

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
AFFORDABILITY AND STUDENT LOANS COMMITTEE
SESSION 2, DAY 3, AFTERNOON
November 3, 2021

On the 3rd day of November, 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. MACK: Alright, welcome back from lunch, everyone, my name is Kayla Mack and I will be facilitating this afternoon's session. We are talking about aggressive recruitment in Borrower Defense and the concept of that being added to our red text. Hands are still up. So David, I'm going to ask the to kick off our conversation again.

MR. TANDBERG: Yeah, thank you. I believe when we left off, we were discussing Daniel's points around subjective what he viewed as subjective items in the list of aggressive evidence of regressive, aggressive recruitment. And I'm I'm concerned, given my experience in Pennsylvania is trying to crack down on some aggressive recruiters that it would be very difficult to anticipate every definable, measurable, perverse action that might be taken in the recruitment. That's why we kind of landed on the language we did in the items that Joe shared. And my alternate Suzanne brought up an important point in the in the in the chat, which is that the the institutions would have opportunity to to address any claims against them. And so there would be a kind of an adjudication of of what is being alleged that the institution did that was wrong and that that's an important point. It's not just going to be that we

take a complaint and judge it aggressive without the opportunity for institutions to respond. And so I would be open to something like a list of here are some examples that and with a clear indication that other actions can and will be considered aggressive recruitment that it. But I don't think we can get in the business of trying to identify every potential item because there are these actors are amazingly creative and they're highly motivated. And so I would be comfortable with the language as it is if we need to as a matter of compromise with some examples that are more definable, that's fine, but it can't be seen as exhaustive.

MS. MACK: Thank you, David. Next in line, Emily, please.

MS. DEVITO: Well, good afternoon, and I apologize if this is just jointed, piggybacking off some comments from before lunch and I also lost the chat during lunch, but I wanted to reiterate. I believe Justin had shared some of the language that that we're sharing and also I believe it's integrated with with Joe's proposal that is from the Department of Defense Memorandum of Understanding that pretty much is echoed in in statute that's passed earlier this year that governs GI Bill dollars. But both of those agreements, which are preponderance of institutions, probably your institutions

on this call are have agreed to or are held to by accepting GI Bill dollars, have historically and do address aggressive recruitment and misrepresentation for service members. In ways, our community, which we're thankful for for the closure of the 90/10 loophole, but has historically been aggressively recruited. So just want to share that context and understanding that even some of that is the proposal is maybe a little bit more generous. Specifically, even regarding unsolicited contact. We're. I'm sorry, I'm losing where I wanted to piggyback specifically Daniel's concerns and also what the points that that Josh was making, were there some room for things to be specific but we also need to be a little bit more general in order to support students, but also deter bad behavior. And I believe Joe shared, you know, we can still encourage good recruit recruitment and not limit it through just unsolicited contact. I believe the proposal is unsolicited contact for students who have previously requested not to be contacted, but it's also would be important for us to see some sort of limitation on time, which I believe or a limitation a number of times that someone could be contacted, which I believe will be addressed here and is addressed in the DOD, MOU and through statute. Again, this proposal would be much more, much more generous. And then to echo off David as

far as being amazingly creative. That was one example I wanted to give as far as unsolicited contact and just being forward thinking in what institutions will create as the definition for contacts? Does that mean a third party lead generator? Does that mean an ad? Does that mean search engine optimization? That basically just resets the clock on what is unsolicited and what's the definition of unsolicited to be moved?

MS. MACK: Thank you, Emily. Let me move to Joe, and before I do, I just want to acknowledge that Daniel is back at the table. Welcome back, Daniel. Joe, please go ahead.

MR. SANDERS: Hi. So a couple of quick things. One, the proposal that I just sent around people did send me a bunch of really specific examples of what constitutes aggressive recruitment, so I encourage everybody to take a look at that. You know, some examples of things that people sent me were comparing accreditation or ownership status of the institution to that of any other institution. So a recruiter saying, we have the same accreditation as Harvard, we're just as good sign up today, that kind of thing. There's a bunch more like that in there. So take a look at those for some specific examples. And then to Alyssa's comment, or I'm sorry, Emily's comment about limitations on the number of

times we did locate a Massachusetts regulation with some help from the legal services organizations and my constituency partners in Massachusetts that does limit the number of times per week that people can be contacted. That's in the latest proposal with a with a site to that. So again, try striving to find demonstrable standards to use in this in this definition.

MS. MACK: Thank you, Joe. Daniel, please.

MR. BARKOWITZ: Thank you, and thanks Joe for stepping in, sorry about that. That's the problem with only having limited time and a meeting over lunch. So to respond, first of all to Emily, I, I support looking at the DOD language, I think the MOU speaks to my concern, which is that it is and I've copied some of the language I've gone through. The my role is both Head of Financial Aid and Head of VA benefits so I'm very familiar with the VA part of the work as well. And I think the DOD standards are very helpful because they are specific. And so I would I would strongly encourage us to take a look at them, and I've copied some of them in the language. I also, to David's point, I have no problem with including, but not limited to. I think the the issue, though, is that once we start specifying particular acts, then institutions will be resistant to

engage in those acts. That's the point. That's why we're doing this work. We want institutions to refrain from them and when they are general and not specific, then that raises concern. So again, the more specificity we can provide and examples, the better. I understand the tension between wanting not to provide every single example because there's a concern that institutions will then go beyond those examples and the concern I ask also to balance that with the desire not to be overly general because by being overly general, institutions may rule out behavior that is perfectly legitimate for fear or concern that it might be viewed the wrong way. So but again, you know, I would go back to Emily's point. I think the DOD language is very helpful and very specific. And again, we tried to incorporate some of this in the language we put forward for consideration.

MS. MACK: Thank you, Daniel. Josh, please go ahead.

MR. ROVENGER: Thanks just on this point of kind of general versus specific language. I don't think this is an issue that's unique to this specific situation. I mean, you look at some states consumer protection laws and they very generally ban unfair, deceptive, abusive conduct because it recognizes that actors will find new ways to circumvent specific

restrictions and to manipulate people. And so, you know, I hear the concern. It's just one that I think, you know, the law more generally has accepted as, you know, it's okay to impose and utilize broad prohibitions just in recognition of how actors will change.

MS. MACK: Thank you, Josh. I'm going to go to Emily as she has her hand up, and then I'm going to ask Jen if we can return to the two page document and continue walking through the aggressive recruitment section. Emily, please go ahead.

MS. DEVITO: Thank you, actually. Daniel, your comments are help help me clarify the point I wanted to make and also bless you for for your work in that space processing the benefits. I know that's that's important and very difficult and arduous work, so we thank you. I think you made an interesting point about the DOD MOU language that would definitely be a point of contention in this space where I think people would argue it's one of the it's a document with so many interpretations that makes it difficult for schools to understand. So an example I would want to give is specifically this unsolicited contact and then also piggybacking off what Josh said and the ability to be creative. Again, if a school believes, if they have that contact, then it's inherently not unsolicited. That

becomes not necessary and then being forward thinking. And I appreciate it, I think Joe included text messages and some other language that is a little bit more forward thinking in how this recruitment is happening. But if schools are able to be like, okay, well, I'm not going to do these three things you said, so I will just engage in aggressive behavior that's more innovative and reset the clock on being able to engage in contact or even the language that Joe provided if someone has requested not to be contacted, but then they click a Facebook ad or they put their information into a third party lead generator. Is that now they've solicited contact? So I think sometimes it seems like it's clear, and maybe it's overly clear to the point that it's allows for too much. I think amazingly creative, I liked that the verbiage from David.

MS. MACK: Thank you, Emily. Can we all refer back to the two page document perhaps share it on the screen? And Jennifer, I'll ask you to continue walking us through it.

MS. HONG: Thank you for the discussion. What I'm hearing again, I'll repeat that I'm hearing that everybody seems to be in favor of the concept of including aggressive recruitment into the regulatory language. The discussion is mostly centered

around the construction of that language, the general versus the more specific, what's implementable, etc. And I'm just going to quickly go through options three and four. And if you could speak to that issue specifically, you'll see a lot of overlap with the concept. Perhaps it's framed a little differently. So let me just go through that. Option three was actually lifted from the twenty sixteen regulation on the section on a way to show reliance, but we realized we could use it here instead as aggressive recruitment. So aggressive and deceptive recruitment tactics or conduct include, again include, but are not limited to, demanding that the borrower make enrollment or loan-related decisions immediately. Again, this is framed a little bit more concretely. I don't know if Daniel feels differently about this language, placing an unreasonable emphasis on the consequences of delaying discouraging the borrower from consulting an advisor, excuse me, family member or other resource. Failing to respond to the borrower's request for more information, including about the cost of the program and the nature of any financial aid. Falsely presenting the number of slots available or otherwise unreasonably pressuring the borrower or taking advantage the borrower's distress or lack of knowledge or sophistication. Option number four is aggressive and deceptive recruitment tactics, and this

has taken from the Consumer Financial Protection Bureau definition of abusive. Materially interfering with someone's ability to understand a product or service, taking unreasonable advantage of someone's lack of understanding, taking unreasonable advantage of someone who cannot protect themselves and taking unreasonable advantage of someone who reasonably relies on a company to act in their interest. So again, a lot of the same concepts just framed a little differently.

MS. MACK: Thank you, Jennifer. Now that we've reviewed those two additional options, please raise your hand if you have additional comments or questions. Daniel, I see your hand first, please.

MR. BARKOWITZ: So since Jennifer called me out, I appreciate the chance to speak in response. I will say option three addresses many of my concerns because it is specific. So again, I have no problem. I'll speak for me personally, not for the group. I have no issue with the language that's included in option three. To me, it is much more specific and provides reasonableness, and it does include the language include, but are not limited to. And again, just to give the context, we've presented in option five and the reason was a timing one once again. So we delivered that and had the negotiation or conversation caucus wise prior

to the delivery of these pieces. So, you know, if we can at some point look at our definition as proposed. But again, I have conferred with and in support of option three on the table.

MS. MACK: Thank you, Daniel. Joe, please go ahead.

MR. SANDERS: Yeah, I would just, you know, voice support for three and four, I think, you know, four in particular, I think, you know, when I put together and the people who work with me, we're in line with the Department on use of the use of standard. That's that's great. However, you want to phrase that, that's cool. And then I think everything in three, you know, we have encompassed somewhere in ours. So I think it's you know, happy to happy to wordsmith on these, I think these are all the right concepts and we just need to boil them down to the the best final language that we can come to. Also, Daniel, I'd be happy to talk with you offline around your definitions. And, you know, maybe we could find some areas where we or we have agreement.

MR. BARKOWITZ: I'd support that thanks, Joe.

MS. MACK: On that note, I do just want to mention if before our sessions or during lunch folks ever want to meet in a private breakout room to

chat about these things, we're happy to utilize the platform and move you so that you can be having these kinds of conversations along the way. Please don't hesitate to let us know if that would ever be helpful to you. Thanks for your remarks, Joe. Justin, please.

MR. HAUSCHILD: Apologies getting my virtual buttons mixed up here. Just wanted to say, I just want to say, I think I think similar to Joe, that three four, I think broadly are workable here. There's particular categories in each that that that we find that we find favorable. But I think, broadly speaking, we're going to be more inclined to look at something that's closer to what Joe is for. And then I think I also want to address this idea of whether this is a non-exhaustive or exhaustive list. Just to be clear, you know, when we're talking about Joe's proposal, maybe this has been addressed already. I'm not necessarily reading that, you know, as an exhaustive list, but maybe I'm interpreting that incorrectly. So I would be fine and I don't I would be fine if Joe's listed and do something more specifically saying that this is not not exhaustive, but I'm not sure it's necessary. So I just want to throw that out there for discussion if folks felt differently on that point. Thank you.

MS. MACK: Thank you, Justin. Heather,

please go ahead.

MS. JARVIS: Thank you. So I just wanted to add a couple of comments, I think there's been quite a bit placed in the chat and there have been some things by email and then I think Joe said people responded to him. I'm not sure we all saw everything that went back to Joe. So I think that it would be helpful to spend the time getting all of that together because I think that we all agree that there are pieces and maybe each of these that could build a comprehensive list of included, but not limited to. And I think once we get to that point, the next question for me would be, are some of those items actually misrepresentation or are they still falling under aggressive and deceptive recruitment tactics? And I think under three, falsely presenting the number of spots available, I'm assuming that that's referring to in an academic program? And if so, is that more misrepresentation than aggressive and deceptive recruitment? It maybe it doesn't much matter how it gets categorized. But I would like to see the comprehensive list that everyone has because I think that's addressing some of what Daniel has shared and gives institutions good guidance of what behavior this is intended to capture and hopefully can help establish good practices along the way as well for recruitment.

MS. MACK: Thank you, Heather.
Marjorie, please go ahead.

MS. DORIME-WILLIAMS: I agree with everything that's already been said. Just in terms of thinking about the language, another way that we could look at, I guess, support for more descriptive language rather than less is that it can be really helpful for students to understand. And if there is more language provided as to what aggressive recruitment looks like, then we might allow students to have a better understanding of either they were or were not in this situation and understanding of what aggressive recruitment means to the Department, as well as to schools. And so my, I guess suggestion or argument would be that limiting it may not necessarily benefit all parties in this situation.

MS. MACK: Thank you, Marjorie.
Justin, please.

MR. HAUSCHILD: Yeah, I want to just kind of add on to two things that were just mentioned. First Marjorie's point I think is a great one why illustrative examples are important. Particularly when it comes to affirmative communications that the Department is issuing to folks that may be eligible for this kind of relief. And then I also want to circle back to something

that Heather mentioned, which I think was just how I took it was kind of the very fluid nature of of what's happening right now around aggressive recruitment and, you know, proposals that are being shot out and communications that are happening, I would tend to agree. I don't I don't necessarily think where we are is a bad place but I'm curious if folks would be amenable to maybe returning to this later in the week in some form after we've had some time to digest this. But but intentionally revisiting this topic later in the week again, after we've had some more time to review all the proposals that have come in very, very quickly here.

MS. HONG: I think from the Department's standpoint, we haven't been able to review the newer proposals either, so certainly we will go back and review what we think sounds feasible and come back with other language. I don't know that we could do that before the end of the week, but I think this discussion bears revisiting, time permitting during this session as well. So yes, to your question, Justin, at our end.

MS. MACK: Okay, thank you, Justin, thank you, Jennifer. Daniel, I see your hand.

MR. BARKOWITZ: Could we perhaps and I'm trying to move the conversation forward and be respectful of time. Could we perhaps and I think we're

all in agreement, but maybe we just need a temperature check. Could we take a temperature check on the inclusion of aggressive recruitment as a reason for Borrower Defense to Repayment? Again, I think no one on the on the at the table disagrees with that. But maybe I'm being presumptuous and it really is more the definition specifically. And that might be helpful for the Department. Because I've heard Jennifer say several times, you know, she's made the assertion that that she hears that we're all in favor, but I'd like to get on record for that purpose to help the Department move that conversation forward.

