

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
AFFORDABILITY AND STUDENT LOANS COMMITTEE
NEGOTIATED RULEMAKING SESSION 3, DAY 5, MORNING
December 10, 2021

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

P R O C E E D I N G S

MS. JEFFRIES: Good morning, everyone, I am Cindy Jeffries. I will be the FMCS facilitator this morning. I welcome you all back to session three, day five. With that in mind, what I'd like to do is, first of all, remind everyone that since this is day five of the final session, there is no public comment today. So let's proceed right into our roll call. I will call the constituency represented, then the primary and the alternate. If you could just acknowledge your presence, it'd be greatly appreciated. So for dependent students, we have Ms. Dixie Samaniego. Dixie, have you joined us yet? Okay, she has not, her alternate, Mr. Greg Norwood will not be here today. We'll circle back to Dixie at the end of roll call. Independent students, Ms. Michaela Martin.

MS. MARTIN: Good morning. I'll be on camera shortly.

MS. JEFFRIES: Okay, great, thanks Michaela. And alternate, Dr. Stanley Andrisse.

DR. ANDRISSE: Morning, everyone.

MS. JEFFRIES: Good morning, Stanley. Student loan borrowers, Ms. Jeri O'Bryan-Losee.

MS. O'BRYAN-LOSEE: Good morning, everybody.

MS. JEFFRIES: Good morning. And Ms. Jennifer Cardenas.

MS. CARDENAS: Buenos Dias. Good morning, everyone.

MS. JEFFRIES: Good morning. Legal assistant organizations that represent student and/or borrowers, Ms. Persis Yu.

MS. YU: Hello. Good to be here today.

MS. JEFFRIES: Good morning, Persis. And alternate, Mr. Joshua Rovenger.

MR. ROVENGER: Morning, everyone.

MS. JEFFRIES: Good morning. U.S. military service members, veterans, and groups representing them, we have Mr. Justin Hauschild

MR. HAUSCHILD: Hi folks, pleasure to be here with you on the final day.

MS. JEFFRIES: Good morning. And Ms. Emily DeVito.

MS. DEVITO: Morning, happy Friday.

MS. JEFFRIES: Good morning. Same to you. For states attorney general, Mr. Joseph Sanders.

MR. SANDERS: Morning, everyone.

MS. JEFFRIES: Good morning. And Mr. Eric Apar.

DR. APAR: Morning, everyone.

MS. JEFFRIES: Morning. State higher education executive officers, state authorizing agencies and/or state regulators of institutions of higher education and/or loan servicers. Mr. David, or Dr. David Tandberg. Sorry, Dr..

DR. TANDBERG: No problem. Thank you, Cindy. Happy to be here.

MS. JEFFRIES: Thanks. And Ms. Suzanne Martindale.

MS. MARTINDALE: Good morning.

MS. JEFFRIES: Good morning.

Individuals with disabilities or groups representing them, Ms. Bethany Lilly. Hard to combine that name.

MS. LILLY: Oh, it's fine. I get called a lot of things. Good morning, everybody. John will not be joining us today Cindy so, or at least not until this afternoon.

MS. JEFFRIES: Okay, great. Thanks for sharing that. Financial aid administrators at postsecondary institutions, Mr. Daniel Barkowitz.

MR. BARKOWITZ: Happy holidays and good morning, everyone.

MS. JEFFRIES: Good morning. And Ms. Alyssa Dobson.

MS. DOBSON: Morning.

MS. JEFFRIES: Two-year public institutions of higher education, Dr. Robert Ayala.

DR. AYALA: Good morning, ladies and gentlemen.

MS. JEFFRIES: Hi, Bobby. And Dr. Christina Tangalakis.

DR. TANGALAKIS: Good morning.

MS. JEFFRIES: Good morning, again. For state department of corrections, Ms. Anne Precythe.

MS. PRECYTHE: Morning. Happy Friday!

MS. JEFFRIES: Good morning! Four-year public institutions of higher education, Dr. Marjorie Dorime-Williams.

DR. DORIME-WILLIAMS: Good morning, everyone.

MS. JEFFRIES: Good morning. And Ms. Rachelle Feldman. Okay, Rachelle's not with us at this point. Moving on, private nonprofit institutions of higher education, Ms. Misty Sabouneh.

MS. SABOUNEH: (Inaudible)

MS. JEFFRIES: Good morning, Misty. And Dr. Terrence McTier Jr..

DR. MCTIER: Good morning, everyone.

MS. JEFFRIES: Good morning. Proprietary institutions, Ms. Jessica Barry.

MS. BARRY: Good morning, everyone.

MS. JEFFRIES: Morning. And Dr. Carol Colvin.

DR. COLVIN: Morning.

MS. JEFFRIES: Morning. Minority serving institutions, Ms. Noelia Gonzalez.

MS. GONZALEZ: Good morning.

MS. JEFFRIES: Good morning. Family federal education loan lenders and/or guarantee agencies, Ms. Jaye O'Connell.

MS. O'CONNELL: Morning. TGIF.

MS. JEFFRIES: Good morning. Mr. Will Shaffner.

MR. SHAFFNER: Good morning. Happy Friday, everyone.

MS. JEFFRIES: Good morning. Accrediting agencies, Dr. Heather Perfetti.

DR. PERFETTI: Good morning, everyone. Good to be back today.

MS. JEFFRIES: Good morning. And Dr. Michale McComis.

DR. MCCOMIS: Good morning.

MS. JEFFRIES: Good morning. And let's circle back to dependent students, Ms. Dixie Samaniego.

MS. SAMANIEGO: Good morning,

everyone. Happy Friday.

MS. JEFFRIES: Good morning, Dixie. And it's still our understanding that Greg will not be here today, correct? Okay. And then we have U.S. Department of Education, Dr. Jennifer Hong.

MS. HONG: Morning, everyone. Happy Friday.

MS. JEFFRIES: Good morning. We have two non-voting advisers present, Ms. Heather Jarvis for PSLF.

MS. JARVIS: Good morning.

MS. JEFFRIES: Good morning. And Dr. Rajeev Darolia on economic and higher education policy and data.

DR. DAROLIA: Good morning.

MS. JEFFRIES: Okay. There are actually three non-voting Department Office of General Counsel officials. I believe we have have Todd Davis present this morning, correct?

MR. DAVIS: Yep. Good morning, everyone.

MS. JEFFRIES: Okay. Did I miss anyone? Yay. Alright, so with roll call completed and announcements completed, we will pick up where we left off yesterday. And on the Borrower Defense, so I will

turn it back over. Oh, Josh, you have a question.

MR. ROVENGER: Thanks. I just like to call a very quick caucus with everyone except proprietaries and the Department. I don't think it'll take more than 5 10 minutes.

MS. JEFFRIES: Okay, great. So if we could go off live stream, why we set that up. Welcome back, everyone. Are we prepared to move on to BD at this point? Seeing no. Okay. Jennifer, we will turn it over to you.

MS. HONG: Okay. So if we could queue the BD document we were working on yesterday, that's the main rule. We left off, I believe on discharge. I think I finished presenting on this piece. Are there any more questions about how we've framed discharge here? Section 34 CFR 685.408. Okay, if not, we can proceed to the next page. And then we can go all the way to recovery. There we are, page 42. Okay. This is a recovery section. Basically, we we haven't changed anything between from here on out in the rule, we've not changed anything under recovery or the other sections regarding cooperation by the borrower transferred to the Secretary the borrower's right to recovery and then the severability text. But we can go back to recovery and I can just briefly summarize again for loans disbursed on

or after July 1st, 2023, the Department will collect from from school on the case of a closed school another principal from common ownership, the amount that the Department discharges. We may have the option to not collect if the cost of collecting would be more than the amount to recover. Any outside limitations period, preexisting settlement agreement, or we collected in a separate proceeding. Again, just to reiterate, the limitations period is no later than 6 years from borrower's last date of attendance. And the limitations period does not apply if the Department officially notifies school of the BD claim prior to the end of the limitation period. Any questions on recovery?

MS. MACK: Jessica, please go ahead.

