

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
AFFORDABILITY AND STUDENT LOANS COMMITTEE  
SESSION 2, DAY 4, MORNING  
November 4, 2021

On the 4th day of November, 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 and welcome back to session two, day four. I am CindyJeffries from FMCS and I will be your facilitator today. We're going to start this morning with a roll call. I will call the constituency then the primary and then the alternates. So for the Department of Education, Jennifer Hong.

MS. HONG: Good morning, everyone.

MS. JEFFRIES: Good morning Jennifer and assisting her this morning from General Counsel is Todd Davis.

MR. DAVIS: Good morning everyone.

MS. JEFFRIES: Good morning Todd. Accrediting agencies Heather Perfetti.

DR. PERFETTI: Good morning, everyone.

MS. JEFFRIES: Good morning. Michaela McComas, Michale McComis, I'm sorry.

MR. McCOMIS: Good morning.

MS. JEFFRIES: I should put my glasses on I think. Dependent Students, Dixie Samaniego.

MS. SAMANIEGO: Morning, everyone.

Happy Thursday.

MS. JEFFRIES: Morning. Greg Norwood.

MS. SAMANIEGO: It'll just be me this

morning Greg will join the afternoon session.

MS. JEFFRIES: Great thanks, Dixie. Federal Family Education Loan lenders and/or guaranty agencies Jaye O'Connell.

MS. O'CONNELL: Morning. Welcome to the second half of neg reg. We're halfway.

MS. JEFFRIES: Yes. Thank you, Jaye. Will Shaffner.

MR. SHAFFNER: Hi everyone.

MS. JEFFRIES: Financial Aid Administrators at Postsecondary Institutions Daniel Barkowitz.

MR. BARKOWITZ: Hey everyone. Happy Friday eve.

MS. JEFFRIES: Alyssa Dobson.

MS. DOBSON: Good morning.

MS. JEFFRIES: Good morning. Four-year Public Institutions Marjorie Dorime-Williams.

DR. DORIME-WILLIAMS: Good morning everyone. Dr. Dorime-Williams here.

MS. JEFFRIES: Good morning. Rachelle Feldman.

DR. DORIME-WILLIAMS: Rachelle will join us in the afternoon.

MS. JEFFRIES: Okay great, thank you.

Independent Students. Michaela Martin.

MS. MARTIN: Good morning and my alternate will be in later this morning.

MS. JEFFRIES: Okay great, thank you. Individuals with Disabilities or Groups Representing them. Bethany Lilly.

MS. LILLY: Good morning.

MS. JEFFRIES: Good morning. John Whitelaw.

MR. WHITELAW: Good morning.

MS. JEFFRIES: Morning. Legal assistance organizations that represent students and/or borrowers. Persis Yu.

MS. YU: Morning everyone.

MS. JEFFRIES: Good morning. Joshua Rovenger.

MR. ROVENGER: Morning everyone.

MS. JEFFRIES: Minority-serving Institutions, Noelia Gonzalez.

MS. GONZALEZ: Good morning everyone.

MS. JEFFRIES: Good morning. Private nonprofit institutions Misty Sabouneh.

MS. SABOUNEH: Morning everyone.

MS. JEFFRIES: Good morning. Terrence McTier.

DR. MCTIER: Dr. McTier, good morning.

MS. JEFFRIES: Proprietary institutions Jessica Barry.

MS. BARRY: Good morning everyone.

MS. JEFFRIES: Morning and Carol Colvin.

MS. BARRY: She was having problems with her equipment this morning. But she will be joining us shortly.

DR. COLVIN: Good morning.

MS. JEFFRIES: Good morning. Okay. state attorneys general Joseph Sander.

MR. SANDERS: Good morning, everyone.

MS. JEFFRIES: Good morning and Eric Apar.

MR. APAR: Morning everyone.

MS. JEFFRIES: Morning. state higher education executive officers, state authorizing agencies, and/or state regulators David Tandberg.

MR. TANDBERG: Morning.

MS. JEFFRIES: Suzanne Martindale.

MS. MARTINDALE: Good morning, everyone.

MS. JEFFRIES: Morning to both of you. Student Loan Borrowers Jeri O'Bryan-Losee.

MS. O'BRYAN-LOSEE: Morning everybody.

MS. JEFFRIES: And Jennifer Cardenas.

MS. CARDENAS: Buenos dias good morning, everyone.

MS. JEFFRIES: Morning, both of you. two-year public institutions Robert Ayala. I'm having trouble with my tongue this morning I think.

MR. AYALA: There's a lot of As in there. Good morning, ladies and gentlemen.

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

MR. HAUSCHILD: Good morning.

MS. JEFFRIES: Morning. Emily DeVito.

MS. DEVITO: Morning.

MS. JEFFRIES: And we have our two esteemed advisors with us this morning, Heather and Raj.

MS. JARVIS: Hello. Good morning.

MR. DAROLIA: Hi all, good to see you.

MS. JEFFRIES: Good morning. Did I miss anyone? Okay, then let's go ahead and jump into what we left off yesterday with the Borrower Defense.

MR. BARKOWITZ: Can I raise just a process question? Thank you, I'm sorry to interrupt. I'm wondering I had asked on Tuesday, if it might be

possible to get an update from the Department on the processing of public service loan forgiveness in the temporary waiver. And I just wanted to check in before the week gets too much later if we'll be able to schedule that for today or tomorrow. I don't know Jennifer if you've been able to hear from anyone else in the Department if there is someone who can provide us an update.

MS. HONG: Yeah thank you, Daniel. We to the extent that that is you know, those issues are pertinent to this, the proposed regulations for PSLF and with respect to the time that we have left we are going to we are update you we did commit to that. It may be a written correspondence, either via chat, or maybe we'll send an email, quick summary update but we want to just preserve the time that we have on the table to talk about the issues rules.

MR. BARKOWITZ: Thank you very much.

MS. JEFFRIES: Okay, thank you. So let's jump back into BD. I did switch from my headset, it look like maybe it was cutting in and out is is my mic better for everyone? Great. Thanks. So I think we were at going through 685.406. Jennifer.

MS. HONG: Yeah, I'll take, I'll take over. So just to review, it's a, it's a big rule so we

want to go back and review. We went over Borrower Defense generally the definitions, the federal standard, we talked about the group process, then we went on to the individual process. The what we are deeming the Fast Track group process for any issues identified in, for example, final program reviews or any other information that the Secretary has available to him. Institutional response and then we are at the top of 406, which is adjudication where we inserted the kind of the compromise proposal from state AGs regarding how they could get a review for state standard before us if they reviewed it upfront, and provided it to us. And we will consider that probably, we'll, we'llwe'll, take it into under consideration, but it's more likely that that would be more feasible under a group process, but we appreciate the discussion on that, that compromise language. So now we are we're at the top of section 685.406 adjudication of Borrower Defense applications. And we just get into this. Okay, so what we have in front of us, we're gonna start with (b)(1) which is the group process adjudication. So I'll just summarize and go through all this. Basically, the Department official considers evidence related to the claim, any materials and application that are part of the group, any evidence that the Department has within its possession, evidence,



and information from the school and other relevant info. And we are operating under a rebuttable presumption that everyone in the group was affected . In other words, if there is an allegation of misrep, you know, college catalog, for example, presumed everyone in the group experienced that misrepresentation, rather than individual reliance. Next, we need to talk about the individual process adjudication where the Department official adjudicates based on the info available to it. Again considers all the materials and application evidence that we have evidence from the school and other relevant information and if we request more information from the school the school must respond to reasonable timeframes. Okay written decision if, if the Department approves some or all the BD claim, we issue a written decision on the relief provided. Borrowers' loans associated with a BD claim are placed in an interest free forbearance until the Department discharges the loan. And then I'm just going to quickly add on to because I think this question came up when we went over group process an individual process for Borrower Defense, I believe it was Daniel that raised it. And then individual process under 403, we specifically talk about notification to the borrower regarding the forbearance and I believe it was Daniel pointed out the

absence of that language under 402 for the brief process and that's because it's here under adjudication. We would it was intentional because of our ability to operationalize that for the group and be able to identify those individuals and be able to put them on forbearance on the front end, so we've put that in the adjudication piece under section 406. Let's see, okay, so if there is a full denial for the group, there will be a written decision base reasons for the denial evidence that was relied upon, and a question of the loans due and payable to the Department. And we will return those loans into prior status we'll resume collection on the loan those loans no earlier than 90 days from date of decision. And then we will also the Department official will also notify members of the group of opportunity to request reconsideration, which we will get to later on. For individual denials, the written decision again will state reasons for the denial evidence that was relied upon and same thing. Portion of the loans due and payable to the Department, same thing 90 days, no earlier than 90 days of written decision, we will resume collections. And again, the Department official notify members of the group has opportunity to request reconsideration. Written decisions are made available to again the individual members of the group

for group claims and the institution. And that is my review. And I see a lot of hands up.

