrowers, attorneys general, or military service members would like to attend as well I'm comfortable with that, but wouldn't wouldn't require to the extent that's permitted.

MS. JEFFRIES: Justin or Josh, I appreciate the fact that you're willing to hold this at 4:00 p.m. after session so that we can utilize these last 15 minutes to try to at least get through the discussion piece or the outline of this entire document so that we could then pick up in the morning, giving the Department time to look over these suggestions and proposals. And we could pick back up in the morning of this. So if that's okay, we'll go ahead and we can set that up for you at four o'clock. Okay, did you have something else, Josh? Okay. Thanks, David.

DR. TANDBERG: Sorry, I meant to put

my hand down, I was just going to suggest veterans and AGs to join Josh's caucus, so apologies.

MS. JEFFRIES: Okay, Okay, okay. I don't see any more hands. So Jennifer, do you want to walk us through the rest of the document?

MS. HONG: Yes. And if we could just cue the document, I just want to flag those three issues. Just by comment bubble real quick, just because I don't want to lose them. Thank you, Aaron. So under reconsideration, if you could just flag a comment bubble under group under A. Just throw a comment about applicability of reconsideration. Thank you. On page 37, this is Justin's issue. The phrase "evidence that was not considered" to just flag that. And just put a note Justin, or maybe, yeah, I'll remember that, and then also page 32 B1. Just flag and you just put like tolling, tolls language, and we'll revisit that with OGC. And then we had the little nit cross reference from Daniel.

MR. WASHINGTON: Toll like a toll booth?

MS. HONG: Yeah, just toll, yeah, (inaudible) and then. Okay. Daniel, I'm sorry, what page was that?

MR. BARKOWITZ: That was also page 37,

so in the same section after Justin, it's the reference to the pieces in 402. So Aaron, it's the references to 402D2 and 402D3. Those two references appear to go nowhere.

MS. HONG: Thank you. And then whenever you're ready, Aaron, we can move on to section page 38, section 685.408, , which we've more appropriately renamed discharge. Because that's what it is, discharge rather than relief. So, discharge amounts. We talked a lot about this. I know there was a lot of discussion about partial, full relief, so we cleaned up some of the language under A. Just made it cleaner. Deleted "rebuttable". And added. So there is a presumption that a borrower with an approved claim under 406C and 406B is eligible for full discharge of the federal student loans associated with an approved Borrower Defense claim unless Department officials presented with clear and convincing countervailing evidence. And we may rebut the presumption that the borrowers are eligible for full discharge under these two conditions and we took we landed here after the discussion that we had at the table regarding partial discharge. And just to state very cleanly that one, either the conduct that resulted in the approved Borrower Defense claim relates to an easily quantifiable

sum and was not the reason or an enticement for a borrower to enroll in that program or institution, in which case the relief is equal to that sum or two, the conduct that resulted in approved Borrower Defense claim related to misrepresentations that did not involve the outcomes or quality of educational services. In that case, the amount of discharge provided would be tied to the level of harm experienced by the borrower as a result of the misrepresentation. So. Okay, so under C, the Department official recommends an appropriate amount of discharge to the Secretary, which may include discharge of all amounts owed on the loan at issue and the reimbursement of amounts previously collected by the Secretary on the loan an easily quantifiable quantifiable amount, or 25 percent if the amount is not easily quantifiable, but less than the full amount of the loan or loans related to the claim. And we've included this for those examples that we provided previously, but we have revised the table that begins at the bottom of page 39. All the other edits on page 39 are technical in terms of just saying discharge more straightforward than relief. So, for example, scenario one, let's say the conduct that resulted in the approved Borrower Defense claim related to misrepresentations that did not involve the outcomes or quality of

educational services. And so that was that is here's an example of B2. So in this case, a school intentionally reports false statistics about the incoming test scores of students in one of the selective graduate programs to an organization to an organization that publishes a national ranking of those programs. The incorrect information causes a program to be ranked higher than it would have been otherwise. And the appropriate relief would be that the borrower may be entitled to a partial loan discharge. The higher ranking could reasonably be expected to encourage a borrower to apply to and then attend the program. But the misrepresentation did not speak to the actual education delivered. Accordingly, the appropriate discharge amount would be the extent to which the student took on greater debt to attend that program than they would have compared to other similarly selective programs. For example, if typical debt at the program within the representation was \$75,000 and in similar programs, it was \$50,000, the borrower should receive \$25,000 in loan discharges. If the Department cannot calculate the typical debt at a similar program, then borrowers would receive a 25 percent discharge. And we're recognizing that scenario as distinctive from from others. So, for example, the next one. Scenario two here. This is a case in which a school misrepresents the

bar passage rate of students in its law school program to a national ranking of legal programs. The actual bar passage rate is significantly lower. In this case, the borrower would receive a complete loan discharge, a full discharge. Though not directly provided to the student, the misrepresentation inaccurately reflected the likelihood that a borrower would be able to pass the bar exam and thus work in the profession for which they are trained. So we're trying to capture the nuance there between the differences between one and two. And finally, scenario let's see, yeah there's two more scenarios, the third one is easily quantifiable one and this one we actually talked about last time. School represents to current and prospective students and widely disseminated materials that is required, its required books and materials to complete the program cost twelve hundred. It can only be purchased for the institution, but then charges fifteen hundred. So then the appropriate relief would be three hundred, partial relief for 300 for the difference. And again, we also talked about the the next scenario is also a similar scenario to the one right above it. So I see hands raised, and I will go on mute.