MS. MACK: I think you want my job, Daniel. That's exactly what I was going to take us to next. I wanted to ask Jennifer, do you believe that from this robust dialog thus far, the Department has everything it needs, at least for the time being.

MS. HONG: Yes, thank you.

MS. MACK: Perfect, then I would love to do what Daniel just suggested, and let me be clear, so there's no confusion. We're just taking a temperature check for tentative agreement on inclusion of the concept. There are a number of proposals and language pieces that we need to review, but solely on inclusion of the concept. Can I please see your thumbs for a

temperature check? Thank you very much for holding them up front and center, I believe that I saw everyone's thumbs and we do not have any down thumbs, so we would have in fact been in consensus on adding that concept. We will in fact return to it. Thank you for that. I am going to ask us to switch gears for a moment away from Borrower Defense to our esteemed advisor Raj, so that he can come on and share with us a presentation that was already emailed out to you. Raj, do we need to watch for an additional login at this time? No. Okay, perfect. I'm going to turn it right over to you. Thank you.

MR. DAROLIA: Can you guys all see that? Are you seeing two screens or just the one screen?

MS. MACK: We are seeing large slide and then an indication of the next slide of it small.

MR. ROBERTS: Yeah we're seeing presenter mode right now, Raj.

MR. DAROLIA: Probably not but. How about now? Alright, thanks, so thanks, everybody for having me to talk about closed schools. What I going to present today are just some counts of schools that have closed over time. It's a little ambitious and overpromising maybe what could be done in a short amount of time with getting student enrollment and demographic information linked up to these schools. And I'll talk a

little bit about that here in a minute when I get into the data. But the punch line from all this is really going to be that the GAO report, which I talked about before in the first session, is really going to be the best source for this information anyway and I'll talk more about why that is. And so what I did was kind of duplicate slides that I presented in the first session at the end of this report, just so everybody has it sort of in the same place. So what I'm going to show you are some graphs of the number of closed institutions over time from 1984. Until most recently, this is actually from a report that comes out weekly. I took the data from the end of September, and so it comes out weekly, so there's actually a few more closed schools in this year. But for all intents and purposes, this is this is accurate up to date. So on the left hand side here, what I'm showing here is your closure on the bottom and the number of closed schools on the y axis. And as you can see, there was kind of this big spike in the early 1990s, late 1980s lowers and then since about 2005 or so a big increase and then a decline in recent years. The numbers are maybe a little small on this, but it actually puts on that the number of closed schools in each of those years as well. Happy to provide the source data it's also the bottom line. On the right here is just the same graph, but it is

split out now by the sector of the institution. And what we have available kind of easily is just public institution, private nonprofit institution, proprietary institution. And so those three colored lines with the different types of markers are the different sectors. And so if you were to sum up those lines from the graph on the right, you would get to the graph line. Now, let me stop here and just mention a little a bit about some of the data challenges in doing this work and talk to some of the comments that Carolyn and Daniel made yesterday, which Carol, who is the alternative for Proprietary Institutions and Daniel, the Financial Aid representative, mentioned yesterday. It has to do with this thing called the OPEID. So the OPEID OPEID is Office of Postsecondary Education Identification Number. So what I've listed here in this first slide is what we call the eight digit OPEID. So the eight digit OPEID is kind of the full identification number for an institution, but it's really made up of two different parts. The first six digits are an identifier for an institution and then the next two digits, sometimes we call that a suffix, are an indicator for whether it's a branch institution or what we might call the parent or main institution. So this is going to have everything. To give an example of what everything means in here, when we talk about something

like in 2016 ITT closing, what is going to be included in the eight digit OPEID is effectively every branch that ITT Tech has listed for that. So we can think of the parent institution for ITT Tech having a six digit identifier in this case, zero zero seven three two nine and then the last two digits being zero zero. We call that the parent ITT Tech. And then each of those branches or other locations, are going to have that same first six digits, but then they'll have a different suffix or last two numbers. Right, so when we think about this then, this is sort of the the most generous or largest way we can think about the number of closed schools. And if you go to the closed school search file, which I'm sure all the financial aid administrators on this call are very familiar with, this is the level in which we're going to be able to see this. Now, there's another way that is commonly used to think about schools, and that's called the six digit OPEID. So when we do that, we would not use that suffix and so instead, just kind of consider the first six digits as a way to think about the institution. So in the ITT Tech example, instead of counting ITT Tech as every single branch of individual school, we would consider that OPEID those first six digits as the unique identifier. So, and what we can see here, then, is obviously that that's going to reduce our number lot

because basically we're kind of including all of the branches with that parent institution. So here's the trend, the corollary trend graphs in this second chart using the six digit OPEID. And then finally, this other way to measure it is what we call the parent institution. So in this case, we're just going to take the parent institutions and look at the number of institutions that have closed over time, who are the parent themselves. Now this is the smallest of those in some years and in most years and that's because this is saying, this is really a count these graphs are really a count of just when the parent institution. Right. So that would mean the institution. Usually that means all the rest of the branches will close, too. But that's going to be a lower number than either of the two graphs before. The reason I point this out or bring up this sort of data complication, I've been trying to keep people from having to get into the data weeds with me is a couple different reasons. One is, when the question comes up, how many schools closed? It really depends on how you look at the data, right? Kind of in the purist level based on, you know, not making any danger transformations to the data. It's the first definition, the kind of eight digit OPEID. But the problem becomes when we're thinking about kind of how many institutions are sorry, how many students are

affected, where these are, some of these branches can be quite small. Sometimes they're not really that active. And so it might overstate in some ways kind of a number of institutions that are really, you know, in full operation and are substantively large that are closing. And so researchers and in different reports will kind of interpret the data in a different way. And I'm going to kind of after this move to the GAO report and try to translate what they did into these figures as well. But these first three or first three slides are all just to show you sort of different kind of reasonable ways to count institutions closing over this time period. And again, kind of in total kind of a maximum, is about 17,836 institutions down to the minimum of about 4,000. So again, kind of depending on your preferred definition. Now I'm not going to go over the GAO report in detail because we did that in the first session, I did repeat the slides, but I did want to give you a little bit of a translation between sort of the closed school data that I just showed you and the GAO report. So what the GAO report effectively did is something similar to what I did on that six digit OPEID slide, which is they collapsed institutions that have a same six digit that had the same six digit OPEID. And so again, we can think of that really as an OPEID or an institution kind of rolling up a

lot of the branches with kind of the parents, and we can think of that all together, and that closed within the same calendar year. Again, there's some other data complications without not really getting into the weeds about it, but actually, if we take that ITT Tech example, six digit OPEIDs, ITT Tech, actually there was multiple closures across different years, and so in the GAO report, at least based on their footnotes, they would have counted those separately. The other thing that the GAO report did, which I'm not going to be able to do in this data, is they didn't include institutions that were reported as closed, but that they did not have records of borrowers attending. So they they kind of site in here, seventy one hundred OPEIDs that they kind of excluded because they did not have records of borrowers attending those institutions. I tried to back into this and I couldn't. I'm sure they did it correctly. I just don't have data access to be able to do this. So what I'm going to suggest is for questions about kind of how many students were affected and especially their borrowing outcomes and their experiences. That GAO report really is going to be the best way to look at it. If for no other reason, even if I was able to kind of link this to another data set, which somebody may be familiar with called IPEDS, may be able to pull in from some

information about enrollment and student demographics there. That's going to be for the whole student body, and it's really not going to provide insight of the borrowers, which are really the kind of the subject of this conversation. So that GAO report had access to the borrower level data that they got privately from the Department of Education. So that's going to be really again to kind of think about who is affected with some of these closures. I'm going to really kind of stress looking at this GAO report, given that it's again, I think the best evidence we're going to have, especially in short time. So again, I'm not going to go through these slides. The next few slides in this presentation are things that I've talked through before. This headline on this first slide, I'll just mention because it was brought up in the group chat. About two hundred and forty six thousand borrowers enrolled in eleven hundred and six colleges that closed. What they're looking at is just about the past 10 years. And so because of that, you know, there's only a portion of that kind of time sample that I showed on some earlier slide. But you know, again, what are some highlights from that report and shared that with you on an earlier session so I'm not going to go over that. So that's what I have on closed schools right now. Again, a pretty quick presentation, I'm happy to

stay on for any questions.

MS. MACK: Let's do that, let's open it up to any questions from the committee members for Raj based on what was presented. Any questions? You must have done an extremely well and thorough job, Raj. Anything else Raj you wanted to share before we continue on?

MR. DAROLIA: Nope, that's it.

MS. MACK: Okay. Thank you all for that, and if questions come up happy to get those those back to Raj. Okay? I'm going to keep us moving with our agenda. So I know again, I've asked you to switch gears a couple of times, but we are in fact going to go back to Borrower Defense. Earlier this morning, there are three papers that you would have all received. We have worked our way through the shorter one on misrepresentation, and we have worked our way through the two page document that specifically referenced aggressive recruitment. So I'm going to have you refer you back to the big document. Jennifer, I think we were on page five, but I see your hand up, why don't you get us started?

MS. HONG: I'm sorry, before we get in I'm a little slow on the draw here, just I, I realize there weren't any comments on closed school. Can we can we just go back to that real quick? So we just had a question for Jessica. Daniel, I know that Daniel had put

something in the chat. If you do, you can you guys do have the exact schools or liabilities that you're concerned about here with regard to closed school discharge? I know that you've expressed some reservations previously in our previous discussion. We just we just want to move this discussion forward.

MR. BARKOWITZ: No, I appreciate that. And again, I referenced Dixie's comment earlier, which was very helpful. And thank you, Dixie, for your comments yesterday. I if I if I can respond, I want to jump ahead of you, either. Do you want to say something before I go forward? Okay. So, you know, this validates the concern I had, which is based on Raj's presentation, if you look at the numbers, there are 17000 campuses that closed from 84 plus right? Of that, though it was only a thousand institutions that had their main campus closed. So my concern goes back to the way that I read this and I want to be very specific. I put this in the chat, but I'm going to say this publicly. The closure of a branch campus may not be a significant event for an institution. I value and support that it may be a very significant event for the students attending that campus. So I just, you know, I want to again center and bring up the centrality to Dixie's point of the student experience and validate that. That said, the way I read the the proposed

regulation e-campus closure would actually entitle anyone on any campus of that institution to submit a Borrower Defense Repayment claim. And I'm not sure that that really is the intention. So that's that's one concern because of the way the definition is written. The second concern I have is about liability. So there's a section within the the frame that talks about the borrower having who submits an is successfully given a Borrower Defense to Repayment discharge requires that borrower to participate in actions against the institution. But there's nothing specifically stated about what are the liability issues for those institutions and so that that specificity of language would help. So it's really it's a twin of those two issues. Number one, I think that we need some specificity about closure and when a branch campus closes, is that open to anyone at that institution to submit a Borrower Defense to Repayment, even if they're not impacted by the campus closure? And secondly, what are the liability issues as envisioned by the Department for for campus closure, which now is included as institutional closure?

MS. MACK: Thank you, Daniel. Ladies, I see your hands will get you momentarily, Jennifer, was that responsive to your your question so that I can move on to additional comments?

MS. HONG: Yes, go ahead and go on I'm, thank you, Daniel. I'm contemplating it, everything you just said.

MS. MACK: Perfect. Okay, Dixie, please.

MS. SAMANIEGO: Yeah, I really appreciate Raj's time and his presentation. And I also just want to make sure that us as negotiators in the committee, we can make best use of this expertise. Could the Department share a bit more about the data access and the resources he is able to pull from? Mainly because this is just really in response to like the data requests that we've made. And personally, for me, I know that the data requested I had made in session one was super niche, and not a lot of data is done on adjuncts and lecturers and stuff like that. So I understand that, but really, I just want to make sure that we're able to best use Raj's abilities and his expertise that he brings to the table to the best of all of our abilities so that we can come to the table with as much information. And so if the Department could share more about what kind of access he has to data and the resources he's able to pull from, that would be really helpful for me and I know from four other negotiators as well.

MS. MACK: Thank you, Dixie. Jessica,

please go ahead.

MS. BARRY: Thank you. Jennifer, I didn't respond right away because I was still digesting it. I didn't get a chance to look at all that data before it was just presented, so I was still thinking through it. But just the two other examples that we shared in the carve outs that we had suggested. I just want to make sure that first one, when I talked about a school system having a location in New York and Florida, I was suggesting that if that New York campus closed, obviously that would be subject to closed school discharge. I was talking about this Florida campus, so there are some school owners own multiple systems and they could take that Florida campus under their eight digit OPEID and move that to their other system, and those students wouldn't be impacted at all. So that was the situation that I just want to make sure was under consideration. And then just when I think I gave this example too, you know say you're renting a classroom that's just down the street and you're using that from a local college and that you end up over time, not needing it anymore and you stop renting that classroom, that can open your school up to close the school discharge. So we're just kind of these these situations that I think this data does show that they're happening more than what we think.

MS. MACK: Thank you, Jessica. Noelia, please.

MS. GONZALEZ: I just wanted to piggyback a little bit on what Daniel was saying and what Jessica just said, is that sometimes campuses will open a location for a very specific core group of students and teach, for example, a master's in public administration program at a at a location 30 miles away. And then once that cohort is done, graduated, we shut that down. So we want to just make sure that that that type of closure isn't included. It was a very specific opening of of a location for a very specific cohort of students. And when that's done and over with, it's closed and and we may open up another cohort of another cohort of the same program, but in a different location to serve a different, a different population. So I just want to make sure that those types of programs aren't subject to the closed school.

MS. MACK: Thank you very much. Oh, go ahead, Jennifer.

MS. HONG: Yeah, just a point of clarification regarding Daniel's and Noelia's comment, remember that we've always defined for closed school. This is existing language in terms of the branch campus. School means a school's main campus or any location or

branch of the main campus, regardless of whether schools or its location or branch is considered eligible. So that's not, you know, that's not language that's being proposed, that's current language. So, to Daniel's point, the issue was whether students have been impacted by the branch closure that they're attending. We, so we're you know, I understand the risks, we understand the risks here, but we want to error on the side of capturing the borrowers that would be affected by a school closure or branch campus closure. For Noelia's question, I mean, remember, the idea is if they were able to complete their program, it's not a close, they wouldn't be eligible for closed school discharge anyway. So I think in your example that they would, you know, that would they would be (inaudible). So I just wanted to get back to Daniel on that point.

MS. MACK: Thank you, Jennifer. Let me go to Heather, please.

MS. PERFETTI: You know if I could direct this to Raj around the data, I'm just trying to make sure I understand University A and University B consolidate. How is that captured in the data on closed school?