MS. BARRY: Sure. So all of these components together form one Borrower Defense framework. And in the past, when the Department approved group discharges, it announced those decisions publicly. If an institution does not have an opportunity to respond before the Department discharges loans, a public announcement could result in undue reputational harm for the institution. Indeed, approval of large Borrower Defense group discharges could create panic at institutions, as students may fear that Borrower Defense approval will cause the institution to close. The

Supreme Court has previously recognized that a person's reputation is a protected liberty interest under the federal due process clause. And we think that separating these processes without providing institutions an opportunity to respond could result in reputational harm for institutions, thus denying them due process. All of these sections are interrelated, and I can't divorce one from another for purposes of my vote.

MS. JEFFRIES: Thank you, Jessica.

Josh.

MR. ROVENGER: So I'll just respond quickly to that before moving on to what I wanted to say, which is I think the law on reputational harm is far more complex than the proprietary institutions have alluded to there, but it's neither here nor there. So I do agree that these BD regs, they are one one package, and I agree with the sentiment that the Department is what's driving this specific provision, I think that a school should be held accountable when in the instances in which a Borrower Defense would be granted. I do, as I've expressed before, have concerns about the unintended consequences of the way that this section is structured and in particular the the possibility that it could either delay or preclude Borrower Defense relief at all. At the end of the day, though, I think the

Department has done a really good job with the Borrower Defense regulations as a whole. And moving forward, I would continue to urge the Department to consider this section carefully and to consider whether it should add more discretionary components to this section, not only for the unintended consequences for the borrower, but just more generally the unintended consequences for the regulations.

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

DR. TANDBERG: Yeah, I, just one, well, I realized we plus one in the comments, those aren't public right now, and so I want to go on the record supporting what Josh said. I would similarly encourage the Department to consider those things carefully as they move forward in drafting final regs.

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

MR. SANDERS: Yeah. Two quick points. You know, the the I've caucused with my constituency on this point and we're supportive of the Department's discretion to make a decision that works for them in terms of administration of Borrower Defense. We would encourage the Department to consider this language in

through the lens of providing maximum relief to borrowers. We think it's important that student loan borrowers are not burdened by student loan debt, and we don't want competing considerations with the schools to impede that. So that's the lens that we view it through, and we encourage the Department to look at this language through that lens. That said, we're supportive of where the Department came down on this. As to the reputational harm piece, I don't have any particular concerns but as Jessica said, you can't, generally speaking, if the Department is making truthful statements about actions that they took, I don't see any due process issue there. We often get pressure from entities that we're investigating on press releases and what we're going to say in press releases. But you know, we we have discretion to make truthful statements about actions that we're taking. So that's not a particular concern to us.

MS. JEFFRIES: Thank you, Joe. Dixie.

MS. SAMANIEGO: So I've spoken to this from the first session since proprietary institutions have also continuously said that reputational harm is something that they're worried about. And I've said this before, and I'll say it again last day of neg reg and I'll reiterate that if an institution does something

wrong and it's truthful, there's no reputation to protect point period blank. And I'm generally supportive of the neg reg overall. And so, yeah, I just had to say that one more time, because there's no reputation to protect if an institution is harming and putting in jeopardy the future of students, and that should not be a concern for any of the negotiators. And while it is, I will reiterate that there's just no reputation to protect or any reputation to harm if an institution is wronging students and I just don't think that for me, that's any concern of mine. And I've said it before, and I'll say it one last time that for all the negotiators here, I think we've all generally done a great job of centering students. But in this one thing in reputational harm, I just I just don't see the issue here. So I just wanted to say that one last time on the last day of neg reg.

MS. JEFFRIES: Thank you, Dixie.

Anyone else? Okay. Jennifer.

MS. HONG: Yeah, I'll just quickly respond to Josh's point. I think the Department wanted to balance the concerns that you raised while stating assertively the Secretary's responsibility in collecting, recovering from institutions while preserving flexibilities and giving (inaudible)

flexibility to the Secretary. We believe that this language conveys that. But we do appreciate your comments. For Jessica, I just wanted to kind of loop back. I know you said that given the interconnectedness of of the issues here, we are taking them up on three different votes. I just wanted to say, was your comment suggesting that on any of the way that we've divided of the three issues, meaning the adjudication of the actual claim separate from the recovery piece and separate from everything the reconsideration piece that you would be voting against all three?

MS. BARRY: Yes, that is what I meant. I just feel are our concerns have not been addressed and I just can't support it at this time in any of those areas.

MS. JEFFRIES: Okay, thank you. Is there anything else you need to walk through on on this document, Jennifer?

MS. HONG: Yes, I'll just briefly go, so after recovery and you can scroll down. We have cooperation by the borrower. This is all, nothing has changed between two and three, this is all kind of standard template language that we have in the regulation. And then after that, 411, transfer to the Secretary of the borrower's right to recover against

third parties. Again, same language that we brought up in session two. And then the severability section. I'll take questions on those remaining issues and then I'd like to circle back on the edits that were proposed, the minor kind of edits, three edits that were proposed yesterday in the document. As well as I was, I realized we never went over the aggressive and recruitment document, and I want to circle back to that document, which will be pertinent to the federal standard piece. And the issue six as we're taking it up for consensus.

MS. JEFFRIES: Okay.

MS. HONG: Okay, great, if we could queue back the document, Aaron, and start with page 32, I think that's the first, got it. And these were again captured by our, our eagle eyes on the committee, Daniel. 32, I'm sorry, actually, we had some right before, I think page 28. I'm sorry, yeah, right here. So these are these are just the cross reference actions. Purely technical nature that Daniel had pointed out, so we've made those corrections here. Okay, scroll down. Okay, now, this is the language on limitations that Misty put forward. Well, raised as a concern, and then our Office of General Counsel suggested this remedy and I think that you were okay with that Misty. Excellent. And then the next one is to go down to the

reconsideration section, which is 407, oh yeah, more edits there right above the green highlight was above were just more technical cross reference edits. Yes, there we go. And then we can go down. Here we go under reconsideration. Yes, reconsideration applies both to individual applicants and group borrowers. So we've deleted group to make that clarification. Okay, let's keep scrolling down through reconsideration. Okay, just this was raised by Justin, and just to clarify this this is a separate section F. So it's not, it's just it's it's just to reassert, excuse me, the Secretary's authority to reopen a Borrower Defense application that was partially or fully denied at any time. Excuse me, Justin had suggested that we strike the language "after any time" and we've struck in that language. And I believe that is the last edit on there. And are there any questions? So basically we took all the suggestions made by this committee yesterday on those edits. Okay, if if there are no other questions, I'd like to circle back to the aggressive recruitment document. This is a two-page document, and I'm happy to go over that with you. And this is proposing a new subpart R under section 668. So we will cross-reference it in the Borrower Defense regulations. Okay, this is a new sub part, establishing what constitutes aggressive and deceptive

recruitment tactics. Okay, so basically, we're defining aggressive recruitment and the types of aggressive recruitment under this section to include demand demanding or pressuring to make enrollment or loan decisions immediately, falsely claiming spots are limited, taking advantage of a student's lack of understanding of the process to pressure the student, discouraging student perspective or discouraging students or prospective students to consult with independent parties, failures to respond to students requests for more information, obtaining information about the student or prospective student through aggressive means, falsely presenting an individual as a neutral party, for example, as an academic advisor or counselor, the use of threatening or abusive language, repeated unsolicited contact, and the use of emotional manipulation. And we modeled this section under the misrepresentation document that we list. We reviewed it earlier and again, this is another basis for a claim under the proposed BD regulations. So I'm happy to take any questions or comments on this document.

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

MR. BARKOWITZ: I just want to call out my appreciation of the Department's movement on this

to a standard that is measurable and objective objective. So I had concerns when we originally saw the language, and I'm very happy with where we ended up. So I just want to comment and appreciate the Department for for making something that is measurable and clear here. So thank you.

MS. JEFFRIES: Okay. Thank you.

Daniel, any other comments? Joe.

MR. SANDERS: Yeah. So this is obviously different than the language that we submitted. That being said, I think the Department did a good job of laying out some examples here of aggressive recruitment. And, you know, the fact that these are examples and not the entire list of aggressive recruitment means that this is something that the state attorneys general can live with.

MS. JEFFRIES: Thank you, Joe. Dixie.