MS. MACK: Justin, go ahead.

MR. HAUSCHILD: Thanks. So I'll be

very quick, I'm sure other people talk about other issues. I just want to thank the Department for abandoning this, this concept of systemic problems. So that's all I have to say. Thank you.

MS. JEFFRIES: Thanks, Justin. Josh.

MR. ROVENGER: Yeah, I'll echo that, and I'll also echo appreciation that the Department has, at least in my mind, strengthened the presumption in favor of full relief. With respect to the two specific categories. So the first, as it relates to the easily quantifiable sum, so I can live with that language and particularly can live with the examples that are provided. I would urge the Department when it issues the NPRM to include as many similar and like examples as possible, just to make abundantly clear that when the language is interpreted in the future, it is cabbaged to the kind of specific set of examples. So that's category one. Category two, I struggle with a bit in particular. So the example that's provided as a school intentionally reporting false statistics about test scores to relate to kind of its selectivity. I guess to my mind, that's still connected to the quality of educational services and or purporting to be about the quality of educational services. And so I'm not quite sure that that kind of fits the language that's



provided. And again, I think so putting aside the question of whether those students should receive a Borrower Defense, I think I would say yes, that they should get a full Borrower Defense. I think reasonable minds may say no. We would again urge the Department to take out that provision and just deal with that in the definition of what constitutes a Borrower Defense. And if the Department wants to say something like a school intentionally reporting false statistics about the incoming test scores of students in a selective graduate program does not constitute a Borrower Defense, I think we could live with that rather than opening up this category in the relief section that could be abused by future administrations.

MS. JEFFRIES: Thank you, Josh. Joe, you're up next.

MR. SANDERS: Yeah, I think this is the same thing Josh is saying, but I highlighted. Well, maybe it's not. Maybe it's not the same thing. Anyway, I'm on 685.408B2. And I I just. I'm not sure I have a full grasp on the phrase, "did not involve the outcomes or quality of educational services". So I'm just, I feel like that is gray in terms of like what claims would would fall under that that category and so I would urge the Department to provide more clarity there. I'm not

sure what that means, and it seems like it could be a way around the presumption of full discharge. Thank you.

MS. JEFFRIES: Thank you, Joe. Josh, you're up next and we are two minutes from public comment. Oh, there you are.

MR. ROVENGER: I'll be quick. I just saw we're low on time, and so thought it might be useful just to kind of wrap back to the public comment on Tuesday. And Carissa's Story, who attended Brooks, and she discussed all of the stress that has been involved in her life and delayed major events in her life. And I think her story captured how "full relief" we use that term. It's actually a misnomer. Full relief is not actually full relief and can't fully remedy the harm that these individuals have experienced. And so I kind of just wanted to end what I had to say today on that on her story in that note.

MS. JEFFRIES: Okay, thank you, Josh. Alright, with that, we will be moving to public comment. We will pick back up with Borrower Defense in the morning. I'd like to remind everyone this is the last day of public comment.

MR. ROBERTS: Are you ready for the first speaker, Cindy?

MS. JEFFRIES: I think we are. Yes.

MR. ROBERTS: Alright. I'm admitting Carol Hix, who is representing themselves.

MS. JEFFRIES: There she is, Ms. Hix, can you hear us?

MS. HIX: I can. Yes. Thank you.

MS. JEFFRIES: Okay. Alright. Welcome. And you will have three minutes for your public comment.

MS. HIX: Okay. Are we ready now? I apologize.

MS. JEFFRIES: Yes, whenever you start. Yeah.

MS. HIX: Thank you. Good afternoon. My name is Carolyn Hix. I am a spouse of a veteran and a mother of four. I wanted to provide a good life for my children by going to college. Sadly, after attending three for-profit colleges, I feel like I have hurt my family instead of helping them. In 1996, I attended Blair College in Colorado Springs, a for-profit college, because they branded themselves as a military friendly college and said they offered discounts for military connected students. Seeing that my tuition fees were still high, I asked how those discounts were applied, but Blair only offered confusion, confusional answers. Blair College also told me that my credits would transfer elsewhere if I needed to relocate. When I was

just a few credits shy of completing my associates in business, my family was had received orders to move to Germany. After arriving in Germany, I attempted to complete my degree through the program offered on the base, but I was told that none of my credits from Blair would transfer. Upon returning to the states I was trying. I tried to transfer to Central Texas College, but I was told by them that they would also not accept any of my college credits from Blair. I remember sitting in the parking lot of the college crying. I looked all over and tried to find a college that would accept my credits. I finally found American Intercontinental University online, another for-profit college, and it allowed me to transfer my credits from Blair. AIU told me that they were also a military friendly school, and I was told that they were also a Department of Education accredited college. They also told me that I would receive military discounts as a dependent and that these were high, but I never saw the military discounts. My classes were five weeks long and online. I never took any final exams, which I found to be odd. Upon graduating in 2005, I requested assistance with job search, which I was originally promised to. But when AIU just directed me to read a website and never returning my calls. I later decided to earn my master's degree in

mental health. Once again, I found it difficult to find a school that would recognize my diploma. Capella University accepted me into their master's program after I saw them at a career fair that was held at Fort Gordon, Georgia. There was no entrance exam or no finals. The fees were outrageous, and the school claims to be a yellow ribbon college. Even though I did completed my degree, I still haven't passed my licensing exam after four attempts because I did not learn the materials needed to. I am now over my head in student loan debt because of these high costs of completing my degree and my children are in college now and I have ensured that they are attending, that they are not attending for-profit schools and I am hoping that our government can protect colleges and students and military connected families by not allowing for-profit colleges to take advantage of them anymore. Thank you.