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

MR. ROVENGER: Thanks. So I have a few concerns about things that are not in here. But where I want to start is my very extreme disappointment that the Department recognized in its prior issue paper the need to have a timeline to decide these claims, but then didn't include one in this provision, or as far as I can see any any of the regulatory provisions. You know, I think we would propose that the Department set 180 days to decide individual borrower to 180 days to decide individual Borrower Defense claims that there's a remedy of the grant if they don't meet that and that relief is retroactive. You know, this was a proposal that my constituency put forward back in 2016 and we flagged some of the concerns. At that point, they were just, you know, potential concerns. But what we've seen over the last few years, is that the Department has utterly failed to decide Borrower Defense claims in a timely matter. And this has a real impact on people's lives. So for example, one borrower says the Department's refusal to grant or deny my Borrower Defense has caused me emotional harm, because the lack of a decision hangs

over me, it would almost be better just to get denied so that at least I know what my future looks like. Number two, quote, I've spent over three years waiting for a decision. In the meantime, the debt piles up and the clock on what time I have to live tick softly growing fainter. Another borrower, the Department's refusal to grant or deny my borrower defenses caused me to lose faith that the government will protect students like me, because the government subsidized my school, legitimized them by allowing me to get Federal loans, failed to provide proper regulatory oversight, allowed them to get away with a slap on the wrist for an \$11 billion fraud lawsuit, promised that every student that was enrolled at one of these colleges that committed fraud would see every ounce of relief that we were entitled to, and has worked to destroy everything we had done to bring progress to a fundamentally broken higher education system. Another borrower, the Department's refusal to grant or deny my Borrower Defense has caused me to lose faith that the government will protect students like me, because I was preyed on and taken advantage of by a for profit school, I turned to my government to stand up for me and two years later, I'm still waiting. It doesn't feel like the government wants to help me succeed, it feels like they want to help me fail. I can't emphasize

enough that the lack of a timeline and lack of timely relief also is going to cause is also problematic to rectify...

MR. TONCHI: Thirty seconds.

MR. ROVINGER: to rectify the racial disparities, that the department's own policies and that the student loan infrastructure has exacerbated. We know what students are, we know which students are preyed upon by these schools and which are waiting for relief. We know that over a third, we know that while Black and Latino Latinx students make up less than 1/3 of college students, they represent half of all for profits. And we know that Black borrowers in particular who attend for profit schools 70% of them will default in 10 years. We know who these borrowers are and the Department just include a timely timeline in these regulations.

MS. JEFFRIES: Thank you, Josh. Before we go to Daniel I'd like to acknowledge that Suzanne Martindale is in for State Regulators. Go ahead, Daniel.

MS. HONG: Can I can I jump in there? I just want to respond to this on time periods for processing. We realized that there were questions about the time periods we did receive your proposal from Legal Aid. We just like, the past timelines here haven't been very instructive. As you're aware we had an exceptional

circumstance with the previous administration. There was a lengthy pause on adjudication, a large number of denials issued additional court activity that has paused any denials since last October. Given all those that those factors, there's that there's a clear lesson from the past data about what an ideal timeline should be. That said, it's not a short process to ensure an actual, thorough review of a Borrower Defense claim. And we just simply think that 180 days is not enough time. To review what this looks like, you know, there have, the claim has to be processed, this can take several weeks, depending on the volume, we need to look at the evidence that the student has included or touch to see what makes sense is sent to the institution. And as we're proposing, we would seek additional evidence from the institution. So we're currently proposing to have two months for that process. We have to then review all of that evidence and make a determination. And this is this is likely happening for 1000s or more claims at any given time. If you can imagine if this was a court process, it'd be occurring over years. And so we just believe any meaningful review of claims cannot possibly be completed within 180 days that have been suggested. Additionally, group clients have their own added work. We're interested in forming MOUs with states and ages to

find additional evidence. And we're also, anticipate that with a 60 day response period from this, we could end up with hundreds of 1000s, if not 1000s, of pages of material. So we want to ensure we understand the concerns here, we realize that a lot of it is a result of kind of these exceptional circumstances that many borrowers are put into. We want to balance what is realistic what we can perform in terms of a thorough, fair review for the borrower. But we, 180 days is not it.

MR. ROVENGER: Cindy can I respond to that real quick?

MS. JEFFRIES: Sure, Josh.

MR. ROVENGER: Thanks. So, what if 180 days doesn't work, like we are open to having a conversation about what time limit would work. And that includes, you know, a separate time limit potentially for individual claims and group claims, because we recognize that group claims will take longer, I think what's not acceptable in our view is having no time limit at all. And, in particular, I think the idea of justifying new time limit by exceptional circumstances, which is in reality is just the Department's unlawful behavior in the past isn't actually a justification for no time limit.

MS. JEFFRIES: Thank you, Josh.  
Daniel.

MR. BARKOWITZ: Thank you. I appreciate that. So, so the comments of Josh and Jennifer, speak to what I'm gonna raise as well. First of all, I agree with Josh, I think a timeline is really important, especially for institutions to understand what their liabilities might be. And to have this open ended without end doesn't really give institutions clarity. But I want to focus on on student borrowers or borrowers particularly. And while Jennifer, I appreciate the mention that in this section, especially under (e) (1), romanette (ii), and I win the bingo for mentioning romanette first today. The the particular point I want to raise is that it says that borrowers will be placed under an interest free forbearance once approved, by either some or all the allegations have been approved by the Department. That differentiates from the individual process where upon receipt, students are placed into forbearance. And so my significant concern here, again, echoing the response you just made about timing, is that could be months from the initiation of the group claim before the borrower sees any protection. And I think that's that's not just unfortunate, that's wrong. And so I would strongly urge that the Department to match what



is placed with the individual claim to the group claim, I think, you know, having a different standard and a different process is not helpful for students, especially because what we've defined as groups processes are going to include many, many, many more students. And the Department can offer some important relief to those group of student borrowers at that point, which may ameliorat, won't solve, but it may ameliorate some of the concerns around timing. So again, I would strongly urge the Department to reconsider that position.

MS. HONG: So we we understand the concern here and that that distinction is intentional in this case, and has to do with our ability to identify and apply those forbearances to each individual in the group on the front end. But your your point is well taken, and we continue to take it under consideration, we haven't found a solution to it at this point in time.

MR. BARKOWITZ: Can I just ask I'd probe a little bit, Jennifer? So is the issue that would a group claim comes in it's simply a process of analyzing the data to determine who's in the group is that the problem? So if, for example, to use the ITT example, if a group of if it were a group process around ITT Tech's closure, is a difficulty identifying who

those impacted borrowers might be?

MS. HONG: That's certainly part of it, and applying those forbearances, evenly and accurately, to all borrowers that were affected by the group process without, you know, on the front end, but we can certainly look back with you to provide more flesh to that issue. But generally that that is a concern.

MR. BARKOWITZ: Yeah, again, I again, I really, I really want something in there for protection of borrowers, because as it currently states or currently is written, somebody who's part of the group wouldn't be protected, and correct me if I'm wrong, with a forbearance at all, until the Department approves or some or all of the claims. So you could be part of a group submission and it could take, you know, in Josh's example over 6 months for a review for some or all of those claims to be approved. In the meantime, that student is still responsible for those loan payments. That That to me is not acceptable.

MS. JEFFRIES: Thank you both. Bethany you are next.

MS. LILLY: I want to echo Daniel's concerns because that also caught my attention. And I want to reiterate the concerns I raised when we

discussed this in the context of the group process yesterday, around whether or not be those, those loans being placed in forbearance. Presumably, this will also be all loans as it was last time, because you said the Department couldn't differentiate. And so if it is going to be all loans, making sure that any other loans that are a part of that that are in process for IDR for Public Service, Loan Forgiveness count towards those is very important to hear.

MS. JEFFRIES: Thank you, Bethany.  
Joe.

MR. SANDERS: Hi, thanks. So my first question. I believe that the proposal that we made to include the state law claim, and the first level of review would need to be placed into 685.403. As it's currently written, is that Jennifer or Todd, is that accurate? That where you guys would see to the extent that that the Department accepts that proposal, it would go into this section?

MS. HONG: You mean 406? I'm sorry, we're on 406.

MR. SANDERS: I'm sorry, we're on 406. Yes, that's what I mean. I'm sorry. I was looking at something else.

MS. HONG: About about regarding the

state standard?

MR. SANDERS: Correct.

MS. HONG: I don't yeah, it could either go under 403 too, I guess, 403 or 406. We'd have to give thought to that.

MR. SANDERS: Okay. Okay. Alright, and I'm going to give thought to that as well and provide you guys with something concrete to work with there. Let me just make a note of that. So we're looking at 406 or 403. Okay. And then-

MS. HONG: I apologize, Joe, I misspoke. Either, yeah, probably there 406. 403 individual process we're likely not able to consider that proposal for so. I think 406 seems to be the most-

MR. SANDERS: Okay. If you guys want to, you know, Todd or you want to email me with like, we think we'd go here to the extent we used it. That's great. I would just second what Josh said about the need for some kind of timeliness. I totally get what you're saying about there's a lot of stuff to look at and want to get it right and it's going to take time those are all correct. The problem is that, you know, what happened in the previous administration could totally happen again. And so there needs to be some kind of backstop on time, because, you know, I've had group

applications, I personally have written group applications, sent them in, and they're-

MR. TONCHI: thirty seconds

MR. SANDERS: still pending. So some kind of backstop on timeliness should be included, with consideration for, you know, the need for a thorough review. And last, one idea on this point that Daniel made about time frame and identifying the group being part of the problem, could you put in here something that would require schools to put stuff into NSLDS that makes it easier to identify groups? Just a thought.

MS. JEFFRIES: Thank you, Joe. If you want to drop that in chat, that might be helpful. Dixie?

MS. SAMANIEGO: Yeah. Also, before I start. I have chickens and a rooster, so if you hear him in the background, I'm sorry. It's 7:31 in California, so my rooster, yeah, going off. And so I've just really want to echo the points that have been made, specifically Josh's as well. Mainly, because Michaela and I were able to talk to three folks who were in the process of a BD application at like, varying different points. And it, it was really disheartening and like heartbreaking for me to hear those stories about how long just how long they've been here, like waiting to hear back. One specific person that we heard from, Ali

had been waiting for, like eight months for just a communication from the Department of Education, and he had just filed within the past year. And so it's just seeing no timeline of that in here is not something I'm comfortable with at all. It's something that I'm I'm not okay with. Because these students, these folks are just waiting, and waiting and waiting with no clear indication of what's to come, right. Until these folks, they're just up in the air, right. And so if the Department, while I understand administrative burden, and the need to or the need to wanting to fully flesh out a case, right or entire application, we also have to understand that these folks can't just be waiting a year, right, they can't just be waiting past a year for that. Because at the end of the day, like this isn't just something that's financially posing a burden on to them. It's also emotional, it's also physical for some folks, right. And it affects not only just them, but their entire families, and just their distrust of the entire system of higher education, right. But also the government. And so it's important to put a timeline in here. And so if the Department is not willing to look into putting a timeline, the Department should also be willing to improve its communications with borrowers, with folks within who have already put in an application

or looking to right just any form of way to make this process easier. But also, I would want to really push for the Department to put out like, and I know, it sounds really weird, like filing a BD claim 101 for folks who are filing, right?