MS. SAMANIEGO: Just wanted to say that I'm super appreciative of the Department for taking into consideration what I was like my own story and my personal experience I shared in session one and putting it into this definition. I think also with what Daniel said, I think it's measurable. I think it's really good that there were examples. So I'm really appreciative of the Department.

MS. JEFFRIES: Thank you, Dixie.

David.

DR. TANDBERG: This was an area of particular concern to state higher education agencies as they are an entity that formally receives complaints from students on issues like this. We had, you know, under Joe's leadership, worked on developing that list of, well the document on aggressive recruitment that he had shared. There are pretty distinct differences, but I think this approach is something that would give the Department the ability to effectively identify and deal with aggressive, improper recruitment. And I think is also a nice guide for states as they deal with it at their level and so in support of it and appreciate the efforts of the Department.

MS. JEFFRIES: Thank you, David.

Justin.

MR. HAUSCHILD: Yeah, thanks so much. I'll echo what has already kind of been conveyed here, appreciate what the Department's done. I think from our perspective, we would have liked to see maybe a few more items included for demonstrative purposes. We submitted some additional language on aggressive recruitment, and I won't belabor the point in terms of the specifics there, but broadly supportive of what the Department's

done here and want to say thank you. So.

MS. JEFFRIES: Thank you, Justin.

Anyone else?

MS. HONG: Just to jump in. We do appreciate all the feedback that we received on this section, I think you'll see both that we've taken the concepts in our conversations with Joe and state AGs into consideration. We did want to include more kind of exemplary language per Daniel's concerns. And none of this would be possible without the courage and the bravery of coming forward in terms of students and borrowers like Dixie and our public commenters. So that is reflected here as well. So I appreciate the work that went into this.

MS. JEFFRIES: Thank you, Jennifer.

Joe.

MR. SANDERS: Yeah, I just want to briefly second what Jennifer said about the public commenters. This is the type of stuff that state AGs see every day in our consumer complaints, and I think it was really powerful for everybody else to see that. I know that the rest of us probably hear from students as well, but it was good for me to have those views expressed to the group and, you know, it can be overwhelming sometimes to get those complaints day in and day out and

know that you can't help every every person. And so I just think that that the public commenters really added to the whole rule making, and I want to thank the Department and the facilitators for having them.

MS. JEFFRIES: Thank you, Joe. Justin.

MR. HAUSCHILD: Apologies. Struggling with buttons.

MS. JEFFRIES: Oh, okay, no worries. Joe, are you? Okay. Alright, Josh.

MR. ROVENGER: Totally plus one that and agree in future sessions just because I can't leave well enough alone, I think a for-profit borrower and a borrower who is going to the Borrower Defense process would be extremely valuable for the process. But completely agree on the value of public comment here.

MS. JEFFRIES: Thank you, Josh. Okay. Jennifer, I'm not seeing any additional hands for comment. Are we ready to move to consensus? Oh, Daniel. Daniel, your hand kind of blends in with that beautiful orange around your hand today, so if I miss you, I apologize.

MR. BARKOWITZ: No, no, I raised my hand late. I just have one final question as we move to a consensus vote and I want to just understand better. There was something that that Jessica said in her

comment about the public notice. And I'm just trying to get a better understanding of what actually is the procedural process. So there is something in the in the reg text that talks about the Department making a decision in the case of group claims. What is the intention in terms of of notifying publicly either institutions or borrowers or the general public about that decision? So in the case of a large institution that that has acted in bad faith and there is a decision that's made, clearly, the borrowers would be notified the institution would be notified, will there be a public notification other than the notice to the institution and the notice to the borrowers? Or what is the, what is the plan from the Department in terms of sort of notification publicly other than to the borrowers and the institutions?

MS. JEFFRIES: Okay. It looks like the Department may need some time on that one, David or Daniel. Do want to pop that into the chat just to preserve it?

MR. BARKOWITZ: Sure. Yeah, it's not it's not going to change my vote. I'm just curious to understand sort of where the Department's intention is in that regard and trying to help move the conversation forward. But.

MS. JEFFRIES: Okay, appreciate that. Thank you. I want to make note that Emily is coming to the table for veterans and service members. Emily.

MS. DEVITO: Thank you. Just quickly to echo what Justin said, we're happy with the progress, wish we could have seen some more items. And but even some of the items that that Joe had shared, it seemed like there was maybe an intention to combine them into one in order to to include as much as possible. So just to kind of have on the record a concern specifically with excessive contact sort of combining repeated contact and an unsolicited contact and an individual who is has been requested or has requested the institution stop contacting them. By putting them all together, just a concern would be the requirement to meet all three in order to have that be aggressive recruitment when each one individually, as an or really really is aggressive. I shared at the last session working on an institution that used the word unsolicited as a caveat to not have to meet the regulation, the DOD regulation, of three times. So just want to flag that. Hope that this can still be impactful and deter aggressive recruitment of any three of those types.

MS. JEFFRIES: Thank you, Emily, appreciate it. Any additional hands? Okay. Jennifer.

MS. HONG: Yeah, just a quick reaction to Daniel's question. I think our ultimate goal would be to have some kind of public notification through our website by publishing the findings. But we'd be interested in hearing your thoughts on that.

MR. BARKOWITZ: And Jennifer, I'm happy to provide them separately again. For me, it's not, it's not this is not a make-or-break issue, so I'm happy to provide my thoughts and guidance. But but it's not going to change my outcome vote. But but I'm respectful of Jessica's concern around the reputational risk, so I understand that and through public notice will will will potentially cause that, but but I don't think it's necessarily a make or break item, but I understand it. So thank you for that.

MS. JEFFRIES: Thank you, Jennifer and Daniel. Michaela. Oh, Michaela before we start, can I just note that Justin is going back to the table for veterans and service members.

MS. MARTIN: Yeah, and Daniel, I apologize to you for this, but I I'm going to say that I do not have respect for the reputational harm of these proprietary institutions. Truthfully. It's got to go somewhere, right? People need to be aware of whether or not a school is doing these kinds of things. And when we

think about again, power, and and oppressive systems, right? Proprietary institutions have quite a bit of resources in power like that has been a historic thing, like they have plenty to go and lobby at the Capitol and take all of their lawyers and do all of the things, right? Like this is the thing that keeps happening on the backs of students who don't have degrees and have a ton of student debt. Like particularly on single and student parents and other marginalized communities. So like while I understand the concern of reputational harm, I do not have respect for it.

MS. JEFFRIES: Thank you, Michaela.
Josh.

MR. ROVENGER: Yeah, so similar to Michaela's point, I just want to be careful about how we, Daniel I take your point, but I want to be careful about how we describe the causation there. Because I don't think it's the public release of the findings that's causing the reputational harm. I think it's the school's bad actions that are causing them reputational harm. And so I just want to be very clear as to that as to that connection.

MS. JEFFRIES: Thank you, Josh.
Justin.

MR. HAUSCHILD: Yeah, thank you. And I

wasn't necessarily going to raise this, but I I've been a little bit concerned, particularly by some of the concerns raised by proprietary institutions about the framing here. And this is maybe a somewhat simplistic view on my part, but I'm really trying to keep in mind that these are Borrower Defense regulations and not institutional defense regulations with regard to allegations of impropriety or potential reputational damage. So I understand that's somewhat simplistic, but really, for me, that's a helpful framing and remembering the very real purpose of these regulations and what what they're intended to do here. So again, I just want to thank the Department for what they've done with these regulations. They're a massive improvement over where where we are now. They're going to help untold numbers of students, including service members and veterans that have been defrauded by bad actor institutions. We think these this regulatory text very clearly reflects the voluminous input by not just the negotiators here, but members of the public that have provided comment that they're well-reasoned. And while they might be able to be, we think they probably could be improved in certain areas, we certainly won't be standing in the way of of massive improvement here. So thank you wholeheartedly to the Department.

MS. JEFFRIES: Thank you, Justin.
Marjorie.

DR. DORIME-WILLIAMS: Thank you, everyone, for your comments, and I just I think it's important and I want to play specifically to some languages by Jessica yesterday about this issue of equity. In particular marginalized students including immigrants and women of color. Yes.

MS. JEFFRIES: Marjorie, you're you're coming in and out as garbled. I know you were having internet issues earlier. It might help if you turn off your camera as far as the garbling for what you want to say.

DR. DORIME-WILLIAMS: Is that any better?