MS. JEFFRIES: Thank you, Ms. Hix.

Brady, who do we have next?

MR. ROBERTS: Cindy, I admitted Professor Mona Alsoraimi Espiritu, who is representing themselves.

MS. JEFFRIES: Okay. Good afternoon, Dr., are you ready? I see you're on mute. Can you unmute yourself? Thank you. Can you hear us?

MS. ESPIRITU: Yes, I can.

MS. JEFFRIES: Perfect. You will have three minutes for your comment. And that three minutes will commence when you begin speaking.

MS. ESPIRITU: Thank you. My name is Mona Alsoraimi Espiritu, and I'm from San Diego, California, I served in Jordan 27 months from 2011 to 2013, in Mongolia for eight months from 2009 to 2010. Two years ago, my husband and I both are PCBs who now work in public higher education had our second child. We've been crunching the numbers. We had been crunching the numbers since before he was conceived, two kids meant a very tight financial squeeze, especially with my income driven loan payment of \$700 a month and the \$3,000 a month for child care for two kids when I return to work. A silver lining of the pandemic was loan forbearance. As we approach January and the loan repayment looms near our financial anxiety builds. I've considered taking on babysitting jobs in the evening or during the breaks to to bring an extra income, driving Lyft, or tutoring on the weekends instead of spending time with my family. I cannot imagine how a mother of two working full time as a professor would stay sane in that situation. But this is our current reality. As the child of immigrants, I was encouraged to go to school

but had no support. I worked through community college and as a result did not qualify for any financial aid at the university I attended. Loans were a means to an end for me. I was the first to graduate in my family and much to my industrious parents' dismay, I chose a life of service. The value of service was important, but more than anything, my parents wanted me to be comfortable. I assured them that Peace Corps would take care of us since we were sacrificing two years of our lives to serve our country. In many ways, that was true. When I became chronically ill in Mongolia as a result of the climate and air quality in the winter, I was given medical care and was medically separated back to the states with the knowledge that I could serve again in a warmer weather country. I attended graduate school, reapplied for Peace Corps, and was placed in Jordan within two years of coming home. Before departing before departing for both Mongolia and Jordan, I researched loans since that was a significant concern for me. I was pleased to learn from both Peace Corps and loan servicers that my loans could be deferred. I wanted to serve and deferment, although not ideal, made it possible. Materials from the Peace Corps and staff at staging confirmed that deferral was my only option. In Jordan, I actually consulted with a Peace Corps

administrator a couple of times regarding loan concerns. I was getting older and saw the amount I owed grow significantly and feared a life of debt. Peace Corps staff told me that I should consider consolidating my loans privately at a lower rate. Thankfully, I did not consolidate my loans privately despite that advice. Peace Corps staff, although caring and helpful, didn't have the tools or knowledge to assist volunteers in making these critical decisions. I am now a tenured professor of English at an urban core community college I serve, we serve a significant number of black, brown and low income and homeless students. I was a city college student myself approximately 20 years ago, and I'm grateful to serve my community in this way. I regularly engage with students who are changing their family's trajectory, and it fills me with hope and joy. The work we do as public servants is important both in the Peace Corps and back home. Our country is better off because of it. It seems only fair that those of us-  
Thank you.

MS. JEFFRIES: Thank you very much.  
Brady, who's next, please?

MR. ROBERTS: Yeah, I just admitted Sarah Partridge, who's the executive director of the N. Joyce Payne Center for Social Justice at the Thurgood



Marshall College.

MS. PARTRIDGE: I regularly engage with students who are changing their families through-

MS. JEFFRIES: Good afternoon, Ms. Partridge. If you could stop your live stream or turn the volume down, it would be helpful for you. Thanks for joining us this afternoon. You will have three minutes for your public comment and that will start whenever you're ready.

MS. PARTRIDGE: Thank you for having me here today. My name is Sarah Partridge, and I'm a research fellow at the Dr. N. Joyce Payne Center for Social Justice at the Thurgood Marshall College Fund. Our organization uses academic research from HBCUs to advocate for equity focused policy change. The Payne Center believes that the IDR proposal currently on the table fails to address the extent to which the student loan crisis perpetuates economic hardship and increases the racial wealth gap. We are disappointed with the relatively minor scale of the changes proposed. We urge the Department to take bolder action. First, the Department must align payment affordability with the dramatic increases in housing, health care and other essentials in recent years. The plan must protect income below at least 300 percent of the federal poverty line.