MR. TONDONCHI: thirty seconds.

MS. SAMANIEGO: So so that we're not just so that these folks are not just applying, and they're like, oh, I don't really know what's happening. So the Department needs to be able to connect with students in new ways that hasn't ever before. And a part of that is equipping students with equitable information and resources, like a filing a BD claim, 101 PDF. Right. And so I really want to hear what the Department is going to do if not include a timeline in here. How are you all going to improve timeliness and communications to student borrowers?

MS. JEFFRIES: Thank you, Dixie.

Justin.

MR. HAUSCHILD: Yeah, thanks. I just want to express, you know, appreciation. I think the Department's overall efforts here broadly, I think there's a lot of good stuff going on. You know, this idea that we're making sure that borrowers are going to get an explanation and some commitment to a whole host

of other things when it comes to denials, that is. But, you know, I think generally speaking about adjudication, broadly, I would agree with the point that Josh and Joe have made about there needing to be some type of timeline and maybe 180 days isn't the appropriate marker. But you know, the court compared or the the Department compare this to the court process. And a thorough fair review is important. But even in the court process, there are timelines, timelines that constrain the court itself in the issuance of decision. So I mean, I think, you know, just because this is a complicated process that needs to be done fairly, and comprehensively doesn't mean that there shouldn't be a timeline involved. And I also take issue too, with the Department's news of what we might consider previously exceptional circumstances or currently exceptional circumstances as something that might never happen again. And I would just renew my plea for the Department to be a bit more forward thinking in the drafting of these regulations. And and I'll guess I'll leave it there for now. Thank you.

MS. JEFFRIES: Thank you, Justin.

Josh?

MR. ROVENGER: Thanks. Two quick things on the timeline and then I just want to briefly



note two other issues. The first is that the Department, wouldn't be the Department wouldn't be the only agency that would be subject to a time limit. There are other restrictions on agencies to have to respond, for example, to citizens' petitions for rulemaking. So like, this isn't, this isn't unprecedented. And then the second piece on the timeline is, if this is something that the Department takes seriously that borrowers are entitled to timely relief or a timely decision one way or the other then putting in the time limit will require the Department to then invest the resources internally to render those decisions in a timely way. And so it's not just helping the borrower, but it's also assisting the Department in helping the borrower if that's the Department's commitment. And then, so putting that issue aside, appreciate the language in here on what's required in the case of a denial. I am concerned that this is not as fulsome as it needs to be particularly in light of a federal judge just calling the Department's notices perfunctory. And I don't, I have concerns with in, particularly in E (2) (i) that this doesn't require much more than what the Department has previously put in to its decisions. And so I would urge the Department to consider the proposal that Persis and I put forward to include, to draw on language from other agencies that

require a more detailed analysis so a borrower actually understands why a claim is denied. And then the final issue I just wanted to flag which was also in our proposal relates to data disclosures on Borrower Defense decisions, and the importance for the Department to release this to release the at least the aggregate information to advocates on the public.

MS. JEFFRIES: Thank you, Josh.

MS. HONG: So yeah, I'll just respond briefly to the comment decision letters. Again, we did review and think about how we wanted to construct this case on decision letters as well as timeframes. It is a balance for us. We don't want to overregulate ourselves. Again, I mentioned this principle throughout the rulemaking, generally, we don't want to overregulate our the Secretary, the Department, because that can introduce unintended effects going forward in terms of operationalizing, finding road bumps in our practice, we do have to preserve some flexibility. So while we've tried to strike that balance here to make sure that we're including the basic concepts and principles that would go into a decision letter without over prescribing that could actually harm us, and our, you know, our path going forward. So, but but yes, we do we did consider your proposals from legal aid.

MS. JEFFRIES: Thank you, Jennifer.  
Josh, is your hand back up?

MR. ROVENGER: Yeah, I just wanted to respond to that. So I appreciate the and I don't, I mean, including a time limit, and including the language that other agencies utilize for notices of decision I don't think is really a meaningful restriction on the department's discretion as it relates to kind of its its more general actions. I think, as other agencies have shown, they can survive and thrive and do their job notwithstanding that language. I guess, you know, I guess to reiterate a point that Justin made previously. While I understand the Department doesn't want to overregulate itself, I also have to ask, has the Department learned anything from the last four years? Because it's possibly, it's very possible to have another Secretary of Education come in and if there aren't safeguards put into this process, just use that discretion to cause really significant harm to students and borrowers.

MS. JEFFRIES: Thank you, Josh.  
Justin?

MR. HAUSCHILD: Thank you. I continue to hear from the Department that they've considered certain proposals. And I'm trying to kind of sort out whether or not that is, you know, there's no longer a

willingness there to improve what the Department currently has proposed. So I think, you know, there's a lot of reasons to be happy about the direction the Department's moving but that doesn't necessarily mean that language that's there is sufficient. And I think Josh has pointed that out, there have been proposals made along those lines. And I guess I'm curious if, you know, we've considered it, but is the same as the Department being unwilling to continue to consider improving on that language. And I just think, this idea that the Department doesn't want to overregulate itself, because it might complicate its current processes, or, or, or prevent, present some difficulties now, based on current processes. I don't know if that is the right lens to be viewing this through when we're talking about the academic and financial realities and futures of students impacted by misconduct at institutions. So I would just, I would encourage the Department while I understand the practical realities and the workability of regulations, to make sure that a student continues to be at the center of the conversation here. And that if regulations might require the Department to improve its own processes, that that would be something that Department willingly takes on in order to defend the student. Thank you.

MS. JEFFRIES: Thank you, Justin. Michaela? Oh, I'm sorry, Jennifer.

MS. HONG: Yeah, just real quickly, I think, to Justin's point. Yes. Like we're in session two, we are, we are needing to kind of refine language. Certainly proposals continue to come in we're, we're taking them into consideration. As far as timelines, we haven't we just we haven't found the right parameters. We know that 180 days isn't it, that doesn't mean that we won't consider other timeframes. As far as as far as a decision letters, we did chew on that for a while. And I think we have enough here to ensure that we, you know, given things that have happened in the past that we want to ensure that we have enough information in the decision letter, and that there's guidance in the regulations to point us for that direction. So, but overall, we're here and we're trying to take everything into consideration as we continue to refine the language, but we are on a constrained timeframe, where, again, I will emphasize a student and the borrower is the center of this conversation, we also have to balance the reality of there are very real, administrative, legal, operational realities that we have to strike a balance with, because we don't want to put words in regulation that we can commit or abide by. So we want to

be sure that there's enough flexibility while capturing the principles, all the principles that you mentioned. And yes, we want to bring, put the borrower front and center here. That's the point.

MS. JEFFRIES: Thank you, Jennifer. Michaela, thanks for waiting.

MS. MARTIN: For the timelines, I guess, so the question is, like, then how long is reasonable? Because Dixie and I met with another with one group of students, but I also met with other groups of constituencies. And some of these folks have been waiting, like, five, six years, right. And I understand that like in a trial or legal process like that could take years, but this also isn't a trial. And the courts have found that the need for expedited decision making within the agencies is just like the right to a speedy trial within our court, judicial system. Part of that is because the court and like I think that we all kind of view that our democracies or bureaucracies are really only as strong as people believe them to be. Right and so when we're not giving people that level of rights to have a decision and a reasonable amount of time five or six years is not reasonable to look at a claim. And then I think that it really lessons less more of the agency than then the potential burden that you might have to

create a new system to be able to have quicker decisions. And so I guess my question really is just how long is reasonable? 180 days isn't, then what would be? What are you ballparking? Five, six years? Like something's got to be in there. Five, six years is like insane.

MS. JEFFRIES: Thank you, Michaela.

Dixie?

MS. SAMANIEGO: Yeah, so let me reframe the conversation then. If it's taking an absurd amount of time, I think I think the Department of Education really just has to question how committed they really are to issues of racial justice and economic justice, right. And for me, this, allowing folks to put in BD claims, right, that is also a part of racial and economic justice. And so if the Department is not willing to really invest into actually being transparent in putting a timeline, it is not committed to actually being transparent to Black and Latinos and Latinas. Right. It is not actually committed to bettering the lives of low-income people, right. Of poor folks, folks that if they could, they would most likely have a negative EFC right, folks like me. And so when there isn't a timeline put into it and there's a hesitancy, I also question the Department's commitment to racial and

economic justice, right. We see that Black and Latinos and Latinas are amongst the folks who have to apply to have to put in claims the most, right. And so I think there is a space to recognize administrative burden, right. But there's definitely a space to also recognize that there needs to be a timeline, there needs to be timeliness and transparency. And I also wanted to talk about just how, for me when folks are denied, individually or in a group, I don't feel comfortable, just them being denied fully. I feel that like, if you've been strung out in this long year-long, month-long process, you should, at the bare minimum get some form of relief. And I know that there's a reconsideration process in section 407. But point blank period, if even if they go through the reconsideration process, at the bare minimum, they should find a way or there should be a possibility for for them to get partial, just partial relief, just because they just went through the process, right, and they were strung along. And so I just really want to re-emphasize that like, if the Department is going to be about it-

MR. TONCHI: thirty seconds

MS. SAMANIEGO: then be about it be about racial economic justice point blank period, put in a timeline, be timely. I recognize that there is an



administrative burden, but also recognize that the Department has to make strides has to it. There's a lot to improve on, right. And so there needs to be transparency into there's no timeline, and the Department has to be able to send out a letter of said on a communication every two, three, weeks every month, updating the folks-

MR. TONCHI: time

MS. SAMANEIGO: hey, this is where this is where the process is at. Folks are not being told anything.