MS. MACK: Raj, are you able to, there he is, perfect.

MR. DAROLIA: Yeah, sorry, I'm just munching on a carrot I'll swallow really quickly. Yes. So typically when we think about closed schools and I'm sure there might be somewhere in the Department you're going to find on this as well. But in the data, if one ceases to operate, you know, whether that's because of a merger or something else. Typically, that would be kind of leaving the data from a data perspective. I believe that ends up then on the closed school list. So we should confirm this. But but that's my understanding of it.

MS. MACK: Heather, did you have a followup there or did that get to your question?

MS. PERFETTI: I think that it goes to the closed school discharge and just the importance of a definition of closed school, we've added or suggested adding a number of definitions in all of the other areas of the regulatory language, and it just seems odd that a regulatory item titled Closed School Discharge doesn't have a definition of closed school. And so I think that's part of what I've been trying to encourage and get us to think about. And that's, I think, what led us down the path of these different, the different mechanisms or the different ways that schools close, even if they have the same impact on students, there are distinctions. And if the closed school discharge is really intended to be

broad and capture them all, then the definition would be worth reflecting that. So I think it's really trying to get at when we speak about closed schools in the environment that we all exist with this with the complexity and changes and legal transactions and consolidation efforts. Is there a definition that could be embedded of a closed school for consistency purposes and maybe to help with conversations about what that means as well?

MS. MACK: Thank you, Heather. Let me move to Michaela, please.

MS. HONG: Can I can I just chime in?

MS. MACK: Oh please, Jennifer.

MS. HONG: So yeah, Heather, I know you've raised this and we appreciate the fleshing out the issue with the mergers and the consolidation.

MS. HONG: So I mean, as we think of it, the the the definition of closure is embedded under A2 romanette 1 where we talk about closure date. If I just so it's it's what we're proposing is the closure date being earlier of the date that the school ceases to provide educational instruction in most programs as determined by the Secretary or a date. This is again proposed language or date chosen by the Secretary that reflects when the institution had ceased to provide

educational instruction for most of its students. So it is encompassed in that. I understand that there may be more that you would like to see there. Just wanted to point that out.

MS. MACK: Thank you, Jennifer. I'll also note that Jen has joined the table on behalf of student loan borrowers now, Michaela, please.

MS. MARTIN: Yeah. So first, you know, this doesn't mean that just because it falls under those that they will automatically be considered the type of closed school that would be considered for forgiveness, there is like kind of an adjudication process in which the Department of Education would make those more complicated decisions. Right, so like, I'm not seeing how narrowing this is going to prevent some of that. And then also Daniels mentioned a few times that, you know, there's potential of having more people apply that should. But I don't think that we're going to be able to regulate out the potential that that potential. I don't see how that's going to be alleviated through the proposed changes that this group has has come to.

MS. MARTIN: I just think that we should allow that process for the Department to make those decisions as those complicated situations arise and not try and prevent people from being able to access when

they should have that ability. And then also like, I know that there's a lot of folks that want to comment on this, but like we have like about like what like an hour and a half and we haven't gotten through Borrower Defense. And so I just would really encourage folks so that we can go and talk about these group processing claims and that maybe we could circle back to to this issue also after we've gotten through some more issues.

MS. MACK: Thank you, Michaela.

Bethany, please,

MS. LILLY: I'll be very brief because I think Michaela is right about our timing issues right now, but I just wanted to say that I speaking on behalf of people with disabilities, there are a lot of reasons why someone might select a branch campus or other campuses specifically related to accessibility, specifically kind of where it is in terms of public transportation and ability to get there. So I understand the concerns that folks have in terms of branch campuses being slightly different. But there are also reasons why they are different for students, and I would definitely not support not getting them here. I think that's really important and I just want to echo that.

MS. MACK: Thank you very much, Bethany. Justin, please.

MR. HAUSCHILD: Yeah, I'll try to be brief too, so I guess I want to get to a very specific point that I think Daniel has raised twice now, which is this idea that a branch campus's closure could entitle folks at a main at the main institution, the main campus, which is not closing to some type of relief here. And I and I and I just want to get a sense and maybe the Department can circle back at this at some point, but get a sense for the Department of whether or not they think that this this language does that. And it seems to me that to the extent that it might, that that is a pretty targeted and should be a relatively easy thing to address. So I just want to throw that out there and appreciate if the Department could circle back on that specifically whether or not they see this language does that. To the extent it does, seems like it should be easily remedied. Thanks.

MS. MACK: Thank you, Justin. So I see two more hands will get to Jen and Josh, and then we'll do what I suggested earlier and circle back to our Borrower Defense issue. Please go ahead, Jen.

MS. CARDENAS: Thank you. I also wanted to bring the same perspective as Bethany. I think the idea of these branches is that students pick them specifically because they know what is offered at that

branch and they get to go there for transportation. Maybe it's close to their daycare, maybe it's close to their home. There's these little things that we're we're still existing, we're still living, we're still trying to do all these things and we choose these branches so that they have those opportunities to get what the school promised and then when they don't, what's this idea that now they have to change their whole life and try to go to main campus. These schools make promises. So then these branches are important for students to be able to opt out of. Anyways, sorry, Kayla, I was trying to go really fast, and that's it.

MS. MACK: Thank you, Jen. Josh, please go ahead.

MR. ROVENGER: Yeah, I'll also be quick. I just want to underscore a point that Jennifer made that we're only assuming is only going to be entitled to closed school discharge relief if they're not able to complete their program. And so if a school emerges and nothing changes in the student's life, they're going to finish their program and they wouldn't be eligible for a closed school discharge relief. And I don't think as as a practical matter, students are in that situation are just dropping out so that they can get the discharge if they wanted to continue on and get their

degree.

MS. MACK: Alright. Thank you all for for those comments and again, thank you, Raj, for the presentation and information. Again, a copy of that is in your emails. If I could then refer you back to Borrower Defense. Again, we're in the long packet that you have, and I think we walked through and we're within 685.401. But Jennifer, I'll turn it over to you to tee it up to where you'd like us to begin and where we should share the screen.

MS. HONG: That's exactly right, Kayla, we're on page four where we're actually on page five at the end of 401, so I'll just briefly review the general section, then we could take a temperature check. But I do appreciate the discussion on closed school. One thing that we keep coming across is that the connectivity of all these different issues on table one, they are related and we're very intentional when we're drafting proposed language to ensure that we get it right in each issue so that students that are eligible for discharge can have that avenue available to them versus having to go through the BD process, for example, to alleviate all and open up all pathways and options for students. So I just I want you to think about how all these issues connect with each other and how our proposed language is

again considered all these options and are intentional to to ensure the best options for borrowers.

MS. HONG: Now going back, we just discussed aggressive, deceptive recruitment that was going to be the insertion at the bottom of page five. Just to review and then we can take a temperature check on this section, which is the general principles of Borrower Defense to include a federal standard. And just to review that, that federal standard includes five five ways in which a borrower may assert a defense to repayment. We looked at and we discussed misrepresentation, omission of facts, which we're currently trying to flesh out. 3, breach of contract, 4, we just finished the discussion on aggressive, deceptive recruitment tactics, and the fifth one is the judgment against a school. And so if we could take and we discussed some of the definitions, including the the term of the provision of educational services, which Joe chimed in on. How are people feeling about the federal standard and the Borrower Defense general provisions with the definitions and the five bases on which a borrower may assert a defense to repayment?

MS. MACK: Are we ready, Jennifer, for a temperature check on what you just outlined for us? Let me ask if everyone's clear on that or if there are any

additional questions or comments that need to be made before we would take that potential temperature check. Joe, I see your hand, please.

MR. SANDERS: Yeah, Jennifer, I guess I'd just like some clarity on, I know I briefly introed our attempt at a compromise on consideration of the State Law standard and, you know, you had said, let's put a pin on that and we'll move on. Is that something we're being asked to temperature check on now?

MS. HONG: No, I'm sorry, exclude the State Law standard for the time being. We're going to get to that when we get into the adjudication piece, if you wouldn't mind. So but definitely keep that, Joe's presentation in your brain.

MS. MACK: Does that address your question, Joe? Ok, great, Jessica.

MS. BARRY: Thanks. So my question is if we are introducing new rules, say with aggressive recruitment, how do we apply those to conduct that happened before July 1, 2023, if the the institution of the person who did the misconduct didn't know that that was misconduct at the time? How do we reconcile that?

MS. HONG: So, Jessica, you're referring to the pending applications before the Secretary? So I just want to be sure, because remember

these these these rules are applicable to those that are applications that are received either on or after July 1, 2023 or those pending before the Secretary.

MS. BARRY: But even, yes, definitely depending. But even the applications, if the conduct happened before the rule was in place, how do we how do we justify holding them accountable for that?

MS. HONG: I'm going to take that back. Jessica, thank you.

MS. MACK: Thanks, Jessica, and feel free to place any questions or concerns in the chat as well. Justin, please.

MR. HAUSCHILD: So I guess maybe I'm not sure if I should raise this here or not, but

MR. HAUSCHILD: we'd like to you know at some point make a you know, discuss whether or not settlement should be involved. I don't know, Joe, if that's part of the state standard or whatever, but we'd like to see

MR. HAUSCHILD: some additional discussion about what we're talking about when we're talking about judgments, what else might be needed there. So I'm not sure if this is the appropriate time for that. I guess maybe I've made that statement now anyway, but it's out there, and maybe I'll return to it. Thanks.

MS. MACK: Thanks, Justin. Todd, I saw you raise your hand. Did you want to speak to that?

MR. DAVIS: Actually, I was going to go back to Jessica's question previously, and I know this isn't an answer that is will satisfy everyone on the panel, but I mean, I think this is the Department's part of the Department's effort to bifurcate the two processes, one the borrower to fit the borrower's claim and the ability to you know provide some recompense to the borrower who was you know, preyed upon by a particular item versus what the Department feels it can legally achieve in terms of recruitment from a potential school or enforcement action against the school, so that that's really a big part of our understanding here is that the Department feels like you know they will have to look at the rules that were in place at the time of the conduct. With regard to its ability to pursue the enforcement action against the school as opposed to whether, but we want to make sure that we're using that single federal standard to get the borrowers themselves a better outcome. I think that's, you know, if we look closely at this, that's I know everyone has different positions on this, but that's what we're what the Department is trying to do here.

MS. MACK: Thank you for that, Todd,

appreciate it. Misty, let me go to you.

MS. SABOUNEH: Yeah, so before we take a temperature check, I wanted to see if this is the right time to

MS. SABOUNEH: talk about breach of contract.

MS. SABOUNEH: We haven't really touched on that yet, but I guess my comment there would be, I'm curious if we could define better what that contract is, so for schools that don't have an enrollment agreement, it becomes a little more fuzzy, whether it's through catalogs, bulletins, handbooks, regulations, just so that there's little clarity. And so the other thing, right? Just an example. During the pandemic, a lot of institutions had to move from going on campus to moving to online. Technically, if you signed up for a branch campus and had to go online, that would be a breach of contract. So I would say at a minimum defining that and then maybe adding like a Acts of God clause so not trying to circumvent, but just making sure that in this go forward state where there could be additional variants of COVID that that's captured.

MS. MACK: We're going to continue to encourage everyone to share their ideas, solution and proposed text in the chat and via email so that we all

have those. Any other questions, comments at this time? Okay, Jennifer, would you for clarity purposes, outline specifically what you want us to take a temperature check on here? That way, everyone's clear and we're on the same page?

MS. HONG: Alright, if we could just take a temperature check on just the start on page four and five. The inclusion of the five biases for claims for Borrower Defense to Repayment and the definitions that you see before you. I know that we've already taken a temperature check on inclusion of aggressive recruitment, but also the concept and misrep, but just as as a whole, just these general ideas. If we could take a temperature check on those.

MS. MACK: Thank you for teeing that up. So a general consensus. Let me, I misspoke. General temperature check on the addition of these concepts. I'll get it out there. Alright. Please let me see your thumbs on what Jennifer has just asked us to take a temp check on. Hold them up there so that we can see them all. Okay, I see Misty, Jessica, and Heather as down, if I missed any other thumbs down, please, please let me know. But a few ladies would feel comfortable very briefly articulating why you were down and then we'll continue to move on.

MS. SABOUNEH: As I just stated, just went further clarification on what the actual contract is.

MS. MACK: Thank you, Misty. Jessica?

MS. BARRY: Yeah, I still have concerns with retroactivity. No proof of reliance. I have some concerns about the group process, too. I know we didn't talk about that a whole lot today.

MS. MACK: Thank you, Jessica.

Heather?

MS. PERFETTI: Thank you. I would just echo what Misty had shared, I had questions about the reference to the terms of a contract with the student as well as wanting to see how the aggressive recruitment language comes together in the cross, references to misrepresentation and omission of fact and the development, as has been suggested about judgment against the school.

MS. MACK: Okay. Around those concerns, again, I encourage everyone to share their ideas, solutions, proposed text, you can do so in the chat. Keep in mind for the chat will be an addendum to the transcripts that are ultimately made public and shared with everyone. So that's helpful there. But also, if you send the FMCS team any ideas that you have, we

will circulate them via email to the full group.

Jennifer, do you have everything that you need on that point so that we can move on to the next section?

MS. HONG: Yes, I think we can move on to good process. So you're in luck Jessica, we can discuss this further and I'm happy, especially for Borrower Defense, we we you know, we've got our legal counsel here, Todd Davis ready as well so to the extent that it's a legal question, Todd is prepared to address those. So moving on to group process, you will see that we have a Secretary initiated through process. So the Department can initiate a process to determine if a group of borrowers identified by the Department has Borrower Defense claim. And we have put in here that we will consider actions by the Federal Government, State AGs or other state agencies, officials, or law enforcement. Lawsuits related to educational programs or judgments against schools or individual Department clients pursuant to section 685.403, which we will talk about after group process. The state we also have provided a process for states to initiate a group process.

MS. HONG: And so we will consider a request to form a group upon request from some states, state AGs, and state AGs must submit an application to the Department, to the Department to identify the group.

Again, through a school name, description of the conduct, and dates of conduct, provide any other info to to the Department. And we will aim to respond on whether we will respond to whether the Department will form a group upon the state AGs request. If the Department chooses not to form a group, why it didn't, in other info needed to go forward with group formation request from state AGs. State AGs can petition the Department to reconsider formation of the group. The reconsideration request, a group formation must be received within 90 days of the initial decision. And again, I don't think I mentioned this, once we provide a response, we'll provide a response to any state initiated group requests within 180 days. And then within 90 days to the reconsideration request to the group formation. The borrower status after group formation, the Department will designate a Department official, borrowers who had a (inaudible) application pending will be encompassed in this group formation and put put in forbearance for staff collection status as applicable. So that was kind of fast, but I see a lot of hands.