The current proposal does not show a realistic understanding of what the average American needs today simply to survive. Second, the Department is not adequately addressing the catastrophic problem of ballooning loan balances due to negative amortization. By not subsidizing unpaid interest for all borrowers, this IDR plan remains a debt trap. There are so many reasons negative amortization is devastating for borrowers from the impacts on one's credit to the mental health burdens and the complicated calculus one must make to not pay down a loan and risk being denied forgiveness later. Finally, I must address the exclusion of Parent Plus and Graduate Plus loans from this plan. Students and families of color are disproportionately likely to need to rely on these types of loans. Because of the racial wealth gap, more parents of color borrow to send their children to college and due to labor market discrimination, workers of color pursue graduate degrees to even achieve just pay parity with college educated white workers. The Department has claimed that it wants to focus on undergraduate degrees because they function as a pathway towards the middle class. However, parent and graduate borrowers of color take on Plus loans for this very end. On Tuesday, negotiator Marjorie Dorime-Williams made the acute observation that

including these Parent and Graduate Plus borrowers would not necessarily reduce the benefits to undergraduate borrowers, it would only extend them to more people. Furthermore, including these loans would in fact streamline IDR options by creating a clear best option for all borrowers. Plus loans are the highest balance, fastest growing, and likely most unsustainable category of student loan debt. If the federal government is not willing or able to share in the burden of a problem that it has helped to create, perhaps Congress should reconsider how these education needs are being met. The Department must use the tools within its power to help address the student loan crisis, including by creating a new IDR plan that is substantively more generous than the current one proposed. Thank you.

MS. JEFFRIES: Thank you, Ms. Partridge. Brady, who is next, please?

MR. ROBERTS: I just admitted Professor Christina Alayan, who is the associate dean for library and technology and an associate professor at the Law School for the University of Maryland.

MS. JEFFRIES: Good afternoon, Professor Alayan. Thank you for joining us this afternoon. You will have three minutes for your public comment and that will start whenever you're ready to

begin.

MS. ALAYAN: Thank you. I'm the proud daughter of immigrants, one of whom qualified for asylum as a refugee. My story could be characterized as a quintessential American dream, including last month when my student loan was forgiven. But it isn't. I've survived the PSLF quagmire only because of luck, the tenacity I've inherited from my remarkable parents, unearned privilege, and my legal training. It doesn't capture the dream denied. Countless families aren't getting married, aren't having kids, aren't saving money, aren't buying homes because the albatross of student loans is all encompassing. During the pandemic, millions of borrowers felt a temporary reprieve for the first time. It was exhilarating, transformative and heartbreaking. I've been watching the work of this committee. I'm not envious of the task before you, and I'm deeply grateful for your commitment to this crisis. Nevertheless, I'm disappointed at the arbitrary lines being drawn that are excluding desperate families. I say families because while the decisions made here apply to borrowers, they have a direct impact on families and communities across generations. Before I jump into my urgent recommendations, let me note the vast majority of graduate borrowers are not high income earners. Graduate

degrees are required for public defenders, social workers and librarians. My field requires two graduate degrees. The financial stability I have secured is the exception and not the rule. This is not a repayment issue. Students take on debt approved by the federal government and attend institutions whose costs skyrocket, while salaries, when adjusted for inflation have remained static at best. Marginalized communities opt into this oppressive system in an attempt to capture the elusive promise of middle class life. To hold them responsible for a system they did not create and that we all know is designed to profit from them with no regard for the harm inflicted is abhorrent. Borrowers have no faith in programs like PSLF. It is a nightmare to navigate. All they see are denials over 90 percent as their balances balloon because payments don't ever cover the interest or don't even cover the interest. It is terrifying. You should aim for easy, broadly applicable wins that require little to no intervention from borrowers. That said, here's what I think should be done. All periods of forbearance should count as payments. Interest should be forgiven for any payment that is less than the interest or freeze interest for anyone in an IDR plan. To be under inclusive is far more harmful than being over inclusive. For example, benefits

to undergrad borrowers should not be denied graduate borrowers. Spousal income should never be factored into payments. Working for a qualifying employer under PSLF for 10 years and not payments should determine forgiveness. Daycare and COLA should be factored into discretionary income calculations. Expand the definition of qualifying employer for the PSLF program from 501(c)(3) to include all essential workers, such as food service and health care. Interests should not be capitalized if borrowers have to move to a different plan. Extend the payment suspension Until this is sorted out, you can transform the lives of all student borrowers. The status quo is financially and psychologically crippling. There is consensus the Department is the holdout. I hope you're listening because we are watching and voting. Thank you and a special thank you to Bethany, Daniel, David, Jeri, Joe, Josh, Marjorie, Michaela, and Persis. I've really been watching and really appreciate all your advocacy. Thank you so much.

MS. JEFFRIES: Thank you, Professor.  
Have a great night. Brady.

MR. ROBERTS: Cindy, I just admitted Kelly Messina, who was here representing themselves.

MS. JEFFRIES: Hello. She's

connecting. Hello, Ms. Messina, can you hear me?

MS. MESSINA: Hi, I can.

MS. JEFFRIES: Okay, wonderful. You will have three minutes for your public comment and that will start whenever you begin speaking.

MS. MESSINA: My name is Kelly Messina. I'm a public servant on track for PSLF and a moderator for a large PSLF Facebook group. I've previously spoken about more wide scale change, but today I will highlight five more immediately relevant points. Number one, all borrowers must have the option to make a qualifying payment in February 2022. Borrowers with early February due dates will not allow Fed/Loan its 14 days to generate a bill creating yet another no-bill month that does not count as qualifying. Every borrower must have the option to be billed for February, regardless of service or administrator procedures. Number two, any months it takes to transfer to the new PSLF servicer in the next 12 months must count as qualifying months without forced forbearances. Every no-bill month, every annual forbearance while servicers recalculate IDRs, the upcoming servicer transfers, they all delay our forgiveness by one month each time and require longer service than 10 years. Ensure February 2022 and the upcoming servicer transfers don't delay our