MS. JEFFRIES: Daniel?

MR. BARKOWITZ: Thank you. So as as a financial administrator were subjected to a number of timelines and default and distinct time limits, I echo and support what Dixie and Michaela have offered. I'd like to offer a suggestion that maybe at least the Department can consider which is a one-year time frame. So if 180 days is not sufficient, would the Department be willing to accept a one year limitation, which would allow, again, a timeframe that could be measurable? And if at the end of that one year, if the Department has not reached a decision, the presumption would be to grant the borrower's request. So you know, again, to try to move this conversation forward to practical reality,

again, 180 days may be insufficient. I would echo the question of what is and one year might be a reasonable accommodation. The one thing I would add, though, is if there is a time limit, and this is now coming from the institutional perspective, and the Department has not contacted the institution, I wouldn't want there to be liability to the institution because of the Department's delay. So that's the one piece I think we'd have to at least explore. But I would support, again, a time limit. We live with time limits in the financial aid space all the time. And there are hard and fast rules. And so you know, there's, there's got to be a presumption of benefit for the student in this case, if the Department can't respond in a timely manner.

MS. HONG: So thank you for that suggestion. And we will also go back and try to discuss this internally and come back with some reasonable timeframes.

MS. JEFFRIES: Thank you. Last hand that's up is Josh and then I think we'll move to a temperature check.

MR. ROVENGER: Thanks. So just want to reiterate that we're very open to hearing ideas for specific time limits and interested in hearing the Department's position once you have internal discussions

on whether a year is feasible. I also agree with Daniel that if you grant the relief, because the Department failed to decide the claims in a timely manner, that's a procedural violation, not a substantive one that the school should be liable for, and would add on it that relief, given the amount of students who have been waiting for five, six years should be retroactive. The last thing I want to say on a timeline is just to take a step back and say that the context of all of this is the Department of Education at the at the point of student is going through the Borrower Defense process, the Department of Education has already failed in its oversight responsibilities for the schools. And so it is difficult for me to accept the argument that the Department's logistical hurdles should prolong a student's ability to get relief for four or five years. It just, that just something that I I can't accept as a reasonable argument. Putting that aside, on the notices of decision, I'd ask for the Department to reconsider whether this language is fully sufficient, because I don't think it would take a particularly clever Secretary of Education to use this, to look at this language and issue, particularly perfunctory notices of denial. So for example, right now, this requires the written decision states the reasons for the denial.

Okay, so we denied this claim, because the borrower didn't satisfy the standard. Okay, the evidence that was relied upon, we considered everything in the borrower's application. I mean, that that's what we like that basically, what we saw in this language doesn't add any additional actual analysis that would allow a borrower to fully understand the decision. And so I would continue to urge the Department, you know, if the examples of of the other agencies, regulations are insufficient, we're happy to try and find some other examples. But we would continue to urge the Department to reconsider that position.

MS. JEFFRIES: Thank you, Josh. So with that, I'm going to ask for a temperature check on section 685.406 adjudication of Borrower Defense application. May I please see your hands or your thumbs? Okay, there are numerous thumbs down. Unless you have, you know, something new to add, we will move on to section 685.407. And, Jennifer, do you want to say something?

MS. HONG: Yeah, I just noticed they're there I think I can generally understand the thumbs down as a result of trying to land a, wanting a timeframe and a more fulsome decision letter. And I see now it's was there anything else? I know, Jessica, you

have, there you go. I would. If there's anything else, we'd like to hear what they are.

MS. BARRY: Yeah sure, we voted no, because we still have some concerns with the group process in general. But I want everybody to know we're we're working through those positions. We're talking with negotiators. We're working through that. So this is a note A but we're still working through the process.

MS. JEFFRIES: Thank you, Jennifer.

MS. HONG: Thank you for that. Shall we move on to reconsideration?

MS. JEFFRIES: So I'm moving into this I'd like to remind everyone of your protocols. That in order to preserve time when it is your turn to speak if you could please refrain from repeating previously made points so that we can make the best use of our time. So with that, we'll move to 685.407, reconsideration.

MS. HONG: Thank you, Cindy. Section 407 is the reconsideration proposed checks. Basically, the Department officials written notice as final for any relief in a group claim. But if denied, in full or part individual members of the group can request reconsideration. If if a state or state AG requests reconsideration, we would ask that they identify the local state law standard. Also why the Department should

use why the Department should use the state law standard and why the application of state law would result in a different outcome and why the applicable state law standard would lead to a Borrower Defense claim. The reconsideration request must be made no later than 90 days from the Department official's written decision. The Department official then follows the institutional response regulations. If the Department, if the Department accepts reconsideration requests, it follows the placement of the borrower in forbearance from stopped payment collections. A Department official then adjudicates as usual and follows written notice regulations. The Secretary may reopen a BD application at any time and it follows the rules for placing borrowers in forbearance or stopped payment collections. I see Joe's hand up.

MS. JEFFRIES: Thank you, Jennifer.

Joe?

MR. SANDERS: Yeah, you know, we just want to continue to voice our opposition to have the state law standard be only on reconsideration. We think that this shuts out borrower state law claims. You know, in particular, items in here, like requiring a borrower to explain why the state law standard would result in a different outcome. You're talking about people would

have to have legal counsel in order to do that. You know, we think we've put forward a reasonable compromise that takes into consideration the Department's administrative burden. But, you know, in sticking with the theme of keeping this Negotiated Rulemaking student centered, we're talking about affordability here, big picture. And that means making processes accessible to students. You know, we're in negotiating good faith, there's a compromise on the table. We think it's reasonable, we think it works, and we think that the Department should move state law claims out of the reconsideration process and into a singular review on the first round, where the state law claim only need be considered where a federal law denial has been made, and where the student has identified the applicable state law. So we're absolutely taking the Department's position into consideration we ask for the same in return. Thank you very much.

MS. JEFFRIES: Thank you, Joe. Josh?

MR. ROVENGER: Thanks. So I have a number of concerns with the reconsideration provision as read, although I will say at the front end, appreciate that the Department is putting in a reconsideration provision in the regs. My, my first concern, though, is just the limitation as to who can bring a

reconsideration request. I don't, I'd be interested in hearing from the Department why this is limited to group claims and not individuals? It seems like an individual should have the right to a reconsideration of their request, just as much as a group. The second concern I have and this, this is actually just a broader concern about Borrower Defense that may not be something we can decide or deal with in this neg reg, but it's it's particularly acute at the reconsideration stage, which is who's deciding these claims. So as I see this, it refers to the Department official. So number one, is that the same Department official who just decided the initial plan, because if that's the case, that doesn't make sense to me for purposes reconsideration. And second, just as a more general point, again, if the Department official is going to be somebody in FSA, I struggle to see how, I see a structural problem with someone who is part of the entity that is responsible for overseeing these schools in the first instance, who has not succeeded in doing so, is able to then render a fair judgement on the back end when a student is petitioning for relief. The third concern I have is, just with respect to the standard for reconsideration, it's not particularly clear to me why the reconsideration process is so limited. If I mean, I



think the Department is making this much more complicated than it needs to be. It seems like there's going to be a reconsideration process. The Department should follow a lot of what other entities do, which is just you can have a neutral, and another individual review the evidence and arguments that you submitted, in addition to whether irrespective of whether there's there's new evidence or not, although certainly, you know, that may be another another reason for reconsideration. And then the final concern I have is just with respect to subsection E, about reopening a Borrower Defense application at any time. As we put in our proposal, we don't think-

MR. TONCHI: thirty seconds

MR. ROVINGER: this should just be limited circumstances in which the Department needs to consider evidence that was not considered before. The Department should have you know, that if the Department doesn't want to limit its discretion, this is a place where it shouldn't limit its discretion, the Department should be able to reopen a denied claim at any point. Thank you.

MS. JEFFRIES: Thank you, Josh. Todd, I see you put your hand up, did you have a response?

MR. DAVIS: Yeah, I just wanted to hit

the first part there, Josh. The Department doesn't intend to limit this to group, the reconsideration process to groups. So you know, if the language doesn't reflect that, just know that we're noting that. And then, you know, the same thing goes for that's the second point on who the deciding official is and what is the structural process? Just, you know, I don't have the answer for you at the moment. But I, your point is well taken, and he's under considers.

MR. ROVENGER: Appreciate that. Thank you.

MS. JEFFRIES: Thank you, Todd.  
Justin?

MR. HAUSCHILD: Yeah, thanks. I want to say again, you know, for the first time, if I haven't, we certainly appreciate the inclusion reconsideration process. I wanted to draw attention to the fact that it seems to be limited. And this is something I mentioned the first time around to to new evidence. And we're not sure why we can't consider errors in process and application of the standard to previously submitted evidence. We would like to see that be a part of the reconsideration process. We think that's, you know, a particularly salient point to make in the in the context of the last several years, and

again, would be something that would be relevant now and going forward. So maybe the Department's identified a reason why that's just simply practically not possible. But in the absence of that, we would certainly encourage the Department to consider procedural error and misapplication of the standard to facts previously presented, and not just the submission of new evidence during reconsideration process. Thank you.

MS. JEFFRIES: Thank you, Justin. Joe?