MS. JEFFRIES: It appears to be, yes.

DR. DORIME-WILLIAMS: Okay. Okay. So I just again, I want to point to this issue of equity specifically in the comments from Jessica yesterday. And I think it's really problematic when we talk about equity for institutions, when many of the institutions that have been engaged in this type of behavior have targeted marginalized students. And that's like Michaela said, students of color, women, single parents, and veterans. And so I just want to again commend the

Department because when we came into this, right, some of the issues addressed equity issues in student loan affordability and borrowing. And so I think it's important that we keep in mind that the folks that we're trying to make this better for are not institutions. Yes, we need to consider what's reasonable. But at the end of the day, this regulation is about how do we make sure we're serving students and how do we make sure that we're serving students who are often marginalized and targeted and victimized honestly by institutions that are not engaged in proper behavior by servicers that are not engaged in proper behavior? And so I just I want to make sure that when we're using the word equity, we're using it appropriately.

MS. JEFFRIES: Thank you, Marjorie. If you want to turn your camera back on, that's fine. Appreciate it. It did help a lot. Any final comments? Michaela.

MS. MARTIN: Alright. Just Marjorie, thank you for being so awesome. But I did also want to point out that the only institutional rep that currently has an issue with this is for-profit colleges. And if that alone doesn't speak volumes, I don't know what else possibly could, right? Because if you're not an institution committing fraud against your students or

harming your students, then you don't really have a lot to worry about. And if if that's a systematic thing that's occurring within your industry, then I think that you must reevaluate the practices that are occurring because they aren't occurring at the same rate everywhere.

MS. JEFFRIES: Okay. Thank you, Michaela. Alright. I think with that Jennifer, we're ready to move to consensus on the three individual issues. Do you have a preference with which one you want to start issue six, seven or eight?

MS. HONG: So we could just take them in order if we if we're beginning with issue six, as a reminder, that's everything from the beginning up to page through page 35 up to reconsideration, inclusive of the two addendum documents misrepresentation, which is introducing a new subpart F, under 34 CFR 668 and then the third document we just reviewed, which is aggressive and deceptive recruitment, a new subpart R in 34 CFR 668 and those are part of the federal standard. We're taking all that for consensus on issue six for BD.

MS. JEFFRIES: Okay, is everyone clear on what you are taking consensus on? With that, if we could see your thumbs and I will read out the positioning of those. Turn chat off so I have bigger

one. Jessica, is thumbs down. Jeri, is thumbs up. Jaye, thumbs up. Daniel, thumbs up. Josh, thumbs up. Heather, thumbs sideways. Bethany, I can't see your thumb. She is a thumbs up. Dixie, thumbs up, Joe, sideways thumb. Christina, thumbs up. Anne is not not weighing in and that will not hold up consensus. David is a thumbs up. Misty is a sideways thumb. Justin, thumbs up. Noelia, thumbs up. Marjorie, thumbs up. Michaela, thumbs up. Jennifer, thumbs up. Alright, I think I got them all. So as is the process defined and the protocols, I'm going to ask dissents to add any additional comments. Serious reservations that they haven't already stated and to offer solutions that would get you from the thumbs down to a sideways thumb. So with that, Jessica.

MS. BARRY: Sorry, had to find my mute button. I have nothing new to share, I just think we're too far apart on these issues.

MS. JEFFRIES: Okay, so you have nothing new to share, and that includes resolutions?

MS. BARRY: I do not at this time.

MS. JEFFRIES: Okay. Okay, so consensus is not reached on issue six. We will table that if time allows today, we'll circle back, but you have a pretty full robust agenda as it is. So Jennifer, issue issue seven issue papers seven.

MS. HONG: Yes, thank you, Cindy.

Issue seven is post adjudication where we've included starting on page 36, the new reconsideration process, and then it'll take us through discharge, how we're going to deal with discharge amounts and that table with examples that we provided all the way through page 41 up to recovery. That's issue seven on BD.

MS. JEFFRIES: Okay. Okay. Everyone clear? Alright. Let's see the thumbs. Jessica, thumbs down. Jeri, thumbs up. Jaye, thumbs up. Daniel, thumbs up. Josh, sideways thumb. Heather, sideways thumb. Bethany, thumbs up. Dixie, thumbs up. Joe is sideways thumbs. Christina up. Anne is not weighing in, which will not hold up consensus, David is sideways thumb. Misty is sideways. Justin is sideways. Noelia is thumbs up. Marjorie is thumbs up. And Michaela is thumbs down, or I'm sorry, thumbs up. I apologize. Don't come through the screen, Michaela. Alright. Same questions to dissents as the process, Jessica.

MS. BARRY: (Inaudible) the same answer as the last two. I've shared my solutions and I have nothing new to share.

MS. JEFFRIES: Okay. Thank you. Alright. Consensus is not reached on issue seven. Issue number issue paper number eight. Jennifer, if you could

identify it for us, please.

MS. HONG: Yes. Issue number eight is the recovery piece through the end of the rule. Recovery through the end.

MS. JEFFRIES: Okay. Alright. Let's see the thumbs, please. Okay. Jessica, thumbs down. Jeri, thumbs up. Jaye, thumbs up. Daniel sideways. Josh sideways. Heather sideways. Bethany sideways. Dixie, thumbs up. Joe sideways. Christina, up. Anne not weighing in, won't hold up consensus. David sideways. Misty sideways. Justin sideways. Noelia, thumbs up. Marjorie, thumbs up. Michaela, thumbs up. Jennifer from the Department, thumbs up. Okay. Jessica have to holding true with process, I need to ask you the same questions with a dissent vote.

MS. BARRY: Sure, and I would add that I have nothing additional to add. I've suggested all of my suggestions.

MS. JEFFRIES: Okay, thank you. So consensus is not reached on issue paper number eight. We do have some hands up. Jeri.

MS. O'BRYAN-LOSEE: I just wanted to say thank you to the Department of ED for for making these changes, and also I want to thank the the educational component of what I've learned from the

negotiators about this subject. I came in not knowing a lot about this and I've really, really learned so much. And I just want to say thank you for those of you who took the time to educate me, as well as probably some others about about this process. And I'm very happy for the almost consensus we got.

MS. JEFFRIES: Thank you ,Jeri. Josh.

MR. ROVENGER: Thanks, I'll start just by echoing everything Jeri just said. I agree entirely with that. But what I wanted to come on here to say was that I think the language we use to describe that vote is really important that there was consensus here, except for the for-profit industry. And so to uplift the points that Michaela and Marjorie were making before, there is consensus across borrowers, across four-year schools, two-year schools, except for the for-profit industry. And now that we've had that vote, it's very clear that they are the only ones standing out here. And I don't think that's a surprise when you look at the statistics, some of which we've discussed before. But this is an industry that takes in tens of billions of dollars in federal student aid and spends less than 25%, on average, on its students. That accounts for between 9 and 13% of all students, but makes up over a third of student loan defaults that accounts for 98% of the loan

cancelation applications. And to Marjorie's point, that specifically targets the most vulnerable people, and that yields 70% of black borrowers who attend for-profit schools to default within 10 years. So I think I would urge the Department as it's moving forward to consider this consensus, except for the for-profit industry and to move forward with a very strong Borrower Defense regulation that that has been put forward.

MS. JEFFRIES: Thank you, Josh. David.

DR. TANDBERG: My message was going to be somewhat similar to Josh's. I think it's rather outstanding that we reached consensus sans one. That's pretty remarkable. I think it, I hope the Department treats it as essentially consensus and that the language they resist lobbying, they resist other interests that may try to push them away from the strong language that they've developed and to implement it with fidelity. I think that's the message from these constituents. It's a very strong and clear message to the Department, and so I encourage it to act accordingly.

MS. JEFFRIES: Thank you, David, Joe.

MR. SANDERS: Yes, I'm here.

MS. JEFFRIES: Okay.

MR. SANDERS: State attorneys general just want to thank the Department expressly for the

inclusion of the state law standard. This is very important to us. We really appreciate you putting it in there. We think it's an acknowledgment that state law has really brought problems with for-profits to light, has provided borrowers with relief, and will continue to protect borrowers going forward. It's very important for us to have the state law standard in these regulations, in part because, many schools, once we take action, will seek refuge in bankruptcy, in receiverships, and will not have the financial resources to make borrowers whole. That means that relief on their federal student loans is often the only avenue that borrowers have for relief, and so allowing the claims that we bring against the schools, to then be applied as a defense to their repayment of their loans is extremely important for borrower relief. Again, thank you to the Department for inclusion of the state law standard. It's such an important step forward.