forgiveness further. Number three, regarding the proposed allowance of retroactive PSLF qualifying payments for periods of forbearance and deferment, consider two additional points; number one, allowing the same option for the six month grace period, number two, adding this provision to the waiver not just negotiated regulation change. I, for one, was never informed that consolidating immediately after graduation would have allowed those six months of grace to count for PSLF, a time my IDR payment was zero dollars. During all of these months in question, we completed our end of the deal, the service, and we are willing to pay you retroactively. So please don't let red tape keep this time from counting. As a stopgap to regulation change, I propose that you add to the waiver to make all periods of forbearance, deferment and grace prior to October 31, 2022 qualifying, provided that employer employment criteria was met at the time. Number four, written guidance from the Department regarding consolidation of loans on different timelines being given the higher count was not provided to borrowers for many weeks after the waiver announcement, leading to inequitable forgiveness. Countless borrowers had already consolidated by that point. Borrowers who did not include their newer Direct Loans, warned by servicers



not to, have now only seen partial forgiveness, while other borrowers who ignored the warnings and included all of their loans anyway received total forgiveness. Still, others who waited for formal guidance before consolidating their loans forgiven before they have the chance to consolidate with newer loans and missed total forgiveness. Number five, and finally, if and when any forgiveness is amount is granted by the Biden administration, such as \$10,000, I ask that the Department allow this to be a lump sum payment that satisfies future monthly payments until it is gone. For any borrower with higher debt than that, forgiving a one-time amount will not ease monthly burden. Please allow any Executive Order of forgiveness to offset future monthly payments. Thank you.

MS. JEFFRIES: Thank you, Ms. Messina. Have a great night.

MS. MESSINA: You too.

MS. JEFFRIES: Brady. Brady, who is next?

MR. ROBERTS: Cindy, I just admitted David Apperson, who is a veteran representing themselves.

MS. JEFFRIES: Okay, thank you, Mr. Apperson. Can you hear me?

MR. ROBERTS: To me, it looks like he's in the meeting, but he's still connecting to audio and video. Do you want me to admit the next speaker?

MS. JEFFRIES: Yes, if you would, please.

MR. ROBERTS: I'll message him. I'm admitting Corina Niner, who is representing themselves.

MS. JEFFRIES: Good afternoon, Ms. Niner, how are you? And welcome to public comment.

MS. NINER: Good, thank you. How are you?

MS. JEFFRIES: Good. You will have three minutes for your comment and that will start whenever you're ready to begin.

MS. NINER: Good afternoon and thank you for the opportunity to speak. My name is Corina Niner. I'm a federal employee, a PSLF hopeful and a return to Peace Corps volunteer. I served the United States for 27 months in the Peace Corps from 2011 to 2013 in the Republic of Azerbaijan. I helped impoverished women artisans, including those from persecuted minority groups, to learn basic business skills to help support their families, all while living under poverty level conditions myself equal to those of my community counterparts, and I am proud to have served

my country. Prior to my Peace Corps service, I obtained a bachelor's degree, a master's in international relations and a master's of business administration, incurring extensive federal student loans. During my time as a Peace Corps volunteer, I deferred my student loans at the instructions of the Department of Education and my federal student loan providers. I was not aware of the PSLF program until I returned from service and immediately started my federal career in 2014, at which point I applied immediately for the program. I have now given almost eight additional years to public service as a federal employee, and had I known that my time in the Peace Corps could have counted towards my 120 payments for PSLF, I would have made sure that I was enrolled in an Income Based Repayment Plan instead of deferment. But I did not know. With the announcement of the PSLF waiver on October 6th and the inclusion of retroactive military deferments as part of credible service for PSLF, I was momentarily overjoyed that my 10 years would be realized and that I would be eligible for forgiveness. I thought for sure that if the same deferment status for active duty military was being counted, then Peace Corps service would be counted. I was devastated to find out that this was not the case, that it seemed that Peace Corps volunteer service was discussed and then

intentionally left out of the waiver. The PSLF waiver aims to rectify the gross mismanagement of the PSLF program since its inception in 2007, but it has missed its mark with this oversight. I ask for myself, my family and the thousands of other Peace Corps volunteers who have served the United States, that you include student loans that were in deferment and or forbearance status during Peace Corps service as retroactive credible time towards PSLF under the current waiver. We should not have to wait additional years for relief for time we've already served. I also ask that you please make changes to future regulations to ensure that the PSLF program follows through on its promises and intentions. Like so many others, I've dedicated my professional life to the public service and forgiveness for my time would be life changing for my family and for my child's future. We have held up our end of the bargain and we ask that you hold up yours. I thank you for your time.

MS. JEFFRIES: Thank you, Ms. Niner.

MS. NINER: Thank you.

MS. JEFFRIES: Alright. So, Mr.

Apperson, I see you have joined us. If you could unmute your microphone. Welcome. Welcome. You will have three minutes for your public comment so you can begin

whenever you're ready.