MR. SANDERS: Yeah, just very quickly want to make the point. So state UDAAP laws are some of the laws that are often applied to claims against schools where borrowers have been defrauded. Those laws govern unfair, or deceptive acts and practices. That's the acronym UDAAP. Unfair acts, or deceptive practices. Right. So I want to point out that there is no consideration in the Federal standard for unfairness claims. So if you don't have state law review, at the first level, these claims, which are common in cases involving student loans, involving schools, are just not considered. And so we really think that this is an important point that the Department needs to somehow work in unfairness in the first level review. We think the easiest way to do that is to use the existing body of case law out there at the state level. I've provided

the Department with multiple examples of cases where my office has brought unfairness claims involving student loans. In particular, these, we have a claim against Navient, one of the biggest student loan servicers, and previously one of the biggest private student loan lenders in the country. We allege that the that Navient put people into loans that they knew would default in order to get federal loan volume. Right. So in order to get the money from the federal loans, Navient gave students loans that they knew the students couldn't pay back. And we think that that is a defense to the repayment of the federal student loans. Similarly, in Westwood, our litigation against Westwood, we alleged that Westwood in order to get federal money, made private student loans to get the 10% of income that has to come from non-federal sources that they knew would default. 90% of the students defaulted on these loans. And they did that in order to get the federal money. We think that is unfair under state law. Federal courts have agreed with us on that point. And we think that the unfairness standard absolutely needs to be considered here-

MR. TONCHI: Thirty seconds.

MR. SANDERS: It's something that we use all the time. And the easiest way to do that is with

the state law claims at the first level. Thank you.

MS. JEFFRIES: Thank you, Joe. Okay, Jennifer, I'm not seeing any more hands. Does the Department have what, have what you need?

MS. HONG: Yes.

MS. JEFFRIES: Okay, so with that, let's go ahead and take a temperature check on 685.407, reconsideration. May I see the thumbs please? Okay, thank you. Those of you with your thumbs down, if you have something additional to add as to why your thumb was down, please raise your hand so that Department can hear what what your concern is. I don't see any thumbs or any hands, Jennifer, for additional information for you. Are you ready to move on?

MS. HONG: I think so just to review, what I'm understanding is the thumbs down has to do with many of Joe's comments during the inclusion of the state standard and the reconsideration. You want to move that out of reconsideration and replace it with the proposal that we talked about yesterday. Okay, and then to capture the unfairness issue. If there, am I missing anything else under reconsideration? Oh, the Justin's comments regarding inclusion of procedural errors etc. I think we're good.

MR. ROVENGER: And also my concerns

which I stated before as well, in addition to the ones stated by Joe and Justin.

MS. HONG: Thank you, Josh.

MS. JEFFRIES: Thank you. Alright, with that, let's continue moving forward 685.408, relief. Jennifer?

MS. HONG: So relief, again, just pointing towards the rebuttable presumption that a borrower with a proof claim is eligible for full relief unless presented with countervailing evidence. The Department's official's rebuttal to full relief could include the borrower or borrower's to cover certain problems at school, or the borrowers harmless de minimis value. As prominent official may use examples from Table A and Table A is an addendum to one of the regulations on page 16, going on to 17. We can go through those together. The Department official recommends a relief amount full or less than full to the Secretary. The Secretary then renders renders the final decision based on the Department official's recommendation and the records available to it. Information from the group individual group formation, fast track process, (inaudible) response for consideration everything that came before. The Secretary then issues a written decision about the relief granted to include the relief

relief determined there may be tax implications if the borrower does not receive full discharge gives him for gives information about the reconsideration request. Upon determining relief, the Department discharges the loans and or reimburses the borrower amounts they paid. For further relief, determine the borrower is not in default and eligible to receive Title IV aid . And also update reports to consumer reporting agencies, the total amount of relief cannot exceed the loan amount less any benefit the borrower received in connection with the Borrower Defense claim. And then no relief would be granted for non-pecuniary damages. I'll stop there.

MS. JEFFRIES: Sorry about that.

MS. HONG:no. I was gonna say, I said that we would go through these examples in the table, but I see hands up to people want to go through these examples? Yes, I see nods. Okay, so let me go through these examples quickly. These are just sample scenarios, okay. For, for instance, where issues that just speak to systemic problems. For example, a school would represents in its marketing materials that one of its faculty members in a particular course, received the highest award in their field. But that course is not foundational or part of the academic program, a borrower enrolls in that program in reliance on the

representation about this renowned faculty member. School failed to update the marketing materials to reflect the fact that the award-winning faculty is on sabbatical for the next two years. So the appropriate relief in that scenario would be that the borrower should receive no relief. Although the borrower reasonably relied on a misrepresentation about the faculty in deciding to enroll at this school, she still received the value of the program and that of course, is not foundational or are part of the academic program. Furthermore, the faculty member's absence and one course does not speak to systemic problems at the institution, therefore, no relief is appropriate. And then there's two other scenarios and these are regarding easily quantifiable de minimis levels of harm. Example one is a school presents to current and prospective students and widely disseminated materials, that is required books and materials to complete the program costs \$1,200 and can only be purchased from the institution, then charges students \$1,500 to purchase the materials. So the appropriate relief in that scenario with borrowers should receive partial relief of \$300. This is this is pertinent to our discussion about partial relief, although rebuttable presumption is full relief. Although the Department presumes that students and prospective



students all rely on widely disseminated published materials, the harm is a quantifiable, de minimis amount. The school provided the education that the student was seeking but misrepresented the cost of books and materials and it said the prices students were required to pay therefore, the student is entitled to relief. Second example of that, an institution promises a borrower free set of materials valued at \$150. Institution ultimately provides the material but was not for free, the borrower takes out \$5,000 in loans to attend the institution the appropriate relief in this scenario is the borrower should receive partial relief equal to the total cost of the materials, which is \$150. The institution promised to provide a specific item with a clear value and did not do so therefore the borrower is entitled to the amount of the materials provided. I'll stop there.

MS. JEFFRIES: Thank you, Jennifer.  
Suzanne.

MS. MARTINDALE: Yes, thank you. So appreciate that the Department is starting with a presumption that a borrower who has met the standard should be entitled to full relief. That said, I have substantial concerns about the Department going down this path of seeking to determine partial relief and I

also have to say those examples in the boxes. I'd be curious to know if those are based on actual claims that have been filed to the Department because I I've never heard of someone filing a claim with those kinds of facts. Meanwhile, we've been talking about administrative burden and the backlog and you know, just to put a finer point in some previous remarks, there are people with claims pending before the Department today who attended Corinthian Colleges and can't get their loans canceled. So I, you know, as I'm thinking about all these pieces fitting together, you know, this, I think, is an administrative minefield for the Department. I think that on balance, it would probably be more equitable for everyone concerned, if the Department went thumbs up, thumbs down, and if someone really thinks that, you know, they the misrepresentation about textbooks is legitimate, and they still deserve relief, let him file for reconsideration. But I don't, I just I think that this is gonna create more problems than it solves to have this, this sort of inquiry into partial relief, and think that if someone has stated a claim, cancel their loans, they've already gone into debt, they've already been charged interest, they've already spent all this time, which may turn it turns up in months or years to get the claim adjudicated. And,

and I think many of us take the view that that these folks will, in many cases, you know, never be made whole, even when they get every dollar cancelled. So, again, significant concerns about going down this path of adjudicating partial relief. In fact, when the Department previously tried to come up with a methodology along those lines, they ended up in litigation. So let's let's let's reflect on that as well.

MS. JEFFRIES: Thank you, Suzanne.  
Justin.

MR. HAUSCHILD: Yeah, I think everything that Suzanne said was very well said. And I'm going to just maybe, first off, appreciate that, that we're talking about a presumption here about full relief, I think that was another great point made by Suzanne, but to the effect of repeating what Suzanne said, I'm going to try to keep what I what I have to say here in the form of a question because I very well may just be (inaudible) here, but I'm, I'm thoroughly confused about the reliance the Department is putting on this, this idea of something being systemic. I just simply do not understand the relevance there. And then I'm really concerned about how we're going to determine what exactly systemic is. And Josh, very well may speak

to this more eloquently than me, but I'm very concerned about that. And I and I know, nobody likes hypotheticals, but I would, I would like the Department's input on a hypothetical. This woman's situation, individual application by a borrower who has seen incredible misconduct based on the allegations and evidence presented in the application, we're talking about lies based, you know, what lies about the nature of accreditation, financial aid available, you know, credits credits that may or may not transfer and job employment rates, but it came from a single recruiter, and there's no evidence that it's part of a more broad widespread package, or strategy by the institution to deceive, folks in the recruitment process seems to be that could reasonably be considered non systemic in nature, that to me does not diminish the harm done to this borrower in any way whatsoever. And I just don't understand why that borrower should be disadvantaged by by the ability, even just the ability to rebut a presumption of full relief. So I just I I'm not understanding and I would just really appreciate some clarification, because I just (inaudible). Thanks.

MS. JEFFRIES: Thank you, Justin.

Josh?

MR. ROVENGER: Thanks. So I think

we'll, you know, just going to reiterate the point that I made the first session, that full relief is never actually full relief, and that the Department is kind of tying itself in knots here to try and preserve some ability to give partial relief in hypothetical situations that at least, you know, I don't think those of us who practice in this space are aware of them actually getting a Borrower Defense granted. With that said, if the Department is going to insist on maintaining a partial relief provision in here, number one, I'm not it's not clear to me what countervailing evidence, like what standard that is. I you know, I think we propose the clear and convincing evidence evidence standard to rebut the presumption of full relief. I think it should be a I just I worry about a future Secretary of Education coming in and saying, well, there was one piece of evidence suggesting partial relief, and that was enough to be countervailing. I share the concern about not only the hypothetical but the use of the freeze did not cover systemic problems. It almost it almost it leads to the question of why then even allow individual Borrower Defense claims in the first place. Like if I'm an individual who was defrauded by a one bad actor at a school, I have a claim to a borrower to the Borrower Defense relief, but to Justin's

point, that may not constitute systemic, a systemic problem. With respect to the de minimis value issue, I do worry there that without more explanation of what that's trying to capture, not not through hypotheticals, but through regulatory language itself, that we're going to run into the same problem we did in the prior administration. And I also, it just strikes me that the the hypothetical is given what like, the claims to just be denied on the front end deal with this in the standard and the adjudication of the Borrower Defense, rather than preserving this, this category of partial relief that is kind of ripe for manipulation in the future. The final question I have and this, so for this, this is not something that's new to this in this proposal, but in H (2), respecting updating credit reports-

MR. TONCHI: Thirty seconds.