MS. MACK: Thanks for walking us through that, Jennifer, so in the group process section 685.402, Josh, I'll begin with you.

MR. ROVENGER: Thanks. I have two

significant concerns with this section. First, I cannot overstate my disappointment that the Department has not included a route for other third party groups, whether they be consumer advocates, legal aid organizations, organizers, to have a route to petition for a group to discharge. Borrower Defense as

MR. ROVENGER: it now exists would not would not exist if it was left to the Department. It is the result of work of organizers like the Debt Collective and legal service organizations, and it's frankly insulting that third party organizations are not included in this list. I think as a practical matter as well, not all attorney attorneys general are doing this type of work or have the view that they're allowed to represent borrowers outside of their states. And so a lot of borrowers in states where attorneys general are not engaging in this type of work wouldn't have any access to petition for a group discharge under this provision. And then as a practical matter, I have to imagine that this would also assist the Department, you know, legal service organizations put together a group application, we're going to do a lot of work, we're going to do a lot of investigation on our own and it's going to end up saving the Department resources. So that's number one. Number two is, I think where I struggle with this regulation is

that it is almost over complicating things. I view this as akin to essentially a class certification process where the Department isn't actually making a decision on a group discharge application, but is just making a decision on whether to form a group in the first place. And then later on, we'll make a decision on the Borrower Defense claim. And I don't understand why that is. I mean, to my mind, the easy, like, very straightforward route and regulation here would be third parties be the AG's, legal service organizations can submit a Borrower Defense application on behalf of a group and then the Department within 180 days or a reasonable time that we agree on would decide the Borrower Defense up or down one way or the other with without prejudice to individuals potentially asserting their own claim with additional evidence or evidence or information related to their own unique circumstances if the group discharge was denied. So those are those are my two big concerns with respect to this provision right now.

MS. MACK: Thank you, Josh. Jessica, please go ahead.

MS. BARRY: Sure. So my first questions and I'm not an attorney, so I don't know the answer to this question, but several stakeholders have asked if the Department has authority to group borrowers

together. So I was hoping that General Counsel could give us some information on that question. And then this is where my issue really lies with reliance. So if if borrowers are grouped together, some of those borrowers might not even know that the misrepresentation happened. And so and they might not have relied on it at all. They just have some common similarities, and that's why they were grouped together. So that's why I would like to see that reliance be a part of this.

MS. MACK: Thank you, Jessica.

Michaela, I see your hand next.

MS. MARTIN: That reliance piece would be incredibly difficult to prove, if not impossible. How do I prove to you that I the information that I saw was the reason I chose something right? Like this is kind of a multifaceted thing and we heard from folks that talked about about these about these experiences, right? And I think the reliance is a really, really difficult thing to prove, especially evidentiary when you talk about it in contracts to detrimental reliance. And how do you how do you show that like is really what I think it begs the question Jessica because how would you propose somebody proves whether or not they relied on something that internal, you know, processes of reliance is is practically impossible to show there. And I think for

these group, grouping them up, makes sense because they experienced a similar thing. And to acknowledge the how do we know if everybody relied on them or not? First, I challenge that because I don't think we could know anybody actually relied on it, but also that.

MS. MARTIN: I'm sorry, my words are failing me already this morning. Whether or not somebody knows that that that they were the victim of a crime, I don't think makes it any less necessary for them to be able to have a remedy. So like whether or not I know that I was defrauded if it comes out that like I was in fact lied to and somebody else finds that lie before I become aware of it, I still think that that person should be should, you know, should be able to have relief for for what was done.

MS. MACK: Thank you, Michaela. Jennifer, I saw your hand, did you want to speak to one of the comments or questions that have come up?

MS. HONG: Yes, real quickly. I just wanted to touch back on Josh's question about broadening the group, and we we do understand the desire to do so. I'm wondering about an option to offer a path where the state continues to bring the request for the group claim it can have other organizations be on state sign on. That way if there are legal services, legal service

organizations that represent a state not covered by an AG they could be considered. If we, you know, if we do consider a broader set of organization, we just we would need to make sure that what's being provided in terms of information is sufficient because we want to make sure that we are able to consider submissions where there is enough evidence submitted for each part of the claim. And your other point about the drafting of the regulations, again, we're open to suggestions. I think the idea here was to kind of clearly delineate the group formation process and the adjudication process for better clarity.

MS. MACK: Thank you, Jennifer. Joe, please, I see your hand next.

MR. SANDERS: Yeah. Just to chime in. You know, the state AGs are supportive of the concept that Legal Aid Groups could join applications that we made as just laid out by Jennifer. Jennifer.

MS. MACK: Thanks, Joe. Josh.

MR. ROVENGER: Sorry. Just a clarifying question on what is the idea I guess, I guess what would happen in a state where the state AG is like doesn't do this type of work and would never submit a borrower (inaudible) in that instance is the idea that third parties could initiate them, or it's only in states where the AGs are doing it that legal aid organizations

could sign on? I guess I'm just confused as to the proposal.

MS. HONG: So it's not the state AGs that would bring it forward it would be the state with the sign on from the respective legal aid organization or whatever organization, third party that would like to sign on to it.

MR. ROVENGER: Yeah, I don't I don't think we could would be amenable to that because I don't think it resolves the problem of states that are not interested in doing this type of work and or legal aid organizations that, you know, we're in states where AGs and legal aid organizations are dividing and conquering, trying to do simultaneous work against various bad actors. More fundamentally, though, I guess I just don't understand the concern for restricting third-party organizations. I mean, I understand fully recognize that legal aid organizations don't we don't have CID authority and so our our investigative tools may not be the same as a state. But I think the success in class actions against schools and success and class actions against the Department of Education at doing the legal aid organizations are very, very capable of pursuing relief on behalf of classes of borrowers. And again, I'll just reiterate that we would not be here today talking about a

Borrower Defense process, but for the debt collective and legal services attorneys. And so I I'm happy to draft up language that resolves both of my problems, but I don't think that proposal would do it.

MS. MACK: Go ahead, Jennifer.

MS. HONG: So I guess even if so, for example, on one state, actually, let me hold off, let me.

MS. MACK: You sure? No problem, I'll move to Bethany next please.

MS. LILLY: I really just want to echo Josh's point here because we are talking about folks who are not going to have the easiest time accessing legal representation and any type of restrictions on who can bring these cases to me is is actively harming borrowers and students, and I don't see that as acceptable. I mean, we need to give them access to those many tools. And I don't entirely understand why the Department would not want to include third party third party groups like this just doesn't honestly make a ton of sense to me. Like, there are other state agencies like the Protection and Advocacy Network that serves people with disabilities don't bring these cases generally because they leave them to legal aid and the AG's, but like to Josh's point, like they trade off on what thing people are focusing on and like if there's an ADA claim, like, I want my as many

folks to take those cases as I can possibly get because they're complicated cases and we need to sort them out. And so I also see it as a deterrence for bad actors in the system if third party groups can bring cases because it discourages them from being bad actors, if you know, for instance, they're targeting low income folks who are going to go to legal aid when they start having problems. That's a good thing. I think that's a very good thing. So just to echo Josh on all of this, I'm a little confused as to why they aren't included.

MS. MACK: Justin, please.

MR. HAUSCHILD: Yeah, and honestly, Josh has hit so many of the points that we were going to make, so I'm not going to comment on those again. But just like Bethany expressed support for those. But I think too, you know, this idea that really the only two thing that I'm taking in here from the Department in terms of why they wouldn't consider third parties, especially the legal aid organizations, one that state AGs that could do this. I think Josh has given a number of reasons why that's not necessarily a great line of reasoning, but two, that that they want all the pieces, all the necessary elements covered when something is filed. And I just I mean, I guess I have faith in the legal aid organizations that can make that happen. I

think they've demonstrated that over the past several years. I mean, I don't think maybe I misinterpreted what the Department is saying, but I just don't think there's a reason to be concerned about legal aid organizations, especially being able to get through each one of the necessary components of an application or claim here. So thank you.

MS. MACK: Ok, thank you, Bethany and Justin, for those comments. Jennifer, let me ask, does the Department have enough feedback or what it needs on this section for now?

MS. HONG: Yeah, I think what I'm hearing is concern regarding inclusion of other third parties exclusively rather than by way of a state initiated process. That's what I'm hearing, mostly. I don't know other things I haven't, I know that there was questions about the drafting and the the the the separating out, the identifying the group process. And I see Joe's hand up. So yes, I think generally if that's what if what I'm hearing is correct.

MS. MACK: Thank you, Jennifer. Joe, did you have something to add to that?

MR. SANDERS: I just want to voice some support for some big big picture concepts that have been included here that I just want to recognize the

Department for. Number one, having a group process, again, specifically in here is a really good big picture thing. Getting a response, a written decision, I think that's really good. The timeframes, I think those are good concepts. So I just wanted to voice support for some big concepts that are in here as we work through some of the finer details.

MS. MACK: Thank you for that, Joe. Alright, I do want to give you a quick break before we do. Would a temperature check around section 4.2 be helpful to indicate where the group is at now? Jennifer, would that be informative for you?

MS. HONG: Yes.

MS. MACK: Ok, perfect. Can I then just honing you all in on Section 402 group process for Borrower Defense? Take a temperature check for tentative agreement and see your thumbs? Alright, there are a number of thumbs down. Let me ask you, folks, is there anything additional to share about what gets you from here to here that has not already been identified for the benefit of the full group? Jeri, I see your hand.

MS. O'BRYAN-LOSEE: I mean, I think the arguments been made, but the the concept of it just seems like by not including legal aid were targeting students for are in particular situations who would

normally go to legal aid for help. And it just seems like we're really targeting students for this.

Thank you for that, Jerry. Any other final comments, suggestions on what gets us to here or here group? Okay. Todd, did I see your hand? Please.

MR. DAVIS: Yes, you saw my actual hand.

MS. MACK: Your actual hand, yes, thank you.

MR. DAVIS: Wasn't quick enough on the draw there. Maybe for everyone on this third party issue, I just want to give you something to think about. You know, there's obviously a lot of support for that from parts of the group and would be kind of interested to think about how the third party. What is the relationship between the third party and the students they represent? Is there, how would on the legal side, right, I think Josh and Joe may have some thoughts on this that are probably well formed that we have not considered about attorney client privilege with the student, consent from the student, what would the students' rights be if it feels like they are not adequately represented, if they were to lose their claim? You know, those kind of there's some back in things I think we would be interested in thinking through here, if, as the Department thinks about

this, this item again. So. It's just putting those on your radar when we go to break.

MS. MACK: Thank you for that, Todd. Alright. Let's take a break and step away for just a moment. I have to 2:27 on my phone does a solid ten minutes coming back at 2:37 work for everyone? Ok? I will see you at 2:37. Thank you.

MS. MACK: Welcome back from break everyone, I do want to mention that we are getting closer and closer to our public comment hour, so I'd encourage folks again to log in early. That way, we can get you sorted and get through as many folks in that portion of our agenda as possible. I am ready to move us into Section three individual process for Borrower Defense and have Jennifer walk us through that. Before I do, I do see a hand. Josh, please go ahead.

MR. ROVENGER: Thanks. I just wanted to briefly touch on on Todd's comments and I suspect further conversation will be necessary, and I just also wanted to flag that I intend to just draft some proposed language with authorities for discussion. I'm just very big picture, though I actually don't think that the legal aid organization or community organizer, or what have you, would be acting in any different capacity than the state AG or the state itself. In that the application

wouldn't necessarily even have to like the application for a state initiated process wouldn't even necessarily have to have borrowers names listed, it would be for a group who attended a specific school at a specific time. And so I don't, I guess I don't see the same, I don't see any kind of potential legal hurdles with that type of framework, particularly if a borrower, if that group claim is denied, has the ability to apply based on their individual circumstances. And so there's no preclusive effect. But I look forward to further discussion on that.

MS. MACK: Perfect. Thank you, Josh, for that. Alright, Jennifer, if I can hand it over to you to walk us through 403?

MS. HONG: Sure. 403.685 .403 is the individual process for Borrower Defense. If a group formation doesn't apply to an individual borrower, individuals can file a BD claim and the process involves submission of an application to the Department, providing evidence that supports application and to provide evidence or other information to the Department upon the Department's request. The individual borrowers status after we received a complete application package is that the Department will designate a Department official. We will notify individual borrowers that it will adjudicated under the individual process. We will put borrowers in

forbearance or stopped collection status. Just to note, if a borrower is not in default, we place all the borrowers loans in forbearance. You'll see our comment bubble there. We believe we have to do it for all the loans because we may not be able to differentiate those loans that were specifically related to the BD claim. We will also notify the borrower that they can decline forbearance and availability of ICR and IBR. There'll be no interest on the borrower's loans for 180 days from initial grant of forbearance if we don't make a determination on the BD claim. Stop collection, we will suspend collection activity on all loans again, all the loans until a decision on the BD claim comes through. There's no interest on the borrower's loans for 180 days from initial grant collection status. If we do not make a determination on the BD claim. We will notify the borrowers suspension of collection activity. Collection activity will not resume until 90 days, 90 days after final adjudication of BD claim, and we will also notify borrowers of their option to make voluntary rehab agreement or repayment agreements, and I will pause their discussion.

MS. MACK: Thank you, Jennifer. Please raise your hand if you have specific questions or ideas around this section, Josh. I saw your hand first.

MR. ROVENGER: Thanks. So a few comments. First, with respect to subsection B or the individual process, I know we talked about we discussed this issue paper that the application itself constitutes a form of evidence. And I'm concerned, I don't, I don't think this was the intent, but I'm concerned that by separating those two out subsection or romanette II in subsection B imposes a requirement of additional evidence beyond the application itself. And so I would recommend just striking romanette II or putting in some other language, clarifying that the application itself can constitute sufficient evidence on which to grant a Borrower Defense. So that's point one, and point two, in subsection D, I guess I still have the same question I did when in session one, why interest only stops accruing 180 days from the application? Just reiterate the point I made before that upon the submission of a Borrower Defense, a borrower is saying that the loan that they have taken out is invalid from the beginning. There's no reason that a borrower who is stepping forward and making that claim should be subject to any accrual or interest while that application is pending. And then number three, what I one thing I didn't see in here, which I also talked about in the last session, is any remedy to address a borrower's harm if the Department unlawfully

collects during this forbearance? I don't really feel the need right now to walk back through all of the circumstances that led to the Department and the prior Secretary of Education being held in contempt of court for unlawfully collecting on borrowers. But I am concerned that just given the structure of the student loan system that it is very difficult for the Department to ensure that collection is actually in fact stopped. And that there needs to be some sort of remedy placed into this provision that addresses the real harms that borrowers suffer in the event of such an unlawful collection. I'm happy if it's helpful to draft specific proposed regulatory language on that. But I do think it's an important concept that should be incorporated in this section.