MR. APPERSON: Thank you and good afternoon. My name is David Apperson and I'm a former firefighter, law enforcement officer, and U.S. Army veteran from Mendel, Texas. Today, as our nation honors the service of Bob Dole, who the New York Times calls a linchpin in the passing of the Americans with Disabilities Act, I hope this committee can build on the work he started many years ago to help veterans and other disabled individuals. At 17 years of age, I enlisted to serve on the Korean DMZ because I hoped the G.I. Bill would pay my way through college. After leaving the Army, I went to the Computer Career Institute and Oregon Polytechnic. I assumed my GI Bill would cover everything, so I was surprised to later learn that some of the financial aid documents I signed were actually student loans. I got a job in computer technology at first detailing heating and plumbing systems using AutoCAD and later worked with internet design protocols and gateways. However, injuries from my military service began to catch up with me. And in August of 2003, I woke up, couldn't move my arm, and soon thereafter, the left side of my face caved in. My head hurt so bad I couldn't even recognize those I served with. By 2005, I couldn't even work, but I didn't

let my disability stop me from giving back to others. In 2009, I founded Vets Helping Vets, which helps build community awareness among military and veteran families throughout the nation and around the world. I was honored by Grapevine, Texas VFW Post 10454 in December of 13 for completing 10,000 hours of community service. However, my disabilities got worse. By 2015, I was approved for Social Security TPD discharge by loans, I also received 100 percent service connected disability rating in 2020 and in 2021 an individual employability rating for the VA, dating back to 2009, which would have automatically discharged my loans. In 2015, I was heavily medicated with morphine, which made it difficult for me to complete basic tasks, and I was counting on the Department of Education, the Social Security Administration, and the VA to work together to discharge my loans. There was a problem when I was finalizing a home loan in November, the mortgage underwriter said I had over \$10,000 of student student loan default debt and if I didn't get it discharged, I would lose the home and could possibly lose my earnest this money. I found out that (inaudible) had sent a letter. The end result is I believe that new regulations should improve information between, shared between agencies, so it's not up to disabled veterans like myself to navigate the

bureaucracy of several federal agencies to receive a student loan discharge and the disabled veterans deserve and desperately need. Thank you.

MS. JEFFRIES: Thank you, Mr. Apperson, and thank you for your service. Brady, who is next?

MR. ROBERTS: Cindy, I just admitted William Gawthrop, who's representing themselves.

MS. JEFFRIES: Okay, thank you. Mr. Gawthrop, can you hear me? (Inaudible). Mr. Gawthrop?

MR. GAWTHROP: Yes, I can hear you.

MS. JEFFRIES: Okay, I don't know if you have video capability, but feel free to turn it on if you're comfortable. There you are. Welcome. Thanks for joining us. You will have three minutes for your public comment this afternoon and that will start whenever you're ready to begin.

MR. GAWTHROP: I'm ready to begin now. Thank you for allowing me to talk. The purpose of this comment is to request your assistance in eliminating an injustice and undue social and financial burden on the spouses and families of student loan recipients. Background: Student loans compute repayment using factors extending beyond the borrower. The extended factor is the borrower's spouse who did not cosign the

loan, and sometimes they're not going to enter into this financial encumbrance. Repayment factor comes in the form that using the married filing jointly, tax returns to calculate repayment. Repayment should be calculated on the borrower's income, not the income of nonborrowers. Repayment of the loan is the responsibility of the borrower. Nonborrowers should not be responsible for repayment. Calculating repayment using the nonborrower's income, married filing jointly, dramatically increases the repayment amount beyond the borrower's affordability. It financially penalizes the nonborrowing spouse for being married to the student. It creates an undue financial hardship on the nonborrower and it disincentivizes some marriages in otherwise already stressed, economic circumstances.

Recommendation: Amend the law or change the rule to restricting the student loan repayment calculations just to the borrower's adjusted income. The benefits are three. It dramatically lessens the financial stress on vulnerable families. This removes a penalty from the spouse of the student, and it relieves the political pressures calling for the carte blanche elimination of the student loan. It creates a win-win-win situation for the student, the government and the students' families. Finally, if you have the opportunity, ask a staff member



to go on Facebook and look at the various student repayment sites and monitor the tone and the tenor and the student's comments and the note of desperation that some of them exhibit in their repayment dilemmas. Thank you very much. That concludes my briefing, thank you.

MS. JEFFRIES: Okay, thank you very much, Mr. Gawthrop. Appreciate it. Brady, do we have another one?

MR. ROBERTS: We do. Our final speaker today, I just admitted, is what Juaquin Brown.

MS. JEFFRIES: Okay, thank you. Mr. Brown, can you hear us? I know you're connecting to audio. See, there we go. Still waiting on the audio. Yes, there you go. Welcome, Mr. Brown. You will have three minutes for your public comment and you can begin now.

MR. BROWN: Thank you. Good afternoon, everyone. Some of you. Yes, can you hear me?

MS. JEFFRIES: Yes.

MR. BROWN: Okay, perfect. Good afternoon. Thanks for the opportunity to speak here. I see some of some familiar faces. Daniel, Ms. Barry, I think Kayla. Yes.

MS. JEFFRIES: Mr. Brown, your audio is cutting in and out. Okay. (Inaudible) now?

MR. BROWN: Yes, I'm sorry, I'm having an echo on my side, but essentially yes.

MS. JEFFRIES: Do you have the live stream still on?

MR. BROWN: I think I do. Yes.

MS. JEFFRIES: Okay. You need to either turn that off. Okay.