MR. ROVINGER: it seems to me that the Department is required under FCRA to update credit reports, if it grants the Borrower Defense and had previously been negatively reporting on the individual's credit. And so I guess I am curious why that's discretionary relief.

MS. JEFFRIES: Thank you, Josh. Joe?

MR. SANDERS: You know, I think

Justin's point on lack of systemic problems as a basis for partial relief, really is problematic. And I'm going to add an example here. So in our Westwood litigation, we allege that the admissions representatives for the school were telling prospective students that they could become a Chicago police officer by enrolling in the school's criminal justice program. We obtained phone calls from the company, listened to a lot of phone calls, and there were phone calls where those exact words were said. Somebody called up and said, oh, well, my dream is to be a Chicago police officer, you know, I really want to be in public service and, you know, being a Chicago police officer is my dream. And the admissions representative says, yeah, yeah, our criminal justice program is perfect for that. Right. Criminal Justice Program was nationally accredited, and until 2010, the Chicago Police Department did not accept nationally accredited credits. So it was wrong on its face. But for our investigation, you could have had somebody who was told that went and paid 70 grand to get this criminal justice degree and then couldn't become a Chicago police officer. On an individual claim that Department may or may not know whether that's systemic. And so I think that in that situation, that individual would be entitled to full relief. It's a material

misrepresentation. It's why the students going to the school and they can't do that. So I think there there is significant problem with that, that romanette, i romanette vi under under 408 here.

MS. HONG: So just to follow up on that, Joe, was in that in that case was it only one student alleging that misrepresentation?

MR. SANDERS: No, but I'm saying in the absence of, right, our office or some other office investigating that claim and bringing to light the fact that it was systemic, that Department may not know that that was the case. Now, you may be able to tell if you get a bunch of claims on that, right, that oh, yeah, that was systemic. But I still think that in that example, let's say it had been one student. I still think that in that case, the person would be entitled to full relief there. If they're saying I want to go to school to be a Chicago police officer and the person says, yeah, criminal justice, and that's not true, right. If it was a single student, I think that student has, should receive full relief there. If that person had brought just that claim for just themselves in a state court in Illinois, they would be entitled to all the all the money back that they paid for that program.

MS. JEFFRIES: Thank you, Joe. Justin?



MR. HAUSCHILD: Yeah, thanks. So this is here is I think some of what the other commenters have said and what the Department's responded with has helped me clarify my understanding here and frankly, I'm as concerned if not more concerned than I was to begin with, when it comes to the systemic issue, you know, particularly this question about, you know, was it just a single student that submitted that claim? Or were there multiple students? To me, that question suggests that really, what we're doing here is saying that the group process is the path for the full, to full relief, one way or the other, either through a formal group being established, or the Secretary determining that there really is a functional group by a certain threshold being met of so many other borrowers submitting individual applications alleging similar behavior. And again, it just, you know, I continue my refrain here about it not making sense, you know, you could have a veteran that alleges the most predatory, you know, things you could think of, in an individual application at an institution, but doesn't include any evidence that it's, you know, part of a systemic issue at the school. And, and then that's, you know, that's a partial relief setup. To me, it seems like it functionally builds in another element for a BD claim

here, that the individual applicant has to demonstrate not only that there's this fraudulent activity happening, been impacted by it or whatever else, but also that it's somehow linked to more systemic problems of behavior at the institution broadly, I'm just, again, confused and I don't think that's appropriate, if that's how this is intended to function. Thanks.

MS. JEFFRIES: Alright, thank you. I see one more hand, Suzanne, and then we'll see if the Department has what they need for the temperature check. Suzanne?

MS. MARTINDALE: Yeah, just real quick. I mean, this is recalling, you know, I was on the prior Borrower Defense Negotiated Rulemaking a couple years ago, when the Department at the time was considering requiring borrowers to allege specific financial harm. And this kind of feels like a roundabout way of implicitly wrapping that into the burden of persuasion. And that also gives me a lot of concern.

MS. JEFFRIES: Thank you. So Jennifer, I'm gonna check in with you to see if the Department has what they need before we proceed with temperature check.

MS. HONG: Yes.

MS. JEFFRIES: Okay. So with that, could I see a show of thumbs on 685.408, relief? Okay,

thank you. There are numerous thumbs down of those who had their thumbs down that hadn't expressed their concerns, do you have something you would like to add at this point? Jennifer, do you want to do a recap?

MS. HONG: I just, so I'm hearing again, and again, I think this while it identified the whole, you know, the idea of the systemic speaking to systemic problems in the first bucket of this table there, you know, there, that's the last bucket talks more about the value of the program, whether it was foundational, (inaudible) to the part of that. So I think it's just it is one piece. I understand that we need to clarify that a bit better. So, in my understanding the issue with regard to that the systemic problems pointing to systemic problems, as well as the partial relief issue, are those the sticking points here that I'm hearing for those people that didn't make suggestions hand up.

MS. JEFFRIES: Justin?

MR. HAUSCHILD: Yeah, and Jennifer, I think that's broadly right. But just for us specifically, I don't want to speak for anybody else. It is it is kind of the clarification around systemic but also the the the reason for it in the first place. So not just like what systemic means, but the justification

for for that as a part of the standard. Thanks.

MS. JEFFRIES: Thank you.

MS. HONG: Also, am I understanding that from both Suzanne and I think Justin that, in the scenarios presented on the bottom half of the table, that, kind of doing away with the concept of partial relief, therefore, those borrowers, these borrowers, for example, and these actually are based on real, real scenarios that that our staff receives, that they would not be entitled to a claim, is that, is that what I'm hearing? Or did I hear that wrong?

MR. HAUSCHILD: I'm sorry, Jennifer, I'm not sure I understand the question.

MS. HONG: Alright. I was hearing that that in, for example, in the examples provided on easily quantifiable de minimis levels of harm, that these because these, these are the kinds of claims that we receive, I understand that, you know, when we think of Borrower Defense think of, but when we when we have this option available, I mean, this speaks again, to the type of volume that the Department receives, we, it's across the board. So that I mean, these are kind of like real situations that might come across, you know, the adjudicator's desk. And I'm just wondering if I just want to be clear, if I, if and I see Suzanne's hand

raised, so I just want to be clear on understanding your point and your suggestion with regard to that piece on partial relief.

MS. JEFFRIES: Suzanne?

MS. MARTINDALE: Yeah, I mean, this is the challenge of crafting public policies, you can't hit every single fact pattern, I think we're trying to balance equities here. If a borrower is going to, you know, wait three years to find out, they're getting 150 bucks back versus, you know, after six months hearing, they're getting zero, I think, on balance, that probably the math probably works out better in the second scenario, versus a Corinthian borrower who filed in December 2016, who's still waiting today. Like that that's what we're trying to balance here. And I do think that a more efficient process that really is focused on swift adjudication, where there was very clear harm, whether it's individual or systemic, is probably better than creating a backlog that impacts absolutely everybody where you're also contemplating potentially charging interest for a while before you stop charging interest. And then at the end of the day, you know, maybe someone gets 150 bucks when I, helpful to know that's an example, however, that is definitely not the archetypal example we've been hearing about for the last

several years.

MS. JEFFRIES: Thank you, Suzanne.

Justin?

MR. HAUSCHILD: Yeah. Appreciate your requests for clarification there, Jennifer. I certainly appreciate that, you know, these are modeled off real world examples that that's helpful. I will get probably too specific here. I think, you know, again, our main issues with "systemic" how it could be interpreted I think, in the example that's, you know, that that's been provided that's most susceptible to, you know, kind of some of the concerns that I've outlined is the first one, you know, where essentially misrepresentations made to a student that caused them to then enroll at an institution. And you know, just how that could be different in all the different variations that those misrepresentations might might, you know, how all those how all the different types of misrepresentations might play out in that example. But I we understand the Department's need to, you know, look at things from a practical perspective based on the types of applications that they receive. So certainly understand that, but just very concerned about how systemic could really be a major loophole here for instances where the full relief is otherwise appropriate.

MS. JEFFRIES: Thank you, Justin.

Dixie?

MS. SAMANIEGO: Yeah. So also, I think I just want to provide a little bit more perspective to what Justin was saying about the first example provided, while the course that the student and I appreciate that this is like a real world example, right. This is a claim that was sent in right, while the course that the student, right, what literally there for or like the professor, right, specifically, the course is not foundational to the degree, I would argue that it kind of is because as a student, you're then left to figure out what courses you're going to take right. You're left to like, for me, my specific your degree program, I'll have to take 21 elective courses, like elective credits. And so for me, I really only attended my program at CSUF, because I was looking at this one professor. Right. And so if that was happening to me, I'd be so mad, I'd be so mad. Right, that is miss like you are that I think that speaks to broader issues within the institution that are systemic. And so for that students who have not been given any relief, that's problematic, deeply problematic. And I, I just, I'm just so confused as to what the Department is, you know, defining a systemic. And so I'm just going to echo what everyone

has said. But that first example, that students should have given at least some form of relief. And it does speak to systemic issues within the institution, like I said earlier, and our first session that like, if the university is misrepresenting course availability, but also professor available availability, that is misleading for students, because what the way that we commit to universities, most first gen students coming to universities is what is publicly available to us, but also what recruiters and admission officers tell us, right, what we what we're given by the university until, if we're given marketing materials that say, XYZ professor in XYZ field is going to teach these classes, right, irregardless if it's foundational, or a core part of the degree program completion, that is problematic. And so I'm just confused as the rest of the negotiators are probably as to what the Department of Education is defining as systemic. And I've asked the Department to drop a definition to what they're using are systemic in the chat earlier. And so moving forward, I would like to. Thank you.