MS. MACK: Thank you, Josh, for your remarks, I would like to acknowledge Carol has joined the table on behalf of Proprietary Institutions. Welcome, Carol. Daniel, please.

MR. BARKOWITZ: So I will second Josh's comments on the issue of interest. I don't think that it's appropriate to charge a student interest while the Department is determining whether or not it's a legitimate claim. And even if the claim is not determined to be legitimate, it still should be a pause in the

collection of the loan until that determination is made without penalty to the borrower. And I could have just said +1 to Josh and moved on, but my concern is I don't see similar language mirrored in this section to the group process. So my concern would be what's happening to the students in the group process? Are they also, I hope, subject to these same pauses in their collection and payment, but that's not specifically called out in the group process. So I wonder if that was an oversight or if there is if there can be a reference to those who are submitted to the group process under this same pause on payment, removing them from default, etc. And Jennifer I don't know if you want to comment on that, but it seems to be missing from the group process section.

MS. MACK: If you have an immediate response, happy to have it, if not, Daniel if you could note that in the chat and I'm happy to return back, Jennifer. I see her off off mute. Did you have something?

MS. HONG: Yeah, yeah the pause applies to the group process as well. We just made it explicit in this section, but we could do it in both.

MS. MACK: Thank you, Daniel, thank you, Jennifer. Bethany, I'd like to move to you.

MS. LILLY: Isn't Joe ahead of me?

MS. MACK: I do not have Joe on my

list ahead of you.

MS. LILLY: Okay. Well, he he's got his hand up ahead of me on my screen, but it may just be me. I wanted to ask, Oh, Joe's camera is off, that's why, so maybe.

MS. MACK: I was going to say, I'm not seeing Joe even so there, there we go. Joe, I'll get to you. Glad you're on screen. Go ahead, Bethany.

MS. LILLY: So I wanted to tie this back to the discussion we had during the Public Service Loan Forgiveness piece, especially since all of the borrowers loans are getting tied up on this. It seems quite conceivable to me that some of those loans might not be for the Borrower Defense claim and may be related to something else. This is another reason why I would encourage the Department to consider forbearance and all payments during forbearance as an offer an option for counting towards public service loan forgiveness.

MS. LILLY: And if they're not going to go that far to include these payments, you know they aren't going to be payments. But those forbearance is in this context because I could see those circumstances arising and we wouldn't want to say, discourage folks from going into, you know, bringing a Borrower Defense claim. If, for instance, they, you know, we're worried

about what's going to happen to their other loans. So I just want to name that as something you guys should be thinking about.

MS. MACK: Thank you, Bethany. Carol, go ahead.

MS. COLVIN: Building off of Josh's and Daniel's comments, not only to request that there be some language added to cease interest accrual and to stop all collection attempts, but also to make sure that especially due to the length of this process, that no matter the outcome, that for these defaulted borrowers, that they're not being allowed any additional collection fees to be accrued during this time, even if the decision is not in favor of the student.

MS. MACK: Thank you, Carol. Jaye and then Joe. Jaye, please go ahead.

MS. O'CONNELL: I think I had a flavor of these comments in session one. So all the borrowers loans is that intended to cover non direct loans? That would be one clarification, as it does today, we do get notices of forbearance. And if Pell is included, any kind of interest limitation will have implications for Pell holders and Pell regulations because we don't have subsidized forbearance.

MS. MACK: Ok, thank you, Jaye. Joe,

please go ahead.

MR. SANDERS: Yeah, just a question for the Department, and it could be that I'm missing something fundamental here, so that's the case, please let me know. What happens to the borrower who makes an individual application, is denied, but then a group application that would encompass the borrower borrower follows post that denial?

MS. HONG: Well, I would assume that that would get picked up by the group process. Could you could you talk more about that?

MR. SANDERS: Yeah.

MS. HONG: What would happen in terms of standing loans?

MR. SANDERS: Yeah. Well, okay, I'm just going to give an example. So, it comes out in July of 2018, I think that the art institutes wasn't accredited and everybody, you know, is public and everybody hears about it, and I'm sure that there was like a rush of individual applications in that instance, when this news breaks, right? And that's not I'm just using this as an example because it's a concrete example, but that often happens, right? If there's news of something bad happening, you're going to have this potential rush of students applying. My office did make a

group application, but we took, I mean, probably, under a year, so like 10 months or so to gather evidence, put together the application and send it over to the Department. In that instance, I think all the borrowers did get captured. I'm just concerned about what might happen in the in the instance where, you know, all the evidence isn't necessarily out right away, and if those borrowers get denied, are they able to get picked up in the group? That's a little more flesh on my concern.

MS. HONG: Certainly nothing in their proposed text precludes that option. In fact, we would probably encourage that. And if it's I mean, if it's something that the state initiated and brought before us, we would we would make the attempt to encompass those students that were affected in that claim.

MR. SANDERS: That's helpful. No, that's helpful, thank you.

MS. MACK: Perfect. Thank you, Joe, thank you, Jennifer. Seeing no other hands raised, Jennifer, let me ask you before we may do a potential temperature check on section 403, does the Department need to address anything or hear anything else from the committee before we do that?

MS. HONG: I think what I'm hearing under this section is relatively minor. You're right, we

did talk about the application itself constituting evidence, so I know Josh is proposing to strike some language there. I think that is just kind of to ensure that if there's any additional evidence or supporting information that we would need, that we would be able to ensure that the borrower can provide that to us. And then I also heard that the concerns about the 180 days. But, just to review.

MS. MACK: Okay, thank you for that, Jennifer. Joe, I saw your hand, is it something additional to share? Okay. Bobby, I saw your hand go up and down, did you have something before we get to this temperature check? Okay. And Josh, I now see your hands something before we do this temp check on 403.

MR. ROVENGER: Thanks and just so it's not just because it was encapsulated in that summary. Also, the concern about unlawful collections during during a period of forbearance while the application is being considered.

MS. MACK: Thank you for that, Josh. Alright, let's take a temperature check for tentative agreement on section 403, individual process for Borrower Defense. Please let me see your funds again just on this particular section. And hold them up there so that we can all see. Okay. I think I see one thumb down. If I missed

you, please let me know. Jaye, if you could speak to why you are down and what potentially would get you to at least a sideways thumb, that would be helpful.

MS. O'CONNELL: So I put my question in the chat that I raised earlier, I think it's just understanding if we're if we have to offer subsidized forbearance, like how does that work and and does it include foul, or not? Actually, that's the first question and then if if Pell is included, how that interest limitation will work?

MS. HONG: But if it's excluded, then you're not a thumbs-down.

MS. O'CONNELL: Right.

MS. MACK: Perfect. Thanks for talking us through that, Jaye and Jennifer. Great. I'm going to move us on to the next section. This is Section 404 group process based on prior material final actions. Jennifer, could you walk us through this piece?

MS. HONG: Sure. You may recall we talked about this during session one. This is a new process that we are introducing a group process based on prior secretarial final actions. And so for purposes of the Department forming a group, we may consider final actions, including final program review determinations. And failure to meet administrative capability that relate

to the provision of educational services, loss of eligibility due to high CDR, fines, limitations, suspension, emergency actions related to misrep, aggressive recruitment, omission of facts, and other Department final actions. I guess it's kind of characterized as a fast track option if the group is formed under this fast track option. There's already an institutional response built into the final program review determination or the final audit determination. So again, the institutional response process would not apply in this circumstance. And we welcome any other discussion on on final actions by the Department for group process. It could include other future actions that we have not taken. We have some, you know, we do have another table that we're going to be negotiating gainful employment, so it could include future actions such as such as those as well, so I open this up to discussion.

MS. MACK: Thank you, Jennifer.

Daniel, please go ahead.

MR. BARKOWITZ: So listen, I am all for lots of regulations and more regulations, the better. That's a joke for my fellow negotiators. So my only question, Jennifer, is but why the need to call this out separately other than and maybe you answered it in terms of the fact that there is no institutional response. It

would seem to me this would fall under what's already defined under group processes. So I'm just trying to get a better understanding of what the intention is because the undersecretary initiated federal group initiated group process that includes actions by the Federal Government. And wouldn't these be actions by the Federal Government? Or does there need to be a specific out in this section other than the institutional response already having been provided in whatever the final action is?

MS. HONG: Right. You are correct, it could be encompassed under the general language we have under 402 and that would be less verbiage. We did want to make explicit since we have not relied on these final actions. Before we just wanted to make that explicit that we would be looking at program reviews. And to your point that if since there's already an institutional response built into that process, that this fast track process would not require an institutional response.

MR. BARKOWITZ: And I appreciate that, and it may be that, in fact, I don't have any issue with calling out the specific examples. Again, I'm just trying to understand, I support, in fact, using these specific examples as triggering events to take group action. I just I'm trying to understand the rationale for writing a

separate subsection. And again, as opposed to just enumerating them under what might be considered federal action. But I'm open to it either way, if it may, if it's clarity you're after and that's the goal. I understand it. I'm just trying to get a sense of what the rationale is.

MS. MACK: Thank you, Daniel, thank you, Jennifer. I want to welcome back Jessica to the table on behalf of her constituency group. Josh, please go ahead.

MR. ROVENGER: Sure, and I think this may get a Daniel's point, I think, to give this real teeth and meaning. I think, or it would be helpful to understand why the Department has this as a may consider rather than a shall consider for the Department official. Because if, so, the Department of Education is one of the key oversight bodies for schools. If the Department makes a determination that the school has acted improperly in such a way that it would implicate the same standards that are ultimately adopted for a Borrower Defense application, it doesn't make sense to me why the Department shouldn't have the obligation at that point to say, okay, we made these findings against the school, now we have to see if groups of borrowers are entitled to a group discharge as a result of those findings. And so I

think I would continue to urge the Department because it's regulating the Department official to make that a mandatory consideration for final actions that relate to section 685.401 B, rather than just keeping it in this discretionary way.

MS. HONG: Just to respond to Josh, that the concern is the "may" and the "shall", but not the idea of explicitly providing this process.

MR. ROVENGER: Correct. So we're very much in favor of including this specific provision of the regulation. It's just the may versus shall language.

MS. MACK: Thanks, Josh. and Jennifer, for clarifying that. I want to welcome Suzanne Martindale for State Regulators and now I'll move to you, Joe.

MR. SANDERS: Thanks. I put my question in the chat earlier, but would this be retroactive in terms of, would the Department be able to go back and rely on old actions, final actions, to discharge loans?

MS. HONG: You mean, Well, this whole section, applicability of these sections are for loans that have been received on or after July 1st, 2023 of those pending before the Secretary. Does that answer your question?

MR. SANDERS: Yeah, so I mean, I'll

give a specific example. The Department withdrew title for eligibility from a school in Illinois, the Computer Systems Institute. They made a 12 page finding that the school had falsified job placement rates by sort of making up employers out of whole cloth and you know, I have complaints from students that attended that school during that time period, we'd love to see the Department take action and I certainly believe that what the school did would justify discharge. Certainly under these regulations, and so I know that we've been considering retroactivity. For other pieces of this as to the students loans and so, you know, to the extent that that's been done in other areas, I would encourage the Department to do that here as well.

MS. MACK: Okay. Thank you, Joe.
Jessica, please.

MS. BARRY: Sure, I just have a clarifying question. So does the Department intend to use more minor compliance findings like miscalculating in R2T4 to support a claim?

MS. MACK: Any immediate response to the Department? If not, I can ask Jessica to place that point of clarification in the chat.

MS. HONG: Yeah, no immediate response other than what we are having, we provide some kind of

illustrative examples in the proposed rent tax.

MS. MACK: Okay. Thank you, Jessica, thank you, Jennifer. Daniel, I see your hand.

MR. BARKOWITZ: Thank you, and I'm going to speak. I'm going to clarify or provide context as well to what Jessica just said. My concern about this particular now that I look at it, sub1 actions arising from a final program review or a final audit determination. Sometimes those can be substantive and significant, and sometimes they can be minor and illustrative of a particular mistake. So, for example, NSLDS enrollment reporting, which is one of the most common errors that is cited in program review regulations and audit determinations. And specifically, it's an issue of timing reporting within, not within the 30 days as required, but 35 days or 36 days that could and does come up on final program review and final audit determinations. I would be hard pressed to suggest that the delay in reporting is the grounds for Borrower Defense to Repayment or the mistake in (inaudible) calculation. Or I could go on and on and on because the text is so complicated and the administration of Title IV aid, I don't think the intention here is to use that as grounds. So, you know, perhaps there needs to be some clarity about the seriousness of the issue. And having

gone through this, I'll give you another example.

MR. BARKOWITZ: At my institution, we received a final audit determination around delay in returning funds that were (inaudible) funds to the Department. We were trying to get them to the students, they were funds the students deserved and were refunded to the students. Students didn't cash them in a timely manner. And so as a result, we continue to try to contact students to get them to have a chance to actually deposit those checks. They were their funds, but we ran afoul of the Department's timeframe. So under the way this is written, that would be or could be, especially if again, my concern here in concert to Josh's comment that it should be shall not may. If we move to a shall language, then a final order determination would in fact lead to a group process. And I don't know, you're shaking your head no, Josh, so clarity would be helpful here. I appreciate that. So, you know, again, I have concerns, significant concerns about shall in concert with what can be a very trivial, not that it's not important, but a very trivial finding that isn't necessarily directly related to student well-being in a particular example.

MS. MACK: Thank you, David. Or Daniel, excuse me, Jennifer, please, I saw your hand and then Josh, I'll get to you.

MS. HONG: Just real quickly for Jessica and Daniel, remember, everything in here must relate directly to the federal standard that we discuss under 401 B. So I think that takes care of your concerns.

MR. BARKOWITZ: Thank you. I appreciate that.

MS. MACK: Josh, I'm guessing that addressed what you were going to share, did you have anything additional?

MR. ROVENGER: No, that's exactly what I was going to say.

MS. MACK: And someone else's hand went down, too. So maybe that was crystallized that for you, too, Justin? Okay. Alright. Then seeing no other hands. Let me check in quickly with Jennifer. Anything else? The Department was hoping to get feedback on or discuss in this section before I would move us to a temperature check.

MS. HONG: Nope.

MS. MACK: Perfect. Alright, thank you all for the discussion. In terms of section 404, group process here, based on those final actions, can I please see your thumbs? And hold them up there. Okay, thank you, that's informative. I believe everyone is either side or up for that particular section. Let's move on to 405,

Institutional Response, Jennifer, can I turn it over to you?

MS. HONG: Sure. Let me just get myself--. Institutional Response-- So briefly, the Department official notifies the school of the basis of the BD claim and requests a response from the school. And the notification, the Department's notification waives any limitation period under which the Department may recover from the school. We request a response within 60 days and an affidavit signed that information is true and correct under penalty of perjury. Again, we talked about this during session one, but if there's no response, the Department shall presume the school does not contest what the borrower is alleging. I open that up to discussion.