MS. JEFFRIES: Michaela.

MS. MARTIN: Yeah, just real quick. I really want to tell so like, you know, we've had a lot of really great public commenters, but also Dixie and I met with with different groups of of students who have had a Borrower Defense, including with Ms. Jessica Barry, and I just feel a lot right now for the folks

that (inaudible) and was really, we're really hoping that this was going to be like a way out and just not hopelessness that I know that is really easy to come by and that I hope that students watching like, still have hope like this isn't like it.

MS. JEFFRIES: Thank you, Michaela. Dixie.

MS. SAMANIEGO: I'll try my best not to get emotional, but yeah, I really want to thank the folks who are going through BD who met with Michaela and I to answer all our questions in great detail. It really shaped, you know, Michaela's and I's advocacy on this topic and it was super helpful. And I'm trying really hard not to cry. But yeah.

MS. JEFFRIES: Thank you, Dixie. David.

DR. TANDBERG: First of all, I just want to acknowledge the important and sincere emotions that have been shown here. It shows a lot of bravery, but also it's a nice reminder of the work that we're doing is it has real implications for real people in tremendous ways. And I think the Borrower Defense in particular has the potential to at least somewhat correct harms that have been done and and provide people hope and relief in ways that are pretty dramatic. So

thank you for sharing those feelings and showing us those true, sincere emotions. It's it's brave and it's helpful. I also want to second publicly on the record what Joe said, the state law standard is just tremendously important to our members, the state higher education agencies, and it's a dramatic improvement over what has existed. I think that in particular, I encourage the Department to include the language as it is now in the final rules that they submit for public comment. That exclusion would be would be horrible. And so just know that we we strongly support that and thank you for including it.

MS. JEFFRIES: Thank you, David. At this point, we are going to take a 10 minute break when we return from that, we will be moving on to predispute arbitration. So let's plan on being back here, I see 11:04, let's say, 11:15. Welcome back, everyone, I hope you all had a chance to get refreshed and get up and moving a little bit. Appreciate the promptness. So Jennifer, if the Department is ready, I think we're ready to move on to issue nine, predispute arbitration.

MS. HONG: Great, thank you, Cindy. Aaron, if we could cue the document, the proposed regulatory tax for issue nine, predispute arbitration and class action waivers. Just as a reminder, this is

reinstating the ban on predispute arbitration agreements and class action waivers. There's basically no no substantive changes between two and three, and we did catch a technical change that we needed to delete on page one at the bottom. If we were to reinstate this language, we would not need H. And that is, so we've deleted all of H. Otherwise, everything is the same as you saw it in session two.

MS. JEFFRIES: Okay. Thank you, Jennifer. So if you could stop sharing, Aaron, we will open it up to the committee. Anyone have any? Josh.

MR. ROVENGER: Thanks. So, you know, as we've stated before, we are in full support of the Department reinstating this regulation, it is a critical tool for students to hold schools accountable. We also understand the reluctance to include any additional provisions in in the regulation in light of past legal decisions regarding the regulation. So we would just urge the Department in subregulatory guidance or in practice to consider adopting some of the proposals that we put forward before, including requiring schools to submit court records to the Department, so long, if a any party is asserting that a Borrower Defense claim is at issue, to making clear that the notice language to students and the language in the agreements with

students has to precisely mirror what's in the regulation. And then three, making sure that students are third party beneficiaries of the regulation. Again, though, generally just wanted to reiterate our support for the Department's decision on this regulation.

MS. JEFFRIES: Okay, thank you, Josh. David.

DR. TANDBERG: Yeah, I too, this was another area of importance to state higher education agencies again because they're involved in the consumer protection work. And so this was a priority, I think, I too appreciate the efforts by the Department in the language as it now stands. It's something that I and my constituency can support. I do think that it could be pushed forward through, as Josh described, guidance and practice and application, and I encourage the Department to consider the points that have been raised by different members of the committee as they implement the regulation. And again, not sure how the vote will go, but I imagine near or complete consensus, and I hope the Department, either way, we'll treat it as consensus language.

MS. JEFFRIES: Thank you, David, Joe.

MR. SANDERS: Thank you. State AGs want to voice support for the pre arbitration language,

we think it's important that students are able to pursue their own claims. Government bodies should not be the only entities that are policing conduct here, we can't do it all. And we think it's important that students have the ability to pursue their own claims in court. Finally, I would second Josh's suggestion on third party beneficiary language in whatever format the Department deems appropriate. Thank you.

MS. JEFFRIES: Thank you, Joe. I want to make note that Carol is in at the table for proprietary institutions. Michaela.

MS. MARTIN: Yeah, I just, because I really like saying the quiet part out loud, want to flag this will probably very well could be another area where its proprietary institutions that are going to act as a block to consensus. And that, like I personally now, have gone to three different types of institutions. As a high school drop-out so I started community college, went to a state university and now I'm at a private nonprofit graduate law program. And none of these institutions have required me to sign away my right to due process. So I don't want to use that language because in the prior conversation, just moments ago, the issue was surrounding access to due process. And now I can imagine, unless I'm like, totally off base, which I

hope I am, now we're going to want to for for-profit industry is going to want to deny students their right to access due process. And how that contradiction is going to look and come across I think it's important as we move forward, and I just really hope that I'm wrong (inaudible) Optimism constantly, and then I cry, this is there's, that's it.

MS. JEFFRIES: Thank you. Michaela, Justin. Or Jennifer, did you have something you wanted to say?

MS. HONG: Yeah, I just realized I was remiss in my introduction. It is, we're restating the ban on these items. But remember what is new in this rule making in terms of language is that we are also requiring the submission of arbitral and judicial records. And I believe that was something that was raised during the session. So that just didn't change between two and three, but that is new for 2023 and with the ultimate goal of publishing it in a centralized database.

MS. JEFFRIES: Thank you, Jennifer. Justin.

MR. HAUSCHILD: Thanks. I actually probably don't even need to speak here, considering the what has been said by Michaela and Joe and others, but I

just wanted to reiterate our very strong support for this. It's our view that students shouldn't be forced to give up other legal remedies they may have and this accomplishes that or prevents that. So. Thank you so much.

MS. JEFFRIES: Okay, thank you, Justin. Further comments? Seeing none. Oh, Carol.

DR. COLVIN: We have reviewed this with our constituency and appreciate the input of the caucus from the last session. The use of predispute arbitration provisions and class action waivers isn't uniform across career schools. Also institutions, including some large online nonprofit universities, use these clauses to ensure effective resolution of individual claims. While at the same time it mitigates the risk presented by plaintiffs' lawyers in some situations. Arbitration of individual claims ensures a student that was harmed will get their claim heard in a relatively time and cost effective way, and that their recovery is tailored to the actual harm that they experienced, which is important. For these reasons, these provisions are used in scores of consumer facing industries. Putting aside the merit of those clauses, after reviewing the matter and consulting with counsel and our constituency group, I would question if the

Department has the authority to enact the provision. As the Department is aware, there are numerous court decisions holding the prohibitions on predispute arbitration agreements and class action waivers violating Federal Arbitration Act. Congress's commitment to the Arbitration Act was restated in 2017 when it passed a joint resolution signed by the President nullifying the Consumer Financial Protection Bureau's rule on class action waivers and aspects of arbitration. While the arbitration provisions in the 2016 Borrower Defense to repayment rule was upheld in court, it was upheld prior to the Supreme Court's 2019 decision in Epic Systems vs. Lewis. In light of that case, the Department in 2018 said it didn't have the authority to impose restrictions on predispute arbitration clauses and class-action waivers. I'm aware of no new authority that undercuts this recent precedent. Also, predispute arbitration in no way prevents a student from being eligible to file a Borrower Defense claim and to pursue relief in those situations. Nor does it prevent a student from filing a claim with the Department of ED through the FSA feedback system or through the VA system and other regulatory systems, which we support and encourage students to use when appropriate. Because of this, I would have to be a no vote, as we wouldn't

support something that appears to violate federal statute and Supreme Court precedent.