MS. JEFFRIES: Thank you, Dixie.

Michaela?

MS. MARTIN: Building off of that if it's one, you know, I might be able to understand, but



then how many of those would would qualify as "systemic"? So just kind of want to articulate Dixie's question of where or, or if there's consideration of where that line would be crossed.

MS. JEFFRIES: Thank you. Okay, Jennifer?

MS. HONG: Thank you for the feedback on this session.

MS. JEFFRIES: Okay. So with that, we are going to move in this will be the final grouping for a temperature check on Borrower Defense. We are going to address 410. The, I'm sorry, 409, recovery from institution, or 10, cooperation by the borrower, or 11, transfer to the Secretary of the borrower's right of recovery against third parties. And finally, 499, severability. Those are all relatively small, so we will group them together. Jennifer, do you want to walk the committee through those please?

MS. HONG: Sure. I'll just summarize all the remaining sections in the proposed reg text. Recovery from institution first and foremost, for loans first disbursed on or after July 1<sup>st</sup>, 2023, the Department will collect from the school or in the case of a closed school another principal from common ownership, the amount that the Department discharges.

The Department may have action to not collect if the cost of collecting will be more than the amount to recover. If it's outside the limitations period, there's a preexisting settlement agreement, or the Department has already collected in a separate proceeding. And that limitations period is no later than six years from borrower's last date of attendance. The limitations period does not apply if the Department official notifies the school of the BD claim prior to the end of the limitation period. So that's what we have under recovery. The remaining section 34 CFR 685.410 cooperation by the borrower, it's just noting that the borrower has to reasonably incorporate with the secretary. 411, transfer to the Secretary of the borrower's right to recovery and third parties. Again, this just upon granting relief, the borrower assigns a right to recover to a third party to the Secretary. And if nothing prevents the borrower from pursuing legal channels or recovering above the discharge amount or other matters unrelated to the claim on other matters unrelated to the claim. And then general (inaudible) section. So we can begin our discussion regarding recovery.

MS. JEFFRIES: Thank you, Jennifer.

Daniel?

MR. BARKOWITZ: Thank you. And Jennifer, I first want to say I appreciate that the Department has moved from the initial position in terms of recovery, which had no limitation at all and in this has moved to a six-year period. So I want to recognize that adjustment. However, I would say the six-year period is still problematic for the following reason. The current guidelines that are published in 668.24, on record retention, specifically 668.24, E (2), and E (3), specify that if an institution makes a direct loan or FFEL loan, they're only required to retain records for three years after the end of the award year in which the student last attended the institution. So record retention wouldn't allow an institution necessarily to respond. There is an exception granted, and I would urge the Department to think about three years of the same exception, which is, if there's an action against the institution, then the three years is extended to the end of the action. So if an action is initiated against an institution during those three years, the institution must retain the records until the end of the action. But otherwise, you're putting institutions in an untenable position to try to respond to a claim where there may be no records available to respond to that claim. Again, I'm trying to, in my principle here is bad actors or bad

actors and I'm not trying to defend bad actors, I'm trying to defend institutions that may be snared and want to respond and need to respond, but don't have the ability to respond because of conflicting guidance. On the one hand, that Department is saying no need to retain records beyond three years, at what point at which point the student has graduated, or left the institution. And in this particular piece, six years, so if a borrower claims initiated four years out to use a specific example, and the Department reaches out to the institution, there will be no records available to substantiate the institution's response. And so again, that seems to me to be problematic. My hope is, that Department will identify bad actors before three years, at which point if an action has begun, the institution will need to retain those records and be required to and then you have the response you need. So again, I would urge the Department to conform this timeframe with the record retention timeframe of three years. Thank you.

MS. JEFFRIES: Thank you, Daniel.

Marjorie?

DR. DORIME-WILLIAMS: So, I support and echo what Daniel said about institutional record keeping that's that's really difficult, particularly if there's already regulatory language that seems to

contradict this. And then my question would be, if there's limitations on periods to recover, no later than six years but borrowers are still waiting to get their claims even adjudicated, is there a conflict there? So if we've already heard from borrowers they've been waiting, right, five, six years already, does that then release the institution from any liabilities based on this regulatory language? So I'm just asking for clarification, and maybe I'm not understanding this correctly. And we know that students are in this position because we again, we've heard numerous testimonies, sharing information that makes this a little bit difficult to understand.

MS. HONG: So just real briefly, the recovery from the institution, six years begins after the loans have been discharged to the borrower. So those so for Marjorie, the, those timeframes don't overlap in terms of the adjudication of the borrower's claim, and then the recovery for the from the institution.

MS. JEFFRIES: Thank you, both. Josh you're next.

MR. ROVENGER: Thanks. So we very much support in the prior in the issue paper on this the separation of the Borrower Defense determination and then recovery from the institution. I'm a little, little

concerned that the Department unlike in other places where we are pushing to the Department to limit its discretion. I'm a little concerned that the Department has done that too much here. I'm worried that the four specific categories where the Department can choose not to try and recover from a school are quite limited, and I think the reg would benefit from a fifth, if the Department is going to maintain this structure. I think it would benefit from a fifth romanette there saying something like in the interest of justice, or a broad kind of catch all, that would allow the Department in various circumstances to choose not to go after school.

MR. SANDERS: Thank you, Josh. Joe?  
Oh, Jennifer.

MS. HONG: Sorry, I'm a little delayed here. Just just to put a finer point on it for Marjorie, that to to Josh's point, that was part of bifurcating the process is to make it to clarify that that recovery process is distinct from the adjudication process. And that's one of the things that we're proposing, through these regulations. To Daniel's point on the records retention, you know, those those, those records that we may be requesting under Borrower Defense claim may not be, you know, exclusively under financial aid materials, right. So, you know, and there's nothing precluding an

institution from retaining those records longer. If we're thinking about bad actors, I mean, retaining the records and complying with those retention rules privately, (inaudible), so we wouldn't want to change our limitations period to conform with records retention. And we would hope that you know, that that information, whatever information, we need to follow up with an institution about as a result of their bad acting, that they would be more provided.

MS. JEFFRIES: Thank you, Jennifer.  
Joe?

MR. SANDERS: Hi. I'd like to talk about 685.411, transfer to the Secretary of the borrower's right of recovery. I have some concern that the transfer of the right may be broader than what the borrower gets. So upon the granting of relief, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund, up to the amount discharge of the borrower may have by contract or applicable law with respect to the loan or contract for educational services. So it's that phrase right there, or the contract for educational services, that gives me the most concern. Because, you know, many students have to obtain money, I would say, like, I say, most students have to obtain money beyond federal

student loans to pay for school. And if the school defrauded them, they need to have the right to go after, you know, the instance, the the case that we see the most is private student loans. Whether made by a third party or made by the institution, we wouldn't want the institution, if the borrower is then going back to the institution say, hey, I shouldn't have to pay this institutional loan. You know, you guys told me I could be a cop when I couldn't. We don't want the school to be able to come back and say, oh no, you gave that right to the Department, like you have to pay your institutional loan. So and this is something we've addressed. I have old language from like, 2015, when we were commenting on the forms that the Department was creating for BD that addresses this issue. I'm happy to provide that. We just want to make sure that they can recover stuff beyond the loan against third parties, should they need to do that. Second point I want to I want to make here, state AGs are certainly willing to cooperate against schools with the Department, you know, at any point, we wouldn't want any kind of interpretation where we have to give our claims to the Department-

MR. TOTONCHI: Thirty seconds.

MR. SANDERS: And so, you know, we'd love to hear from the Department on their interpretation



of that, and we may have to look at some carve out language here that would say, if it's a state AG that's doing it, you know, they're not relinquishing any claims that they may have. Thanks.

MS. JEFFRIES: Thank you, Joe. Todd, did you have a something you wanted to say?

MR. DAVIS: Yeah, just, good point Joe, on the first one didn't mean to, did not recognize that. So, you know, we will definitely be happy to review any suggested fixes here on both those points, I think. And in particular that first one about not needing to assign a right that isn't really ours to take. So thank you.

MS. JEFFRIES: Thank you, Daniel?

MR. BARKOWITZ: Thank you. I want to respond to Jennifer's response to my response. So one of the concerns I have is specifically that, and this addresses a comment I made yesterday, the way that Borrower Defense is written, it's extensive and includes and I'll go back and refer to the language in 685.401 that I questioned in Joe's language it includes, quote, the making of Direct Loan for enrollment at the school. And so I think it does directly relate to financial aid retention information, FAFSA filing, promissory note, entrance interviews, I mentioned these issues

previously, and was and the response was, yes, those are included. And those are specifically related to record retention. So I don't see a distinction between, at least as it's written today, the broad nature of what could be considered a Borrower Defense to Repayment, and the very, you know, open window. I also want to clarify, Jennifer, something you said, struck me is different than when I'm reading the text, I'm trying to get a better understanding. You said six years from the discharge. And what I'm reading in the particular section says six years from last attendance. So I want to be clear that that is on the record, as written, and make sure I'm understanding the intention of Department, which is I read this to be if a discharge takes place eight years after graduation, then there would be no ability to collect from the school at that point, unless there was an action that was still open, related to other issues. So am I missing misreading that or is that was there a misstatement earlier in terms of the the understanding of that section?

MS. JEFFRIES: Okay, thank you. Misty?

MR. BARKOWITZ: I'm sorry, can I get, can I get a response to that? Or do you want me to what's the.