MS. MACK: Thank you, Jennifer, for walking us through that. Any questions, ideas, comments from the committee on section 405? Misty, please.

MS. SABOUNEH: Just to clarify, so I agree, we want to get responses out quickly as possible, does the 60 days refer to individual and group claims as it's written today? It does, okay. But

MS. MACK: Thank you for the question, Misty. Any others? And you know what's coming? I'm going to ask for a temperature check on just section 405 but Joe jumped in there just in time, please. Joe, go ahead.

MR. SANDERS: Yeah, so, with is the institutional response the only way that the Department can gather evidence from a school regarding a Borrower Defense application?

MS. HONG: You mean, in addition to what we just described with the fast track, the group process-- ,? I mean, we built in that process so that we could use information, not that we could use, that we could always use it to make explicit our use of that information that the Secretary has on hand. You're saying anything is in addition from that?

MR. SANDERS: Right. So let's say you get a, you get an application and you want to, could you subpoena the school and say give us this information? Or is the only way that you can get information through an institutional response?

MS. HONG: I'm going to defer that to our--and we can even, if you want to come back to it Todd.

MS. MACK: I saw this motion, Todd. Does that mean we can circle back to it later? Okay. Alright. Thanks for the question, Joe. Alright, based on that dialog 405, can I please see your thumbs to indicate a temperature check for tentative agreement around this single section? Hold them up there high for me to see

everyone. Appreciate it. Okay, I believe I've captured everyone as a thumbs up or a sideways thumb, so no thumbs down on section 405, as is. I'm going to move us immediately into 406 and turn it over to you, Jennifer. I just want to take this opportunity, though, to remind folks who have signed up for public comments, to please start accessing the meeting via the link they were provided in logging in so we make sure you are ready to roll at that time. Jennifer, will you walk us through 406?

MS. HONG: Yes, and you know, maybe this would be a good time to jump back to the language that Joe provided in terms of the compromise with the state standard. So Vanessa, that would be that document that we used earlier on aggressive recruitment with the first paragraph being the violation of state law. I want to be sure that we come back to here. So this section is, section 4, section 685.406, proposed, walks us through the adjudication of Borrower Defense applications. We had talked during session one about ensuring that we have a strong federal standard because that makes the process, the adjudication process, much more streamlined for borrowers and to kind of cut down on the time that it might take to be in the queue.

MS. HONG: So during the intervening

weeks, we had some back and forth with state AGs to find a way to kind of capture a circumstance where, which we now conceive would be very limited, given our inclusion, proposed inclusion of, you know, misrep, the aggressive recruitment and all the elements that a robust state standard might also include. However, we wanted to, just to be sure that we grab everything, this is the the process that Joe described-- is something that they've proposed in the event that a borrower or group of borrowers is denied initially for full relief under the federal standard. So Joe summarized it well earlier, but basically states would need to submit, submit the application, for example, from (inaudible) and or individuals, but also include the state standard that they're alleging was violated. Did you have anything else to add to that, Joe? So I guess we haven't, we're just teeing that up because this section on adjudication is pertinent to this proposal. And it is not currently included in 406. So I just want you to kind of think about this and have in the back of your mind as we go through section 406.

MS. MACK: Thanks for teeing that up, Jennifer, I'd remind everyone that that language is on that two page document, I also want to welcome Greg to the table for Dependent Students. Joe, please go ahead.

MR. SANDERS: I'll be very brief because I spoke on this earlier. I think the meat of the proposal here is in subsection A. And it allows the Department, for the borrower, what it does, is it gives them a path to state standard review that doesn't require reapplication. But it allows the Department to only consider the state standard if, in fact, they've already denied under the federal standard. So again, trying to balance the interests of borrowers with the administrative capacity that the Department needs in order to adjudicate these in a timely manner. We think it does a good job of that, and we'd ask for people's support on this proposal.

MS. MACK: Thank you, Joe. Daniel, please.

MR. BARKOWITZ: I am generally supportive of this Joe, and I appreciate the clarity and information-- where I'm, where I'm stuck a little is in the addition of the clause that relates to the making of the loan for enrollment at the school. So this introduces a new set of standards that I don't believe is anywhere else in Borrower Defense to Repayment. So far, we've talked about provision of educational services and that includes misrepresentation and aggressive recruitment and et cetera, et cetera, et cetera. So I need to understand

a little more what the rationale to the language as indicated that relates to the making of the loan for enrollment at the school refers to that wouldn't otherwise be covered by the provision of educational services.

MR. SANDERS: We pulled this directly from the 2016 rule in an attempt to use an existing standard. It's not perfect from my point of view either, but we're trying to get some language that everybody can agree with. If there's something that we missed here or if the language from 2016 has now changed in this latest issue paper, I'm happy to consider changes that would conform to what the other proposals on the table.

MR. BARKOWITZ: If if you're willing, I would suggest striking that clause so relates to the go from attended by the school that relates to the provision of educational services because otherwise I don't again, Jennifer, correct me if I'm wrong, but I don't see any other reference to making of the loan anywhere else in the document.

MS. HONG: Yeah, I think all that that clause was intended to convey was the loan, the federal direct loan that was taken to, you know, avail themselves of the provision of the educational services, that's it's just meant to be very clear that that was the purpose of

the loan. I don't think there's a whole lot more to it, but your point is well taken that it's a lot of words.

MR. BARKOWITZ: Well, and it introduces a concept that is not defined anywhere else in the statute or the regulation. So I'm just I'm trying to understand. The making of the loan could include the signing of the promissory note, the provision of entrance counseling, the, you know, all of the filing of the FAFSA. So all of that is regarded to making of the loan, you know, is the intention to include all of those processes as an act or omission or is, is again the intention to drive to the provision of educational services, which is what we've so far discussed.

MS. MACK: Todd, I saw you came off mute, did you have something you wanted to add?

MR. DAVIS: Just echoing what Jennifer said there that I don't think we thought about it that way, but we will, the point is well taken, Daniel, that we may have vertically, you know, introduce something we didn't intend to, so we will reconsider that, at least.

MS. MACK: Ok, thank you, Daniel, Jennifer and Todd. Joe, I see your hand.

MR. SANDERS: Yeah, that phrase does appear in the current proposal. It's 685.401 section (a) (2), the definition of a Borrower Defense to Repayment.

MR. BARKOWITZ: Thanks for that.

Again, maybe it's just a question that that has not yet been defined in any of the conversation.

MS. HONG: Yeah, thank you for that point. I think it is intentional, and I think it's just again, I don't think it's anything more than to convey that is within the scope of the provisions governing the direct loan program. That's it.

MS. MACK: Okay, thanks for the clarification, Jennifer. Justin, then I see your hand.

MR. HAUSCHILD: Yeah, it's going to be quick, I don't think it probably matters one way or another here, I mean entirely, I think I just don't think it probably matters, but I will just say, I mean, it's our understanding that misrepresentations or omissions along any number of the lines or items, again, you mentioned very well may be, you know, a part of the Borrower Defense process here. Again, considering the fact that we don't have not non-exhaustive list, so the fact that we're talking about the making of a loan and misrepresentations or omissions with regard to that, I'm not entirely sure. I think it's not. I think it's probably all wrapped up one way or the other. So I don't know how much matter, but thanks.

MS. MACK: Thank you, Justin Heather.

MS. PERFETTI: I just wanted to add here, although it may not necessarily be most relevant here the question about communication with the institutions and creditor if there are state laws that are being incorporated into Borrower Defense, in particular violations of state law. That is one of the areas that a creditors should be informed about, as it also applies to the standards and expectations that a creditors have. And that's a separate kind of consideration and potential action above and beyond the borrower's defense provisions for students. So I just wanted to mention that if there were some specific provisions directing notification to the creditor, that that could be helpful somewhere, if not here.

MS. MACK: Thank you, Heather. And Joe.

MR. SANDERS: I just want to make one point about state law and what's captured in the federal standard, as we have it now. First of all, you know, we want to thank the Department for having state law in here, period, we think that that big concept is great and we're just trying to refine that. Number two, to Jennifer's point about, making a more robust federal standard, a couple of things that are not currently included in the federal standard, and I've shared some of

this with the Department state law and fairness claims. These are claims that my office and other offices have often used when litigating and investigating violations of state law. Some of the examples we provided were schools that will make loss later loans that they know the student will default on in order to get the federal dollars. And we think that there's a nexus there around the federal money that makes it that an applicable Borrower Defense. That's not really considered the federal standard right now. The definition of omission, I'm going to be talking with my constituency today at 4:00 Eastern around some of this, but you know, for an example, we talked about state that the use of knowingly, we don't think that that's the sort of the highest state law standard possible regarding an omission. So the more that, the closer the access we can bring students to these claims, you know, we think we're capturing some important student protections. So just for my take on where we are vis a vis the the federal standard and what all isn't that right now.

MS. MACK: Go ahead, Heather, please.

MS. PERFETTI: Thank you, if I could just ask a logistical question with regard to the group process, if in that group there are borrowers from multiple states. How does the state law provision apply?

MR. SANDERS: Jennifer, do you want me to address that or do you want to address it or?

MS. MACK: If you have some thoughts Joe, to go ahead.

MR. SANDERS: Yeah, so I think if we're talking about a group process. There's there's two ways to look at it, and we've presented both of these ways to the Department in existing group applications, so. One way to look at it is the State has a claim. Where the parents, (inaudible), we have the power to get restitution for borrowers, and so we have that, right. My jurisdiction would be Illinois borrowers. And so it wouldn't necessarily capture a borrower from Vermont, which pertains to what the Department and Josh were talking about with group claims for legal aid organizations that could, you know, if Josh represents borrowers in Ohio and I've got an application out there and he says, Oh, well, this happened in Ohio, too, and he wants to jump out of that, that would capture some of that. The other way to look at it, and I don't know, maybe Todd can shine some light on this as to the Department's position on this, but the other way to look at it is that it's not the state's claim, but it's the borrowers claim themselves. And those are two different things under most state law. And so there, if I had the

evidence that, you know, borrowers in Cleveland had been harmed by this process, it's conceivable that the Department interpret the evidence that I submitted to, even though I'm from Illinois and my jurisdiction. Illinois, if they interpret it as an individual claim that those borrowers could be wrapped in. I'm just not sure where the Department stands on that on that question right now.

MS. MACK: Is there an immediate response or will we need to circle back to that piece later in the conversation?

MS. HONG: We can take that back.

MS. MACK: Okay. Thank you, Jennifer. We are just a couple of moments from public comment. So in terms of looking at 406, Jennifer, anything else that we need to chat about there so the Department has what it needs on this section?

MS. HONG: So we'll pick up on there so that we just started with the state standard piece, but we still need to review everything under adjudication. I'm sure there will be a discussion regarding that piece.

MS. MACK: We still have a couple of minutes. Would you like to walk us through any of those pieces? And Todd I see your hand's raised.

MR. DAVIS: I just want to go back to right at the end, if I could, just to try to clean up. I'm not, we will come back, Joe, on that last piece I think that's important and Heather there. But the question earlier about what can we do about what's our sort of power to get force institutional responses? We were all we were on the right track there. In the past, we requested such responses, but we did not really have the authority to force the responses. The Department itself, aside from the inspector general, does not have subpoena power in that in that way. Obviously, there's always a program review, but that's considerably longer than 60 days. So just wanted to make sure I think that Daniel, I don't know where that exactly came from back a little while ago, but just wanted to revisit that a little bit.

MS. MACK: Ok, thank you, Todd. So anything else on 406 to be helpful for us to just quickly touch upon before we move into public comments?

MS. HONG: Yeah maybe, maybe we should save this for tomorrow and start off with it since it'll take me a minute to go through it.

MS. MACK: Sure. So we will pick up then with section 406 first thing in the morning, work ourselves through Borrower Defense and then we'll be

moving on to issue number nine, Pre Dispute Arbitration. Alright, I'm going to once again invite those who have signed up for and been confirmed and the waiting list of public comment to please start logging in because we only have a few folks logged in thus far. And so I believe we are right on time. Brady, I'm going to ask that you admit our first individual so that we can begin our public comment portion.

MR. ROBERTS: Sure. I'm admitting this Andrea Smith, who's here representing Legal Services Center at Harvard Law School.

MS. MACK: Alright. Welcome Miss Smith.

MS. SMITH: Hello, sorry, I wasn't sure if I had my mute on or off, I apologize.

MS. MACK: We can hear you now. If you'd like to turn on your camera, you are welcome to do so that we can see you. If not, that's okay too. But as soon as you begin, your three minutes starts.

MS. SMITH: Alright. Well, my name is Andrea Smith, I have been in the process with Borrower Defense for almost three years. Well, actually just over three years, I think. It's been a grueling process, it's been hard, it's been frustrating. I applied. Uh. Received it, received almost no communication for a long time, and

then when I did get communication this year, April of this year, I was told that I 100 percent was approved for discharge and that the tax returns that had been taken from me to pay those loans would be refunded. That still hasn't happened, I was told October, and that still has not happened. When I do call Borrower Defense, they told me to call my loan, my loan servicer, my loan servicer, then who is supposed to represent Department of Education, at least that's my understanding, then tells me the call back to the Borrower Defense. So there's there's a strong lack of communication, unfortunately, and it's frustrating not really getting any answers or being directed to call a bunch of different places.

MS. SMITH: You know, I'm a mom of five, I have a granddaughter, I work full time as an administrator in my company. You know, I have a lot to do. So my my frustration comes in this has turned into full time work almost trying to contact someone just to get information. So that's probably been my biggest frustration with the Borrower Defense situation. I went to school, I went to Everest Institute, which is one of the Corinthian Colleges. In an attempt to further my education, I'd been doing medical career for a long time and wanted to move up and move further, I thought this would be a great opportunity. I also wanted to being a

single mom for a long time, I wanted to show my kids that it's never too late to go back to school and get an education and, you know, get get ahead in life and have that education, which I still absolutely fully believe in. I just I want my kids to do better than I did

MS. MACK: You have 30 seconds, Ms. Smith.

MS. SMITH: Thank you. For so many reasons. And unfortunately, this process has been very frustrating. And you know, my family sees that and it puts the sour mouth in everybody or puts a sour taste in everybody's mouth.

MS. MACK: Okay, thank you for your public comment today.

MS. MACK: Brady?

MR. ROBERTS: I'm admitting Jarrod Thoma, who's here today representing himself,

MS. MACK: Alright, Mr. Thoma, can you hear me?

MR. THOMA: Yes, can you hear me?

MS. MACK: We can if you would like to turn on your camera, you are more than welcome to do so. Otherwise, as soon as you begin speaking, you'll have three minutes.