MS. JEFFRIES: Thank you, Carol. Josh.

MR. ROVENGER: Thanks. So just want to tick through some of those talking points. The first being that it's more cost effective and efficient for students. I mean, again, I emphasize this before, the reason for that is because students have virtually no right to discovery or opportunities to actually vindicate their case in arbitration. And I would ask our friends on the for-profit side how frequently you've rejected consumer contracts that have arbitration clauses for that reason. You're essentially forcing students to give up these rights in situations where you're holding all of the power. The other talking point I'll touch on is recovery, which, when you're in arbitration and you're restricting the availability of class actions, you're in many instances cutting off any viable for any viable path for relief without the class action option. And while I think it's interesting that our friends on the for-profit side are now pointing to Borrower Defenses available, I don't understand how they could in good faith say that when they've spent the past three months trying to water down a Borrower Defense regulation. And the final point I'll raise is on the

legal authority side, I want to be very clear that this is not a prohibition on an arbitration bans on arbitration provisions and class action bans. You still have the choice whether or not you're going to include that it's solely a question of whether you're eligible for Title IV funds. And there's nothing in recent Supreme Court jurisprudence which would undermine that, and if there's specific language in the 2018 case that you're aware of, but I would be interested in seeing it.

MS. JEFFRIES: Thank you, Josh. I want to make note that Brian Siegel has joined the table for the Office of General Counsel. Bethany.

MS. LILLY: I just want to verbally back up everything, Josh on this and thinking that this is an incredibly important consumer protection. I am curious, Carol mentioned in her statement that there were some, let me make sure that I'm getting this right, that there were some private nonprofit or private nonprofit schools that use arbitration agreements. I'm just curious who those groups would be. But of course, she doesn't have to answer if she doesn't have a list handy.

MS. JEFFRIES: Thank you, Bethany.
David.

DR. TANDBERG: As far as I'm aware of

the private nonprofits that use these provisions are former for-profits. Those are the ones that come to my mind. But I'd also be really careful about citing the the prior administration as precedent because in most actions regarding federal higher education policy, they were, their actions were major divergence from existing precedent. And so you have to be careful of what your reference point is, and I wouldn't I wouldn't use them on most issues as an effort to establish precedent within a policy area. In fact, they were a major divergence. I'll just leave it there.

MS. JEFFRIES: Okay, thank you, David. Any further comments? Michaela.

MS. MARTIN: Yeah. I'm sorry, I'm just kind of on one about this whole for-profit industry thing because I really tried to hold out hope. I know a lot of folks in this room know like, I was like, no, like, it's fine, but like the fact that like, you know, like I also like could have words in rather than like responding to any concerns, the for-profit rep just read off of something, just read a statement. And I just I think that's so devoid of like, humanness, right? Like, I'm not going to address the fact that we, what is being talked about, I'm just I'm just going to say what I have to say. And also to be very careful when you're throwing

around very legal, complicated arguments in a way that's simple and not the most factual, because that's just really harmful I think in these situations, and I don't think that everything that's been represented by the for-profits in regards to their legal concerns are like factually accurate and just for folks that might be watching at home, I just wanted to flag that. Be careful. Do your research before you believe everything.

MS. JEFFRIES: Thank you, Michaela. Seeing no other hands, Jennifer, are you ready to move forward with consensus?

MS. HONG: Yes.

MS. JEFFRIES: Okay. So at this point, we will be taking a consensus check on issue nine predispute arbitration and class action waivers. If there are dissents indicating that consensus is not reached on under definition, then the dissent will be asked for any further serious reservations and to provide remedies or solutions in an effort to move this forward to get the full consensus. So with that, could I please see your thumbs? Alright. Daniel, thumbs up. Jeri, thumbs up. Heather sideways. Josh, thumbs up. Carol, thumbs down. David, thumbs up. Joe, thumbs up. Jaye, thumbs up. Justin, thumbs up. Bethany, thumbs up. Christina, thumbs up. Noelia, thumbs up. Dixie, thumbs

up. Michaela, thumbs up. Anne, no, no weigh in, does not hold up consensus. Misty, thumbs up. Marjorie, thumbs up. So with that, consensus is not reached as there was one dissent, Carol. Josh, before I get to you, is it okay if I go to Carol? As is process, for you to clearly articulate your serious reservations and offer solutions that might move this towards full consensus?

DR. COLVIN: Thank you. We support the current regulations that are in place that permit a borrower institution to voluntarily enter into a predispute arbitration agreement. We did bring to the table a couple of suggestions, including a reasonable cooling off period and suggested maybe three days so that the borrower would have time and would not feel forced or pressured to go into the student who could potentially borrow, would not feel forced to sign a predispute arbitration agreement and would have time to discuss it with family, friends, and other college access professionals outside of the prospective school. Never to to pressure them to make that decision, but to give them time to reasonably consider it.

MS. JEFFRIES: Okay, thank you, Carol. Josh.

MR. ROVENGER: Thanks. I just want to make two quick points. The first again, I think the way

we discuss this matter is I think we did reach consensus, except for the for-profit rep, that is number one. Number two, I'm thinking about kind of the issues that we've been focusing on and three of them closed school discharge, Borrower Defense, and now predispute arbitration and class action, are three critical pieces to protecting students and holding schools accountable. And on all three of those issues, the through line is that we've reached full consensus except for the for-profit rep. And I just I just want that to be abundantly clear.

MS. JEFFRIES: Okay. Thank you, Josh. And I do understand what you're saying, Josh. I'm when I presented, I'm just merely speaking from the consensus process that any dissents indicate that full consensus has not been reached. Okay? Justin.

MR. HAUSCHILD: Yeah, thanks, and I'll try to be quick. I think, I would just encourage folks to do their own analysis about what's happened here on Borrower Defense and predispute arbitration and and really not just the fact that there is a single roadblock to consensus here in terms of negotiators even standing out among their institutional peers. But but the massive chasm that sits between where they want to be and where everyone else agrees is best for borrowers.

That's really concerning. I would encourage folks to draw their own conclusions about that. And just real quick, this doesn't need to be done, but I have to say, because it was a solution proposed, it's really not a solution. This idea of a cooling off period that you get three days to consider and consult with your close friends, I think that's probably more appropriately explained as, take this, obtain legal counsel, and have a lawyer explain to you the ramifications of these provisions, which is incredibly unreasonable when we're talking about a student trying to enroll in an institution of higher education. So I just I just want to throw that out there, and that's not really a compromise. That's a way for them to get to what is a very extreme position comparatively speaking, when we're looking at where we have functional consensus right now, so thank you.

MS. JEFFRIES: Thank you, Justin.

David.

DR. TANDBERG: Yeah, it seems like we've got a pattern going here. Following up on what Josh and Justin said, I want, I want, I once again want to publicly and on the record voice that I would appreciate it if the Department treated this essentially as consensus language. Implement it in what is sent out

for public comment with fidelity to the language as it is. I think that would be the most reflective of where we're at now. Give it a chasm between everyone else and the proprietary representative. Regarding the potential solutions suggested by Carol, the the idea that there would be no pressure put on the student to sign the the agreement. I just can't accept that given the record of abusive tactics towards students and putting high pressure on them to enroll and do other things within that sector, I have no reason to believe that there wouldn't be widespread pressure put on students to sign these agreements. And there is a huge difference in what the student brings to that discussion and what the institution brings. So many of the the students have never heard of predispute arbitration, don't know what it is, that just can't work. It doesn't work. It's not fair. Therefore, I, as my thumbs up indicated I strongly support the language as it is now and strongly encourage the Department to implement it with fidelity.

MS. JEFFRIES: Thank you, David. Jennifer has or Jen has joined us at the table. Go ahead, Jen. Your hand is up.