MS. JEFFRIES: I'm not sure that

Jennifer has a response right now. She may need to get back to you, Jennifer?

MS. HONG: I think it's it, yeah, I think you're generally right. It's just it's a bit more complicated than that. Because when we know, when we inform the school, the limitation period effectively stops. So six years from the last attendance, your correct, but when we tell the school about the claims, it's your clock stops.

MR. BARKOWITZ: And I appreciate and understand that I would just ask that the number of years be reconsidered. I think that's absolutely appropriate, and intentional, that the clock stops when the when the institution is notified. Similar to any other legal case, we must retain records when a legal case is in process. I think the issue here is the six years versus three years. But thank you for that clarification.

MS. HONG: Understood. Yeah, thank you.

MS. JEFFRIES: Thank you. Okay, Heather?

DR. PERFETTI: Was Misty teed up to provide remarks?

MS. JEFFRIES: Misty, were you?

MS. SABOUNEH: Yeah, thank you.

Thanks. I just I put some of this in the chat. But I just wanted to say this on record. My support with Daniel regarding the limitation period. Schools are consistently a target for cybersecurity scams, and we have so much personal and sensitive data. And so again, I support the three years on that basis that we have to make sure that we're doing the best to protect that data. And then I also just wanted to add in so on 685.405 (E) the waiver of the limitation period. I have some concerns with that again, as it relates to how long we would have to retain data for.

MS. JEFFRIES: Okay. Thank you, Misty. Heather?

DR. PERFETTI: Thank you. So I was just going to flag here because I know Josh and Daniel, in a previous provision referenced a potential automatic award for procedural issues, and that that would not produce liability for the institution. So if that is considered in the previous provision, then there would need to be language added here to reflect that.

MS. JEFFRIES: Thank you, Heather. Seeing no additional hands. Jennifer, do you have what you need at this point?

MS. HONG: Yes, yes, thank you for the

feedback.

MS. JEFFRIES: Okay, great. So let's go ahead and take that temperature check on the four sections 409 recovery, 410 cooperation by the borrower, 411 transfer to the Secretary of the borrower's right of recovery against third parties, and 499 severability. So with that, could I please see thumbs? Okay, I see about five thumbs down and most of those we've already heard from, is there additional information from anyone who had their thumb down that they would like to provide to the Department?

MS. BARRY: I didn't speak earlier, because Daniel and Misty covered it so well, but the record retention issue is is serious for institutions.

MS. JEFFRIES: Thank you, Jessica. Anyone else? Okay, Jennifer, with that, do you need to recap your understanding just for clarity?

MS. HONG: No, I think I've got it in this case. I realized we only have a couple more minutes left. I did want to go back. I know there were a lot of questions, Daniel, and I believe Jessica, yesterday regarding abilities, and where those regulations are. And I just wanted to point them to 685.308. Those are the remedial actions. And basically, it's where the Secretary requires repayment of funds and purchase of

loans by the school if the Secretary determines that the school is liable as a result of and then it lists out all the loan discharge discharges. Because I think there was a question from Daniel why they're not stipulated in in the regs we went over it's because they are under that section, 685.308.

MS. BARRY: Thanks Jennifer for that answer, I appreciate it.

MS. JEFFRIES: Thanks Jessica and Jennifer. So with that it is 11:59am. We will go ahead since you wrapped up Borrower Defense. Thank you very much for all your hard work on that and the rules discussions. We will go ahead and break for lunch and when we come back, you will be picking up issue paper number nine, predispute arbitration and class action waivers. Have a nice lunch.

**Appendix**  
**Department of Education**  
**Office of Postsecondary Education**  
**Zoom Chat Transcript**  
**Affordability and Student Loans Committee**  
**Session 2, Day 4, Morning, November 4, 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 Jen (she/ella): (A) Student Borrower to Everyone:

Awwwww Daniel what a cute dog!

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

Thanks Jen! His sister is cute too! :)

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

My dog is approaching that time, Cynthia, and I'm so dreading that moment

From Will (A) FFEL Agencies to Everyone:

...they truly become family members....

From Heather - PSLF Advisor to Everyone:

My doggo is at my feet too, but too heavy to pick up and show -- he's a big boy

From Kayla Mack to Everyone:

I believe I have covered all CEMS as co-hosts. Please let me know if I missed one.

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

+1 Will

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

+1

From Heather - PSLF Advisor to Everyone:

+1

From Kayla Mack to Everyone:

Everyone can come on screen to check-in!

From Michaela [P] Ind. Studnets to Everyone:

For how many times I have been called Michael I am stoked rn

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

Michaela. lol!

From Kayla - FMCS to Everyone:

If anyone has tech issues, please let me know. You can message me in chat or send an email to kmack@fmcs.gov

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

Better now

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

Much!

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

Josh is probably going to say what I want to. Shucks. Didn't raise my hand fast enough...

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

My alternate, Suzanne, will jump in.

From Joe; P, State AGs to Everyone:

+1 Josh on lack of timeliness

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

+1 Josh



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

+1 Josh

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

+1 Josh

From Michaela [P] Ind. Studnets to Everyone:

+1

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

+1 to Josh Re need for some type of timeline

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

+ 1 Josh

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

Just a reminder that I had my hand up... LOL... I can put it back up but will go to the end of the line...

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

+1 Josh

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

+1 Josh

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

+1 Bethany

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

+1 Joe

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

+1 Joe

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

+1 Joe

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

That is awesome, Dixie!

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

Need to see them on camera like the dogs..

From Joe; P, State AGs to Everyone:

One idea to speed up identification of groups is to require information from schools, either through NSLDS or as part of the review process. Schools are in the best position to identify students that are part of the group.

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

+ 1 Dixie

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

+1 Dixie

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

+ Dixie

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

+1 Dixie

From Suzanne Martindale (A) state regulators to Everyone:

+1 Dixie

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

To Joe's point, our information in NSLDS should already be able to identify students as reported as enrolled with effective dates and program level data.

From Joe; P, State AGs to Everyone:

+1 Dixie on good BD filing info for borrowers (and on

backyard chickens!)

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

+1 Justin

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

+1

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

+1

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

+1 Justin

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

+1 Justin

From Joe; P, State AGs to Everyone:

+1 Josh on the need for robust decisions

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

For ED: Create resources for folks filing BD claims (Topics: Filing a BD Claim 101, What to do when you've been denied, timeline PDF, something that can help) In the style of something you would normally see a university/college student government put out for its students (informational and accessible knowledge)

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

+1 to Josh on further improving denial explanations

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

From Jeri (P) Student Borrower (she/her) to Everyone:  
+1 Josh - transparency!

From Jen (she/ella): (A) Student Borrower to Everyone:  
+ 1 Josh

From Bethany (P) Disability (she/hers) to Everyone:  
+1 Josh

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

From Jeri (P) Student Borrower (she/her) to Everyone:  
+1 Justin - a timeline of correspondence of where people are in the process should be included. I.e. we will send you a letter every 3 weeks to make you aware of movement.

From Jen (she/ella): (A) Student Borrower to Everyone:  
+ 1 Dixie!

From Bethany (P) Disability (she/hers) to Everyone:  
+1 Dixie

From Misty (P) Priv. Non-Profit to Everyone:  
+1 Daniel

From Daniel (P) - Fin Aid Admin (he/his) to Everyone:  
+1 for retroactivity (Josh)

From Justin (P) Service Members/Veterans to Everyone:  
+1 Josh on current logistical hurdles being barrier to timeline

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

Data

From Michaela [P] Ind. Students to Everyone:

A quote from my Administrative law Final "The court likened it to the right to speedy trial being required for people to maintain faith in the criminal system. This is because when a people loose faith in the efficacy of the system the system holds no power. Essentially our democracy, bureaucracy, and criminal justice system is like fairies in the movie Peter Pan. They only exist if we believe in them.

Tinkerbell must live in our mind in order for her to be real at all."

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

+1 Joe

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

+1

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

+1 Joe

From Suzanne Martindale (A) state regulators to Everyone:

+1 joe

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

+1 Josh!

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

+1 Josh

From Joe; P, State AGs to Everyone:

+1 Josh on individuals should be able to apply for reconsideration

From Michaela [P] Ind. Students to Everyone:

What is "less any benefit received"?

From Joe; P, State AGs to Everyone:

+1 on support for the presumption of full relief

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

+1 on presumption of full relief

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

+1 on whether this is just hypothetical

From Michaela [P] Ind. Students to Everyone:

+1

From Joe; P, State AGs to Everyone:

+1 on pending Corinthian claims. It is not tenable to have pending claims in the cohorts where the Department already made findings of fraud.

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

+1

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

+1

From Suzanne Martindale (A) state regulators to Everyone:

+1

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

Could ED drop what definition they are using for systemic?

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

+1 Josh

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

+1 Josh - precisely. "systemic" suggests that individual applications must be linked to broader misconduct to qualify for full relief.

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

+ Joe and Justin on this

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

2nd mention of romanette! Who has the bingo card?

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

+1

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

Re: Suzanne, Justin, and Josh's points

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

Echoing Justin, Joe, and Suzaane here

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

+ Bethany

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

+1 Suzanne

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

+1

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

+1

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

There is no clear indication as to what crosses into the systemic area - ED needs to provide a definition as to what systemic is.

From Jessica (P), Proprietary Schools to Everyone:

+1 Daniel

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

+1 Daniel There is risk to students from a cyber security standpoint the longer data is retained

From Jessica (P), Proprietary Schools to Everyone:

+1 Misty

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

+1 Daniel

From Jessica (P), Proprietary Schools to Everyone:

+1 Misty

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

+1 Heather

From Jessica (P), Proprietary Schools to Everyone:

+1 Heather

From Joe; P, State AGs to Everyone:

I can get behind this section with a clean-up of 685.411 on the issues I raised