MR. THOMA: Alright, thank you. Good

afternoon. My name is Jarrod Thoma, I'm a veteran of the U.S. Army in Colorado Springs, Colorado. Thank you for the opportunity to offer my testimony today. I'm here to tell you why from my own experience the United States Government needs to regulate bad schools that take federal taxpayer dollars like the GI Bill. I earned my education through years of service and sacrifice during my enlistment. After my discharge from the Army, I was eager to pursue my lifelong passion for electronics by earning a degree in engineering. With that in mind, I decided to enroll in DeVry University. After my enrollment at DeVry, it didn't take long for me to realize that this for-profit college was failing to deliver on many of the promises recruiters had made to me. In particular after transferring from one DeVry campus to another, it became clear to me that the school was implementing cost saving measures that negatively impacted the quality of education being delivered. I saw that the quality of course materials and equipment used for instruction were subpar and not as advertised, and that the standards varied from branch to branch. And I realize the dramatic reduction in quality I learned in my professors and then school staff members. Although DeVry was more than happy to cash in and all my GI Bill benefits, my complaints about the quality of materials

and instructions fell on deaf ears. When I tried to transfer, I was told by both public university and community college that they would accept only my general education credits, even though the variety stated that their credits would transfer. As I was starting to accumulate debt, including \$52000 in additional student loans, I made a decision to complete my engineering degree at DeVry.

MR. THOMA: However, upon entering the job market, I quickly found a degree from a for-profit college was not worth the paper is printed on and it actually hurt my job prospects. Through hard work and a little luck, I was finally able to secure an engineering position after two and a half years. Given these challenges, along with many of the other hurdles that veterans already face, I cannot stress enough the need for regulatory protections for not just military connected students, but all students for predatory practices by these terrible education corporations posing as colleges and universities. Not long after I graduated from DeVry with what turned out to be a worthless degree, subpar training, other bad schools went bankrupt and left other students and veterans in even worse spots than myself. Education companies like ITT Technical Institute and Corinthian were run into the ground despite having

taken millions of taxpayer dollars. This shows the need for regulations to protect students like myself from lies, fraud, predatory recruiting, and marketing tactics.

MS. MACK: You have 30 seconds.

MR. THOMA: While my loans have been placed in forbearance, they still have a financial burden. This is not the position I envisioned myself or my family after serving this country and sacrificing to earn my benefits. If you want to support men and women in uniform, I ask that you take a hard look at schools like the DeVry that takes taxpayer dollars, including veteran benefits, but don't deliver on the quality of education that is promised. Thank you for your time.

MS. MACK: Thank you.

MS. MACK: Brady, who are we bringing in next?

MR. ROBERTS: I'm admitting Mr. Chris Glock, who's here representing himself.

MS. MACK: Welcome, Mr. Glock, can you hear me?

MR. GLOCK: Yes, I can thank you.

MS. MACK: Perfect.

MR. GLOCK: Can you hear me?

MS. MACK: We can hear you loud and clear if you're comfortable with it, you can come on

camera. If not, that's okay, too, but you'll have three minutes as soon as you start your comment. Please proceed when you're ready.

MR. GLOCK: Okay, sounds good, thank you. Good afternoon, my name is Chris Glock and I'm a veteran from Colorado. I joined the Marine Corps following 9/11 and I served as an intelligence analyst. After leaving the service, I fell in love with the restaurant industry and the person that it allowed me to become. For years, I managed restaurants in Hawaii and Las Vegas, but eventually I found myself back home in Colorado, where I decided to combine my analytical skills along with my passion for the restaurant industry and my love for computers. My goal to design it excuse me to design a universal, easy to use system for the small mom and pop restaurants that are often left behind in the technological world. So I enrolled in ITT Tech using my GI Bill. I was about a year and a half into my computer programing degree, when the school closed abruptly interrupting my study and causing me to reconsider my future. At this point, however, my benefits were nearing their expiration and after taking time to consider my options, I eventually decided to enroll in Colorado Technical University in 2019. I was told that I would learn all that I needed to know about getting a computer

programing job, that I would be able to design websites and understand programing languages. For the first few semesters, everything seemed okay and I thought I made the right decision. But then came the online courses and I found that the classes were low quality. I was often doing so YouTube videos and not really being taught anything of substance. Although I experienced these issues,

MR. GLOCK: I stuck with it because my benefits were expiring, and I genuinely thought that I would bring it all together at some point. I graduated in September of 2021 and I have not been able to get a job in my field and the school has provided me with no career counseling at all. I don't know what they were talking about when they promised me that recruitment, but it is completely non-existent. I was also told that my GI Bill would cover all of the tuition for the program and I would have nothing to pay out of pocket. However, I was charged various fees that were not covered by the GI Bill, including extra fees for taking classes online during COVID. Because of these additional fees, I am left with bills for thousands of dollars for YouTube videos and online course materials that I can no longer access. They promise me so much just to get me in the door, and none of it was true. The sad part in all of this is that

looking back, even even ITT Tech took care of their students in the school's final moments. However, unfortunately with college, there is no money back guarantee and transferring schools become slightly complex. CTU not only wasted the governments money and my time but they destroyed my passion to achieve my ultimate goal. Now I'm left with bills, a worthless degree and an uncertain road ahead. I just wanted to share my story with the committee to ensure student veterans like me are considered during this process. Thank you for your time.

MS. MACK: Thank you for your comments today.

MR. ROBERTS: Alright, I'm admitting Ms. Kyra Hahn, who is the founder of the group Librarian 4 PSLF.

MS. MACK: Ms. Hahn, welcome. Ms. Hahn welcome, can you hear me?

MS. HAHN: Yes, I can hear you. Can you hear me?

MS. MACK: We can hear and see you, you have three minutes for your public comment.

MS. HAHN: Okay, thank you. Thank you for the opportunity to speak with you all today about student loan for student loans and affordability. The comments that I have are one of the things I would like

to see is a definitive ruling on the full time work requirement of 30 to 40 hours. Earlier in the program, it was promoted as 30 or more hours, but some employers their definition between full time and part time benefited vary depending upon the market. And in some instances, there are reports of employers declining to sign off on paperwork. So I would like to see a definitive ruling on that. Secondly, I would like to request that repayment calculations for income based repayment plans be based solely on borrower income. Currently, they are based on household income, and that artificially inflates the repayment, for women, for married borrowers, particularly for those that are trying to participate in PSLF because not everyone in the household works in public service. And so that's artificially inflating the repayment amounts that are given to those that do work in public service.

MS. HAHN: Additionally, I would like for an interest rate cap to be considered. In a lot of instances for borrowers that hold student loans, you're seeing situations where the interest is exceeding the initial amount that was borrowed. And so I think that there's a lot of room for improvement on that where a cap should be instituted once it meets or exceeds the amount that was borrowed. Also, I would like to add a comment in

relation to Parent PLUS Loans. Right now, I feel like a lot of the policy or improvements that have been released, including with the recent PSLF waiver are kind of piecemeal and I would like to see that process simplified. And then lastly, on the new PSLF waiver you have, it has been asked that borrowers provide proof of qualifying employment with supplemental bylaws and letters from employers. If someone has multiple employers, I have concerns about the upload limits for those documents. I can tell you for certain that at my current employer that I am at now.

MS. MACK: It's time, Ms. Hahn. Thank you for your comment.

MS. HAHN: Okay, 500 pages, one upload. I don't think we have capacity for that.

MS. MACK: Thank you. Brady, who are we moving to next?

MR. ROBERTS: I'm admitting Representative Alma Adams, representing North Carolina's 12th Congressional District.

MS. MACK: Alright. It looks like we are working on connecting to audio. Representative Adams, can you hear me?

MS. ADAMS: Yes, can you hear me?

MS. MACK: We can hear you and see

you, yes ma'am. You have three minutes, please proceed.

MS. ADAMS: Thank you very much. I'm Congresswoman Alma Adams, and I proudly represent the 12th Congressional district of North Carolina. Student borrowers need to be protected. No individual should be penalized with crushing debt for seeking higher education opportunities, and no service or institution of higher education should be preying on student loan borrowers. At the outset, let me say, I want to be clear that I am distinguishing good faith actors in the higher education space from predatory actors. I understand that many institutions and services are working with students on pathways forward to help manage their student loans, and I commend them for doing that. But when it comes to services, in September 2012 the Department of Education reversed the previous education Secretary's notice to loan servicers, and this notice stated that state laws which protect borrowers from services to false and misleading practices were preempted by The Higher Education Act, and that the loan servicers did not have to respond to questions raised by state enforcement agencies. And so in its recent announcement, the Department of Education clarified that HEA does not prevent states from holding servicers accountable if they mislead and harm borrowers and colleges who defraud

students must be held accountable for their actions. For Title IV funds that have been paid out to these institutions must be recouped when these institutions close. so both student borrowers and the taxpayers are made whole. Student loan borrowers who have been defrauded by college or university Or career

schools must have the option to petition for forgiveness of these loans. We acted swiftly through legislation last year to temporarily protect borrowers from outside effects of the pandemic, and so I urge the Department to continue with the momentum of Congress's efforts. I'd also like to comment on the closed school discharge provision to protect student borrowers under these provisions of HEA, students have no further obligation to repay the loan, and adverse loan history will be deleted from the credit report. So when delinquent accounts appear on credit reports, these have a noticeable and negative impact on credit scores. I'm concerned about black student borrowers because they are more likely to take on school and student loans at

MS. MACK: You have 30 seconds,
Representative Adams.

MR. ROBERTS: Alright, I'm admitting Representative Josh Harder, who's here representing California's 10th Congressional District.

MS. MACK: Representative Harder, can you hear us?

MR. HARDER: I can.

MS. MACK: Perfect. We can see and hear you so you have three minutes.

MR. HARDER: Perfect. Today, I want to talk about one of the most critical challenges facing my community in the Central Valley, which is access to health care. Right now there are 157 medical doctors for every 100,000 residents in my area. Just over the Altamont in the Bay Area, there are 411 physicians per 100,000 residents. It doesn't take a rocket scientist to explain why the wealthy folks in the Bay Area have more than two and a half times the number of doctors as my (inaudible) community in the valley has. This disparity just crushed my community during the pandemic. This winter, our ICU bed capacity was at zero percent and the peak of COVID. It wasn't because we didn't have the bed space, it's because we didn't have the doctors to

actually care for the folks who were sick. In my community, people wait months to see specialists and then when they finally do get an appointment, they have to drive hours to their doctor's office. That makes getting care simply out of reach for thousands of hard working families. So I'm here today to advocate for a common sense and tremendously impactful solution to the doctor shortage my community is facing. This isn't a pie in the sky, a Hail Mary type pick, this is easy. We know how to do it, and we know how many doctors this will bring.

MR. HARDER: The Public Service Loan Forgiveness program was created almost 15 years ago to encourage people with student debt, especially doctors, to enter high demand fields in the public service. For doctors, it says, if you work at a nonprofit hospital for 10 years, we'll forgive your student loans. For communities like mine that are facing crippling doctor shortages that just make sense. But it doesn't happen right now in California or Texas because of an accidental oversight and a regulation that limited the eligibility for the program. The regulation applied to doctors directly employed by hospitals, which is not always the case for doctors working in nonprofit hospitals in both California and Texas. In fact, it's actually illegal, precluding any doctor here from getting the student loan

forgiveness. When the average medical student has more than two hundred and fifty thousand dollars of debt, that's a major deterrent to practicing medicine in the valley. I'm here to tell you, you have the power as an agency to fix this. With a stroke of the pen, you could change the rule, let doctors in California and Texas get their student loans forgiven and bring thousands of new doctors to communities like mine. That's why I sent a bipartisan and bicameral letter to the Department of Education in September, signed by sixty seven of my colleagues, pushing the Department to rectify that.

MS. MACK: 30 seconds Representative Harder.

MR. HARDER: I have a bill in Congress that provides the framework for how to make this fix and will codify that change in the law. But first, I'm asking you to fix it within your agency today. If we do this together, we'll bring 10,000 new doctors to California over the next 10 years and deliver health care to so many folks who need it. That's what our community and so many others need. So let's get this done. Thank you.

MS. MACK: Thank you for your comment. Brady, who are we bringing in next?

MR. ROBERTS: I am now admitting this Lindsay Baker, who is the Executive Director of Maryland

Humanities.

MS. MACK: Welcome, Ms. Baker. You have three minutes for your public comment.

MS. BAKER: Thank you. Can you all hear me okay?

MS. MACK: Yes, ma'am, we can.

MS. BAKER: Great. First of all, I'd like to thank the committee for listening to my testimony today. My experiences navigating the student loan process has always been a lonely one, and I appreciate that there is an effort to better understand the difficulties that borrowers face. My name is Lindsay Baker, I'm the Executive Director of Maryland Humanities, I'm also a mother of two small children, a homeowner and an active member of my community. I've worked in public service since 2008. In 2002, I started my undergraduate education at Goucher College, not knowing the difference between a loan and a grant. My parents had recently divorced and declared bankruptcy, but I was determined to attend my college of choice and navigated the financial aid each year by myself. Each year, I sat down with the financial aid officer to figure out how I would get the loans needed to attend school. I ultimately graduated early due to issues with financial aid. By the time I graduated with a master's in 2008, the news had broken that the

financial aid offices had once been receiving kickbacks for steering students away from things like Pell Grants towards private loans.

MS. BAKER: I was one of those students and remember distinctly asking about Pell Grants and being told they were limited and I should pursue loans through Sallie Mae. From the time PSLF program was created, I have plugged away at my loans, hoping always that I was in the right payment plan, but honestly, never sure. As each time I called, I was told something different. In my career I've always been an executive director. I'm someone who understands processes, but I have never been able to understand this one. Fast forward to 2021 when I have been making payments on my consolidated loans for over 11 years. I have 70 plus qualifying payments and 70 plus unqualifying payments. I've been employed by qualifying employers for that entire time, making payments diligently each month. The news recently came out that federal loan federal student loan servicers are being investigated and sued for intentionally misleading students about the forgiveness program and the payment plan options. So again, I realize my troubles navigating this process, like before, are a reflection of a larger national issue. With a new waiver, I felt renewed hope in the plan. I

felt that my government was working as it should be to protect its citizens from large corporations whose only concern is making money.

MS. BAKER: When I resubmitted my ECF and forgiveness forgiveness application, it was denied and no new payments were added. I have no idea why right now, and in order to get any real information, I will need to submit a Freedom of Information Act request. My understanding is that that request is the best way to get real information because we cannot trust the work of those servicing our loans. My experience, my experience with the student loan industry has been broken from the beginning, but I am a story of one of many. With that in mind, I'd like to respectfully, respectfully suggest the following changes. Cap the payment at five percent discretionary income, standardized the definition of full time, make periods of deferment and forbearance count at least temporarily, fix the interest so that it's set at two to three percent at most and set clear communications from loan services and more oversight with a system to file complaints as requirements. Thank you for listening. I know you all have many speakers to hear from. Thank you.