MR. BROWN: Okay, there we go. Alright. I'm sorry about that. Okay. Good afternoon. So I am the former ITT tech student. And so some of those individuals that I mentioned during my echo session there kind of heard my spiel. But basically on Monday, December 13th, I will have reached five years for Borrower Defense of repayment. I have still not heard an answer. Today makes 1,822 days. A lot of times I just want to be in the background. I don't want to be seen or heard from, but I would like to be acknowledged. And so I've reached out to the Department of Education. One thing I'm not going to get into all of the policy stuff because I've been listening all week and trying to manage to work from home. But essentially in this process. To hold hands along the way, somebody from the Borrower Defense of repayment process need to walk hand in hand with the student to keep them abreast of what the situation is. I have two degrees from a school that

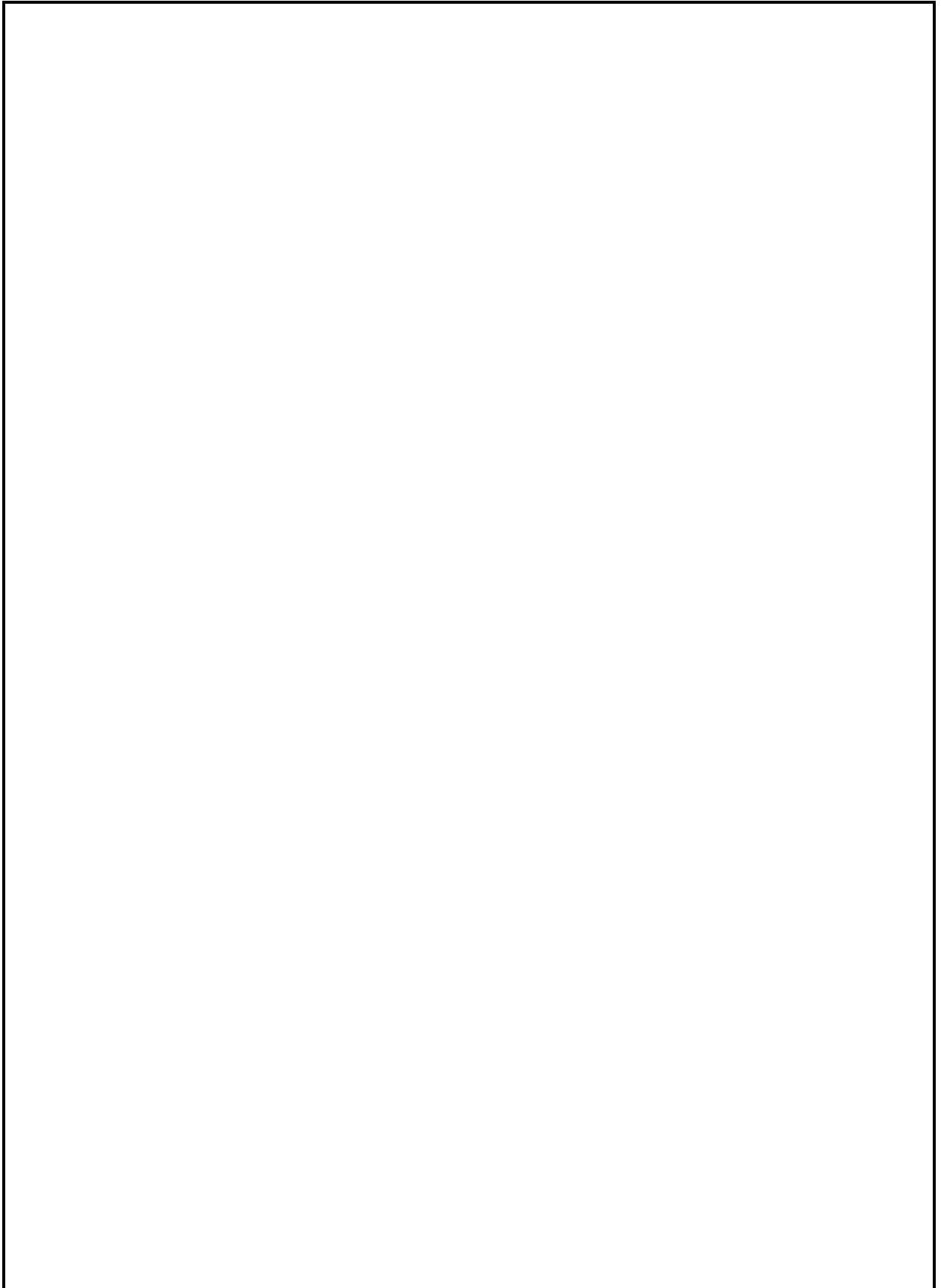
I can't put on my resume. I don't know how hard that is for anybody here to swallow, but for me, that's hard. I also went to a state school that's been around since 1891, so I have three degrees. But if I sent you my resume today, you will only see one. I sent this to the Department of Education, Secretary Cardona as well. I sent that to him back in April. I just want somebody to acknowledge the fact that I've been in this fight for five years and my answer is always pending. My school back on August 26th of this year, the Department of Education Secretary announced that former students in the Borrower's Defense case or the ITT case, we have a close discharge loan that goes back 13 calendar years. In that time, I was a student, okay? To this day, I haven't received a letter, I haven't received a phone call, I haven't received an email. Matter of fact, if I go to my online Department education site right now to look at my claim because I followed it by mail, it is not there. I work and manage in health care. I manage people's legal medical record. I do that electronically. Most people now can go to the doctor and get all of their records on their phone. I can't even view the document. Although, if you see behind me here, I have about three computers of documentation behind me, of all of my Borrower Defense claims. Okay. I just want

somebody to acknowledge this and there are students out there who are willing, myself included, who will be glad to help in this process. One thing is I should be able to call the phone number and somebody provide me some type of status update. Everybody here today is a consumer. I don't know how many people will sit here and wait 1,822 days for an answer.