MS. CARDENAS: Hi, so. What can we say other than this administration has shown us that they want equity? The Department of Education has shown us

that they're willing to make spaces of education equitable for people of color. Our black and brown communities are seeing that Department of Education is doing so much. Yes, we didn't come to consensus right now. But let's I mean, let's get real. Whose philosophy has been not for students? It hasn't been anybody with their thumbs up, that's for sure. I think one thing that I really hope the Department of Education takes in consideration is all our voices of students and all the thumbs up. Yes, it's not consensus. I understand that, but I really urge the Department of Education to see that the people that were here, honestly with students in mind showed us with their thumbs up that they were here for students first and not money and not corporations and not other institutions that have made it a point to make sure that students of color suffer because you're giving them, you think three days is ideal, three days to find a babysitter, three days to tell my job, to tell both of my jobs, hey, I need time off. That's ridiculous. That is really ridiculous. And I hope the Department of Education sees all the work that we put in and really takes in our thumbs up and sees that we really care about students. Thank you.

MS. JEFFRIES: Thank you, Jen.

Alright, so there are no further hands.

MR. BARKOWITZ: Cindy, I have my hand up, I know my background...

MS. JEFFRIES: I'm sorry. Yep, there it is. Thanks, Daniel.

MR. BARKOWITZ: So you may have been going where I was going. I appreciate this conversation and I want to touch base on where we are. So if I were to summarize sort of where we are for the week and the process, I see sort of three distinct sets of issues. I see a set of issues where it has been, as as has been noted, the proprietary representative is the only representative voting no. I'm not sure that prioritizing that set of issues for further conversation is going to be productive. So that is, particularly the closed school Borrower Defense predispute authorization, So I would like I would like to propose that we set those aside. I see a set of issues where frankly, the Department is the sole dissenter, and that is the issues around PSLF and Income Driven Repayment. Again, I'm not sure that the Department has has ability or willingness to move on on those issues. So I'm not sure that it's productive to return to those either. I do see a third set of issues, well, let me start by saying, there are a couple of issues that we reached consensus on, yay, but there are some issues that remain, which I think it

would be productive to swing back to. And those include in my notes, if I'm following this correctly, the prison education programs, the false certification discharge, although Josh, your constituents may not be able to make movement there. And I think those are the only two that remain. So, you know, perhaps we can prioritize those two in our next conversations. And I hate to do your work for you, Cindy, but maybe that is what I'm doing. But I just I note that I think we're close on those two issues and with some productive conversations can probably come closer to a set of agreements than we might on the other issues.

MS. JEFFRIES: Okay, I thank you for that, Daniel. And yes, you did kind of steal my thunder, but that's okay. I'm good with that. It is true that you have now taken an initial consensus on all 12 issues. Okay? And that the committee has reached consensus on the total and permanent disability, and interest capitalization. The remaining 10 issues do not have consensus and as we have been discussing all along all week, that we will, you know, time permitting, revisit those. I appreciate your outline of it, Daniel. Our intent was if time permitted this morning, which is short, okay, that we revisit closed school discharge and false certification. I I don't I don't think the FMCS

team has a strong preference on which one of those goes first. Hearing you loudly, I'd like to turn to the committee and see if if Daniel's suggestion of false certification for this short period of time would make the most logical sense. It is, you know, it is our intent to move to the Pell discussion this afternoon, okay? So I did not want to not address that Daniel. Okay? Michaela.

MS. MARTIN: I was just wondering for these conversations, did anybody or does anybody have like how the votes went or did we like keep track of like why people were stuck on certain issues? And I just ask that for like expedited conversation, because now it's been like a whole week and a lifetime, I don't remember what people's like, you know, massive reservations for the phraseology that we've been using for if they were thumbs down. So I think that starting from that vantage would probably be ideal.

MS. JEFFRIES: You know, I don't, FMCS doesn't have, you know, necessarily the record list of of that. We have noted in our summaries what has reached consensus and which has not. I don't want to misstate people's votes. So I don't know Jennifer, if the Department has.

MS. HONG: I think we got I think we

have a good handle on it.

MS. JEFFRIES: Okay. Alright. So I'm not hearing any strong preference or any dissent on going to false certification first. So with that, do we want to let's go ahead and revisit false certification so we can utilize some of this time.

MS. HONG: Yes. If Aaron could, Aaron, if he could queue the regulatory language. I see Jen's hand's up hand up. I don't.

MS. JEFFRIES: She did? Jen, did you have your hand up?

MS. CARDENAS: No, sorry, I forgot to put it down.

MS. JEFFRIES: Okay, thank you, Jen. Okay, Jennifer.

MS. HONG: Thank You. Thank you, Aaron and Cindy. So false cert, we this is the issue with Josh and the group discharge language. I think that's the only outstanding issue. We had some strong reservations of the inclusion of that language. We believe that this the regulation as proposed, provides for a group discharge. I know that legal provided some suggested language. I understand the concept is very important for them. Again, we would argue that the language as proposed provides for process for group discharge. If we

could move you to a thumbs up, Josh would if we took that first sentence of the language you proposed. I'd like to get your thoughts on that, I don't I don't know that we could do, we wouldn't be able to do anything more than that. And even that, you know, we had to do a lot of contemplating. So that is, I know you guys don't have a language in front of you, I think Josh provided it in between sessions two and three, but if, I'll go to the floor to Josh if you want to look at it.

MR. ROVENGER: Yeah, I actually just need to pull it up as well. I don't have my false cert notes handy. One minute.

MS. HONG: If it's the concept of incorporating a group discharge and flagging that, that is, we're making that explicit. The first sentence that Josh proposed, I'm just, while you pull it up, Josh, is "a state attorney general or nonprofit legal services representative may submit to the Secretary in an application an application for a group discharge under this section" period.

MR. ROVENGER: I think that probably gets us there. But I'd like if it's if we can defer this vote till after lunch so I can just consult with a few colleagues. That would be much appreciated.

MS. HONG: Sure.

MS. JEFFRIES: Sure. Thank you, Josh. Appreciate you willing to reach out to your constituents and and see where they're at on this. I will say that on that issue, it's my understanding that in the temperature check in the in the previous initial consensus, there was just one dissent. Okay. Alright, so we still have a few minutes, I am going to suggest that we move back to closed school discharge just because that is with the limited time we have left, I'm hesitant to get into the other one and preparations are not finalized to be able to move to Pell until after lunch. Okay? Let's see. Jessica's coming back in for proprietary institutions. Welcome back Jessica. Michaela you have your hand up.

MS. MARTIN: Yeah, I'm so sorry, I think I don't understand what just happened. So are we taking another consensus on all of the closed schools or is that? I think I just missed the last like a different process.

MS. JEFFRIES: Right, well, we are deferring an additional consensus check on false certification until after lunch so that Josh has it because the Department did put some forth, Josh has time to reach out to his constituency, so we will table that briefly until after lunch. And then moving us to closed

school discharges. Okay? Where it is, my understanding there also was, Jennifer correct me if the record showed differently, one dissent on this, correct?

MS. HONG: I'm sorry, one dissent on closed schools, is that what you asked?

MS. JEFFRIES: Yes. Okay, thank you. So with that, Jennifer, do you want the language cued back up?

MS. HONG: Sure, that'd great, if we could cue back closed school discharge. So. It was a bit more challenging for us, I know that Jessica you expressed kind of more general, broader, philosophical differences and offered us to take another look at the definition. We did consider the definition proposed language that you and others provided, we felt we had reservations both conceptually as well as being able to implement that language. So but more importantly, we would like to stay with a definition that we have to make sure that we are reaching all potential situation closed school situations that could adversely affect a student. So, we that that's why we we didn't incorporate the proposed language that you and others have provided earlier on the process, so I don't know if there's any there's anything new that you wanted to suggest. But I understand that that was kind of the sticking point,

initially.

MS. BARRY: Yeah, that is a sticking sticking point with some others, but Jennifer, I really appreciate you taking another thought, at least at that language and and thinking about whether that was something you could do even if you couldn't. We have thought about this since Monday and thought through different ideas, but we haven't come up with anything new that would get us to a yes, but thank you for circling back to me.

MS. JEFFRIES: Okay. Daniel.

MR. BARKOWITZ: Is, I just want to return back. Was there a commitment, am I remembering this wrong, was there a commitment from the Department to add the table that was subregulatory? I believe I remember that that there was a commitment to either putting that in the FSA handbook or adding it as part of the preamble to these regulations. If we could achieve consensus or even if separately drafted. Is that commitment still on the table, Jennifer from the Department, is that still something that you would be willing to do?

MS. HONG: We're definitely willing to do that, yes. The document that you saw does need some kind of technical updating and revisions, but we will

definitely take that into consideration. We don't have any problems against doing that.