MS. MACK: Thank you for your comment, Ms. Baker. Brady, who's next on our list?

MR. ROBERTS: I'm admitting Ms. Naomi Claxton, who is representing herself.

MS. MACK: Ms. Claxton, can you hear me?

MS. CLAXTON: I can hear you. Can you hear me?

MS. MACK: We can. You have three minutes for public comment. I can't hear you now, unfortunately. Can you try once more to see if we can hear you? Brady, let's move on to the next person, and if you could reach out to Ms. Claxton.

MR. ROBERTS: Yeah, we'll come back to MS. Claxton. Alright, I'm letting in Ms. Lisa Elliott, who is representing herself.

MS. MACK: Alright. Alright, can you hear us Ms. Elliott?

MS. ELLIOTT: I can.

MS. MACK: You have three minutes for public comments. Please proceed.

MS. ELLIOTT: Okay. Alright give me one second, okay. Thank you for the opportunity to speak. I grew up hearing from my dad that I absolutely must go to college. He found himself struggling his whole life and he didn't want that for his daughter. When the time came for me to go to college, I learned that my dad

though he would have loved to send me to college was not financially capable. So I found a way to get through school on my own. That included a lot of hard work scholarships, grants and obviously loans. In my field of psychology and counseling, a bachelor's degree alone would not prevent me from living in poverty. I had to go to grad school. I also got married and had four beautiful children. As my kids got older, I was able to go back to school for my master's in counseling, but then needed to work three years postmasters under supervision to be state licensed, which included a very low salary, but a lot of fulfillment in the work. I found a residency program for this in a spiritual care and counseling department in a nonprofit hospital. This job was amazing and turned out to be my passion. But the pay would not meet our needs without advancement. I had to return to school yet again to pursue my endive and chaplaincy. The great news is that it worked. I was blessed with a promotion as the first female pastoral care coordinator during the history of our department. This is a huge blessing. It also carries with it a fear, what will my student loan payment be now? Now I'm a single mom with an uncertain future.

MS. ELLIOTT: I'm thankful for my education that has allowed me to provide for my family

into escape poverty. However, the black cloud of a mountain of student loans threatens to cancel out the income earning power that that very education has earned me. Within the next four years, I should be able to receive loan forgiveness under PSLF except that I am being caught like many on the loopholes of deferment and forbearances. In order to survive at times, financial hardship, forbearance as where necessary as the loan payment plans that I was offered over the years were impossibly high. At other times, I was placed into in-school deferment. I did not understand the consequences of these different influences at the time. I assume I must have signed some sort of acknowledgment, and I must own that for myself. What I'm asking for now, for myself and so many others is mercy. I'm asking that you modify the program rules such that those who have earned who have served in these qualifying areas be granted forgiveness solely on the basis of their years of service, regardless of deferment or forbearance. Please do not disqualify us due to actions we took to try to keep our accounts in good standing and to still be able to provide for our families. In short, please remove the barrier of the qualifying payments and allow the payment periods placed in deferment or forbearance to count towards forgiveness. Thank you for your consideration and

may God bless you with wisdom as you deliberate.

MS. MACK: Thank you for your public comments today.

MS. ELLIOTT: Thank you.

MS. MACK: We are going to try to go back to Ms. Claxton.

MR. ROBERTS: I admitted her, her backup. Let's see. I see her.

MS. MACK: Ms. Claxton, can you hear us now?

MS. CLAXTON: I can thank you and I.

MS. MACK: We can hear you perfectly too so you have three minutes for your public comment.

MS. CLAXTON: Thank you very much. I apologize. I am unable to change my name, but I am an assistant attorney general who has been working as in public service for the last eight years. I graduated in 2011 and at the time that I graduated into a recession, there were not very many positions available. I worked as a special assistant attorney general, which is to say an unpaid assistant attorney general for some time. During that period, I was advised by fed loans that my payments would not that I would not qualify for PSLF because I was not being paid by my agency. I believe that that is a circumstance that many borrowers experienced and one that

the Department should take into consideration, especially for those of us who were working full time in those positions that were full that were, excuse me, qualifying positions, except for the fact that they were unpaid. The second issue, and one that I have attempted to address to address with my fed loan several times is for anyone who has experienced identity theft and has a lock on their credit report or a PIN that is required to file their IRS taxes, you cannot link your myfed loan recertification annually to your taxes. You cannot. Every year, when I submit my recertification, it takes longer by three to four weeks to process the normal, and I usually submit within the first or second week that recertification is open. What happens is, is that they then push me into forbearance

MS. CLAXTON: I've lost over five months of payment history to that because of the fact that I cannot afford the standard payment, and they refuse to provide accurate information to borrowers who are calling. I do believe that this is something that the Department should look into and make accommodations for borrowers to provide alternate information for recertification upfront if they have a PIN on their IRS filings or to provide paper filing information. Lastly, I was a foster parent for six months, and during that time

when I contacted my fed loans and told them that I had three children placed with me in addition to my child, I was told that they could not recalculate my payment at that time and that information, as it turns out, was incorrect. So I was again placed into forbearance during the time that I had guardianship of what are now my God children and I feel like.

MS. MACK: You have 30 seconds Ms. Claxton.

MS. CLAXTON: Thank you. There just needs to be better information given to the representatives who are speaking to borrowers. They are giving people incorrect information, and that information has created hardship for many borrowers. Not unlike myself, I've lost over 11 months of payment history to incorrect information and to my loans as failure to process timely the forms that are submitted. Thank you.

MS. MACK: Thank you very much for your public comments. I want to thank the committee primaries, alternates, advisors, the Department, all of our public commenters and all the folks working behind the scenes to make this possible. We look forward to picking up with our work in the morning. Thank you all.

Appendix
Department of Education
Office of Postsecondary Education
Zoom Chat Transcript
Affordability and Student Loans Committee
Session 2, Day 3, Afternoon, November 3, 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 Daniel Barkowitz to Everyone:

Alyssa will start for Fin Aid Admins.

From Alyssa (A) Fin Aid Administrators to Everyone:

Daniel is running just a few mins behind. I will be here until his arrival.

From Joe; P, State AGs to Everyone:

I'd love to see the DOD MOU

From Daniel Barkowitz to Everyone:

Back in

From Alyssa (A) Fin Aid Administrators to Everyone:

Daniel is here now :)

From Emily (A) Service Members/ Veterans to Everyone:

<https://www.dodmou.com//Home/InstitutionList>

From Emily (A) Service Members/ Veterans to Everyone:

https://s3.amazonaws.com/dodmou/dodmouwebsite/document/s/Appendix%20to%20Enclosure%203%20DoDI132225p_Change%204_SAMPLE.pdf

From Daniel Barkowitz to Everyone:

Per DoD MOU paragraph 3.j.(3) institutions are required to, "Refrain from high-pressure recruitment tactics such as making multiple unsolicited contacts (3 or more), including contacts by phone, email, or in-person, and engaging in same-day recruitment and registration for the purpose of securing Service member enrollments."

From Emily (A) Service Members/ Veterans to Everyone:

Despite .com address please know this is official

government webpage

From Joe; P, State AGs to Everyone:

+1 Josh

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

From Daniel Barkowitz to Everyone:

Fair comment.

From Joe; P, State AGs to Everyone:

Emily - would love to see your thoughts on how to define/cabin unsolicited contact

From David Tandberg to Everyone:

Emily: +1 to Joe's request.

From David Tandberg to Everyone:

I think what was developed by Joe, et al and shared via e-mail before the break provides more specifics.

From Jessica (P), Proprietary Schools to Everyone:

+1 for #3

From David Tandberg to Everyone:

Yeah lots of cross over between #3 and what was in the e-mailed version.

From Will (A) FFEL Agencies to Everyone:

+ 1 Marjorie

From Daniel Barkowitz to Everyone:

Raj, did you look at only those schools where the -00 (or main campus) closed?

From Daniel Barkowitz to Everyone:

Yes!

From Daniel Barkowitz to Everyone:

:)

From Joe; P, State AGs to Everyone:

I believe ITT manipulated their OPEIDs, lowering the number of OPEIDs for branch campuses.

From Daniel Barkowitz to Everyone:

My concern is that a closure of one branch campus, as currently written, counts as a closure. For many schools, the closure of a branch campus is not a significant event (especially if there is a close campus nearby). I understand (and value) that a campus closure is a significant event for students on that campus, but as I read what was proposed the closure of a campus would allow anyone at any campus at that institution to submit a BDR claim.

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

Thank you, Raj

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

Thanks, Raj!

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

Thanks!

From Jessica (P), Proprietary Schools to Everyone:

Thanks!

From Justin (P) Service Members/Veterans to Everyone:

Agreed. Thank you, Raj.

From Jeri (P) Student Borrower (she/her) to Everyone:

Jen will be swapping in for me.

From Joe; P, State AGs to Everyone:

+1 Bethany

From Jeri (P) Student Borrower (she/her) to Everyone:

+1 Bethany

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

+1 Bethany

From Daniel Barkowitz to Everyone:

Thanks, Justin!

From Joe; P, State AGs to Everyone:

+1 Jen

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

+1 Jen

From Jeri (P) Student Borrower (she/her) to Everyone:

+1 Jen

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

Jeri will be back!

From Greg, A - Dependent to Everyone:

+1

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

+1 Josh

From Joe; P, State AGs to Everyone:

+1 Josh

From Joe; P, State AGs to Everyone:

+1 Todd on bifurcation

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

+1 on bifurcation and this understanding of retroactivity

From Michaela [P] Ind. Students to Everyone:

+1

From Jessica (P), Proprietary Schools to Everyone:

+1 Misty on contracts

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

If the parties wanted a force majeure clause, couldn't they include it in the contract?

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

Many of us don't have contracts per se.

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

Right, what is the contract?

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

To the extent that the agreement was in-person rather than on-line, then it still would be a BOC

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

There'd still be common law defense of force majeure

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

Presumably

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

Of frustration of purpose, etc...

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

Or*

From Jeri (P) Student Borrower (she/her) to Everyone:

what contract is signed saying that a student will pay for their coursework, room/board, fees, etc?

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

At a public university there generally is no contract. The student registers and pays. We take the action of registration (student initiated) as their intention to take the classes...

From Jeri (P) Student Borrower (she/her) to Everyone:

yes, intent to take classes, abide by code of conduct, pay for service, etc. isn't that a contract

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

@Christina, or @Bobby, do your institutions have a written contract?

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

If so, Jeri, that should be defined...

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

+1 Josh re: other third party groups

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh re: other 3rd parties - gov't agencies may not have resources to file petitions for group claims

From Justin (P) Service Members/Veterans to Everyone:

+Josh RE other 3rd parties being allowed to initiate the group process

From Jeri (P) Student Borrower (she/her) to Everyone:

+ Josh, yes!

From Marjorie (P), Four Yr Publics (she/her) to Everyone:

+1 Josh | State & gov agencies may not always have students best interest in mind

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

+1 to Josh

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

@Jessica - How do you think students can prove reliance? If there is something that we're missing please provide perspective for us all.

From Jessica (P), Proprietary Schools to Everyone:

To my knowledge, reliance is a common element in consumer fraud cases.

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

+ Josh 100%

From Jeri (P) Student Borrower (she/her) to Everyone:

+ 1 Bethany

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

+ Bethany

From Alyssa (A) Fin Aid Administrators to Everyone:

Why would it be an issue to exclude third party groups? I can't find a 'negative' here.

From Alyssa (A) Fin Aid Administrators to Everyone:

Sorry, to include^

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

+1 to Josh

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

Almost always poor folks and minoritized folks ONLY
have access to legal aid and third party groups to get
any form of aid. +10000000000 Josh and Bethany

From Jeri (P) Student Borrower (she/her) to Everyone:

^

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

+ 1 Dixie!

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

+ Alyssa's + Justin's points. I don't understand the
downside.

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

^

From Justin (P) Service Members/Veterans to Everyone:

+Joe here on positive aspects

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

+1 to Joe

From Justin (P) Service Members/Veterans to Everyone:

+1*

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

+1 support for what Joe is highlighting

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

+1 to Joe's positives highlight

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

My concern is the one highlighted by Josh

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

^

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

Ditto highlighted by Josh

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

Voted down due to third parties inclusion

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

Jeri... what candies do you have...

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

Also sitting next to my kids' candy

From Jeri (P) Student Borrower (she/her) to Everyone:

all of them - it is an impressive variety.

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

Jeri, I am on my way to steal a couple of your candies

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

The problem with being empty nesters... no spare kids' candy.

From Marjorie (P), Four Yr Publics (she/her) to Everyone:

The trunk of my minivan looks like Wonka's chocolate factory.

From Jessica (P), Proprietary Schools to Everyone:

My alternate Carol is going to sub in for me.

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

+1 to Josh on the interest issue.

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh on both points

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

+ Josh

From Jeri (P) Student Borrower (she/her) to Everyone:

+ Josh

From Justin (P) Service Members/Veterans to Everyone:

+1 Josh on all points

From Marjorie (P), Four Yr Publics (she/her) to Everyone:

+1 Josh

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

Joe's cam is off that's why

From Joe; P, State AGs to Everyone:

+1 Bethany

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

+1 Bethany (and also count for IDR cancellation too)

From Joe; P, State AGs to Everyone:

Forgot to turn my cam back on after the break -
apologies!

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

Just want to make sure that the pause to repayment during the determination of the validity of the BDR claim applies to both individual borrowers who submit a claim, and to those in the group process. As well, I would support no interest assessed during the period of review.

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

+ Persis on IDR too!

From Jaye (P) - FFEL agencies to Everyone:

Re: forbearance: does "all loans" including FFEL? if so, and the interest limitation applies to FFEL, this has implications for FFEL program and regs because there is no current subsidized forbearance.

From Jessica (P), Proprietary Schools to Everyone:

I am subbing back in for Carol.

From Joe; P, State AGs to Everyone:

Is this section retroactive as to discharge of the students' loans?

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

My alternate will be on for the rest of today.

From Kayla FMCS to Everyone:

Thanks David.

From Suzanne Martindale (A) state regulators to Everyone:

Suzanne here now for state regulators

From Jessica (P), Proprietary Schools to Everyone:

Does the Department intend to use minor program

compliance findings, like miscalculating R2T4, as evidence to support a group process BD discharge?

From Jessica (P), Proprietary Schools to Everyone:

+1 Daniel

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

Greg will be subbing in now :D

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

Joe, why is the language limited to "making of the loan" rather than the five standards before?

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

Highly supportive of this proposal.

From Justin (P) Service Members/Veterans to Everyone:

We support this proposal as well.

From Suzanne Martindale (A) state regulators to Everyone:

+1 to joe's solution for incorporating state standards

From Michaela [P] Ind. Students to Everyone:

Can we have a 2 min break instead of a walk through?
:)

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

^