MS. JEFFRIES: Mr. Brown, I'm sorry, but your time is up. We do appreciate it.

MR. BROWN: Thank you. Merry Christmas.

MS. JEFFRIES: Thank you. Thank you. Alright. That concludes session three day four. We will see you all in the morning except for those who are going to stay after in the working group, I think we're good for today. Thank you all.



**Appendix**

**Department of Education  
Office of Postsecondary Education  
Zoom Chat Transcript  
Affordability and Student Loans Committee  
Session 3, Day 4, Afternoon, December 9, 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 Josh (A), Legal Aid (he/him) to Everyone:

Pup!

From Suzanne Martindale (A) state regulators to Everyone:

+1 to pets on zoom!

From Persis (P) - Legal Aid (she/her) to Everyone:

+1

From Jessica Barry, Proprietary (P) to Everyone:

I am back at the table for proprietary schools.

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

Yes, that is what I remember too

From Suzanne Martindale (A) state regulators to Everyone:

+1 persis, more complexity will lead to more servicing errors and will undercut intent to expand access to relief

From Suzanne Martindale (A) state regulators to Everyone:

\*lead

From Persis (P) - Legal Aid (she/her) to Everyone:

josh will join the table for the discussion on BD

From Justin (P) Servicemembers and Veterans to Everyone:

+1 to Persis's and John's final IDR comments

From Jeri (P) Student Borrowers (she her, they) to Everyone:

Brady - is there a feed problem for viewers?  
I got a note that the feed stopped

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

Yes, live video feed is down...

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

According to several folks...

From Kayla, FMCS Facilitator to Everyone:

Working on it.

From Heather (P) - Accrediting Agencies to Everyone:

Michale, accrediting agencies, is going to take my place at the table.

From Justin (P) Servicemembers and Veterans to Everyone:

+1 Josh on support for inclusion of legal aid organizations and re state law standard

From Jeri (P) Student Borrowers (she her, they) to Everyone:

+1 Josh

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

Suggested Strikes:

685.405(b) (1) The notification in subsection (a) of this section waives any limitation period by which the Secretary may recover from the institution under § 685.409.

685.407(f) The Secretary may reopen a borrower defense application that was partially or fully denied at any time to consider evidence that was not considered in making the previous decision. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedures in §§ 685.402(d) (2) or 685.403(d) for granting forbearance and for §§ 685.402(d) (3) or 685.403(e) for defaulted loans, as applicable.

685.409(c) (2) The limitations period described in paragraph (c) (1) of this section shall not apply if the Department official notifies the school of the borrower's claim in accordance with § 685.405(b) prior to the end of the limitations period.

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

My last chat was kind of confusing the three sections I would like to see struck which waive the limitations period are:

685.405(b) (1)

685.407(f)

685.409(c) (2)

From Suzanne Martindale (A) state regulators to



Everyone:

+1 josh, the processes are separate for a reason

From Jen(she/ella): (A) Student Borrowers to Everyone:

+ 1 Michaela

From Jessica Barry, Proprietary (P) to Everyone:

I just heard that the feed cut off

From Brady FMCS Facilitator to Everyone:

I am working with tech- will keep you posted

From Michaela [P] Ind Students to Everyone:

<https://iwpr.org/media/press-releases/single-student-parents-have-higher-student-debt-burden-especially-at-for-profit-colleges/>

From Michaela [P] Ind Students to Everyone:

<https://www.aspeninstitute.org/blog-posts/worse-off-than-when-they-enrolled-the-consequence-of-for-profit-colleges-for-people-of-color/>

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

+1 Joe

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Michaela

From Joe (P) State AGs to Everyone:

+1 Michaela on costs of adjudicating borrower by borrower

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

+1 Michaela

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

In addition, research and evidence consistently demonstrate that the borrowers who would be most impacted by this are marginalized borrowers (i.e., women, students of color, low-income) who attend for-profit institutions. This proposal may help clarify language and expectations for all institutions going forward so we have less of these claims in the future.

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

Hello, I'll be subbing back in for the Disability seat.

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

Welcome back Bethany!

From John S. Whitelaw, A-Disabilty (he/his) to Everyone:

Dropping off for Bethany to come to the table

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

Suggestion: "waives the expiration of any limitation..."

From Jen(she/ella): (A) Student Borrowers to Everyone:

+1 Marjorie

From Todd Davis - ED OGC to Everyone:

Josh - on the 3rd party definition, would your suggestion be "a nonprofit legal assistance organization that provides legal assistance with respect to civil matters to low-income individuals without a fee" ?

From Justin (P) Servicemembers and Veterans to Everyone:

Emily is taking the table.

From Josh (A), Legal Aid (he/him) to Everyone:

Todd - Yes. Just strike (A) and have (B) be the definition

From Todd Davis - ED OGC to Everyone:

thanks for clarifying

From Jeri (P) Student Borrowers (she her, they) to Everyone:

Jen will be coming in for Jeri

From Joe (P) State AGs to Everyone:

+1 Josh on interest accrual

From Marjorie (P), 4 Yr Public Insts. (she/her) to Everyone:

+1 Josh, interest

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

+1 on interest accrual

From Michaela [P] Ind Students to Everyone:

+1