MR. BARKOWITZ: I was hopeful that that could assuage some of your concerns, Jessica. Sounds like maybe not, but but again, I think that would be really helpful because again, it was the first time I had seen that guidance in any public space, and it did help me in large scale move to greater comfort with the definitional issues that I had raised at first.

MS. JEFFRIES: Michaela.

MS. MARTIN: Yeah, I, I still am just really struggling with this idea that the for-profits are really saying that we need to get students to sign an agreement that says you don't have access to your right to due process because you're going to be forced into arbitration, right? Where somebody who's probably paid for, contracted by the institution will be the one to determine what that resolution of the situation is. When it comes to something like closed school discharge, you're saying that the school could close down and I'm not allowed to sue you, right? That just is a really big ask I think and I just wonder like Jessica, like is throwing around like we and I don't know who we is, right? I feel like other institutions and other people here are thinking about students, and I just

don't know who the the we is that you're consulting that has problems with with allowing students to be protected.

MS. JEFFRIES: Okay. Thank you, Michaela. Heather.

DR. PERFETTI: Thank you, and I just want to reiterate what Daniel indicated, because I know I was part of the group looking at the closed school definition and some of the definitional challenges that we saw. So I appreciate the Department's willingness to look at what we were calling the chart, which we distributed to everyone, which helps to clarify circumstances when a closure is triggered under these regulations, and I offer the support and assistance from accrediting agencies as closures are becoming more nuanced if we can contribute to that chart in any meaningful way, we're happy to assist as well.

MS. JEFFRIES: Thank you, Heather. David.

DR. TANDBERG: Yeah. As state agencies are often the ones that are left holding the bag to directly help students, close down schools, retain records, implement teach out agreements after the institution no longer exists, this was of particular interest to us. Most other entities' interests dissolve

with an institution dissolving. However, students and their interests remain, and state agencies are often the ones that directly deal with them after a school's been closed. Closed school discharge, therefore, is something that we strongly support. We also, along with Heather, pledge our willingness to assist the Department as they deal with implementation, identifying closed schools, Our members have to identify them themselves, and it sometimes is a little tricky, but it's something of great interest to them. And so we're we're happy to work as a triad too and will be an up vote on this, and I hope others will likewise.

MS. JEFFRIES: Jaye.

MS. O'CONNELL: I just wanted to speak in support of the chart, so as guarantors are in the fold of this and making determinations, I had passed that along to some operations folks in my team and said, wow, that will be really helpful. So the the nuances of what is a closed school could be really useful I think to the FFEL, the FFEL participants that may have other closed school discharges presented.

MS. JEFFRIES: Okay. Thank you, Jaye. Okay. I'm not seeing any other hands. From facilitator's standpoint, I did not hear anything new, and I'm going to turn back to Jessica. I know you have stated in this

conversation that you are still a no vote. I'm going to check and see if any of this discussion has changed that position to sideways thumb in determining whether or not the committee actually needs to take an additional consensus on this.

MS. BARRY: We too really appreciate the chart, and we think it will be helpful, but we just have other concerns that aren't going to be able to allow us to vote yes or sideways.

MS. JEFFRIES: So committee knowing that there is still the one dissent. I don't think protocol requires another consensus vote unless I'm going to hear a strong objection or if the Department would like an additional consensus check.

MS. HONG: It doesn't seem necessary at this point in time.

MS. JEFFRIES: Okay. Alright. Hearing none, we are at 11:59, almost 12 o'clock. So why don't we go ahead and take our lunch break and we'll come back here promptly at 1:00 p.m..

Appendix

**Department of Education
Office of Postsecondary Education
Zoom Chat Transcript
Affordability and Student Loans Committee
Session 3, Day 5, Morning, December 10, 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 Marjorie Dorimé-Williams, Ph.D. (she/her) to Everyone:

Internet problems. I'll be on shortly.

From Stan (A) Ind. Students to Everyone:

Good morning, everyone. Last day! 😊

From Raj - Advisor Econ & Data to Everyone:

I really enjoyed Columbia and was sad to leave. But my partner wanted us to get closer to family

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

<https://twitter.com/higheredrachel/status/1469322515340214281/photo/1>

From Raj - Advisor Econ & Data to Everyone:

Sorry, that was meant to be private

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

Everyone:

we are glad you are happy Raj

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

lol

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

We're pros by now on Zoom :D

From Michaela Martin to Everyone:

yeah lmao constitutional right to reputation? I missed
that line in that document

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

+1 to Josh

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

+1 to Joe

From Suzanne Martindale (A) state regulators to
Everyone:

+1 joe

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

+1 to Jennifer on bravery of public commenters.

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

+1 Thank you to all the public commenters who came and
allowed us to hear about their experiences and how we
can all do better to help them.

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

+1 re: public comment

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

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

+1 to Josh's suggestion!

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

+1 Josh!!!!

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

+1 Josh's suggestion

From Justin (P) Servicemembers and Veterans to Everyone:

Emily is taking the table for a quick comment

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

What is the Department's intention for public notification of decisions on group adjudication? Will there be a public notice or will this be just a notice to schools and borrowers impacted?

From Joe (P) State AGs to Everyone:

+1 Emily

From Emily (A)- Servicemembers and Veterans to Everyone:

Justin is returning to the table

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

+1 Josh

From Joe (P) State AGs to Everyone:

+1 Josh

From Jen(she/ella): (A) Student borrowers to Everyone:
+ 1 Justin

From David (P) - State hi ed agencies to Everyone:
+1 Justin

From Bethany (P) - Disability (she/hers) to Everyone:
+1 to Justin!

From Marjorie (P), 4 Yr Insts. (she/her) to Everyone:
+1 Josh

From misty sabouneh to Everyone:
+1 josh

From David (P) - State hi ed agencies to Everyone:
+1 Josh

From Suzanne Martindale (A) state regulators to
Everyone:
+1 joe

From David (P) - State hi ed agencies to Everyone:
+1 Joe

From Jeri (P) Student Borrowers (she her, they) to
Everyone:
+1 Joe

From David (P) - State hi ed agencies to Everyone:
Just want to uplift Joe's comment. The state law
standard is huge for state hi ed agencies.

From Daniel (P) - Fin Aid Admin (he/him) to Everyone:
We still have issue paper 9, correct, before we return
back to past issues?

From Jessica Barry, Proprietary (P) to Everyone:

Carol will sub in for me for the next issue.

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

+1 to Johs

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

*Josh

From Suzanne Martindale (A) state regulators to Everyone:

+1 joe

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

+1 Joe

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

+1 to Joe + Josh

From Justin (P) Servicemembers and Veterans to Everyone:

+1 Josh

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

+ 1 Josh

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

+1 Josh!!!!

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

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

+1 Josh. Very well done.

From Joe (P) State AGs to Everyone:

+1 Josh

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

+1 to Josh that the rule limits only arbitrations about DL and Borrower Defense.

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

+1 David on previous administration

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

+1 re: David

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

+1 re: David

From Joe (P) State AGs to Everyone:

+1 Josh

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

+1 Josh

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

+1 Josh

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

I thought I was going and so lowered my hand too quickly

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

Jen will be coming in for Jeri

From Michaela [P] Ind. Students to Everyone:

+1

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

+1 to Josh, Justin, and David

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

+1 Josh, Justin, David

From Justin (P) Servicemembers and Veterans to Everyone:

+1 David

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

+1

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

+1!!

From Suzanne Martindale (A) state regulators to
Everyone:

+1 David

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

+! Jen!

From Michaela [P] Ind. Students to Everyone:

I hopethis is leading to going back to pell

From Joe (P) State AGs to Everyone:

Daniel should join FMCS

From Joe (P) State AGs to Everyone:

He has a bright future as a facilitator!

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

LOL!

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

+1 Joe!

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

Jeri is back for Sbs

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

I was keeping track

From Michaela [P] Ind. Students to Everyone:

Heck yeah Daniel

From Jessica Barry, Proprietary (P) to Everyone:

I will sub back in for Carol.

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

+1 Heather

From Joe (P) State AGs to Everyone:

+1 David

From Joe (P) State AGs to Everyone:

+1 Jaye

From Will (A) FFEL Agencies to Everyone:

+1 Jaye