

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

On the 6th day of December, 2021, the following meeting was held virtually, from 1:00 p.m. to 4:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MS. JEFFRIES: Good afternoon and welcome back, I hope you all had a wonderful lunch break. And I am Cindy Jeffries, I will be your facilitator this afternoon. With that, I want to make note that David Tandberg is rejoining the table for the state agencies. And my notes showed that the order that we left off in picking back up closed school discharge issue, the order that I had speaker was when we broke was Heather and then Joe. And then I see Josh has his hand up, so Heather.

DR. PERFETTI: Great, thank you, and welcome back from lunch, everyone. So I just wanted to also reiterate what Daniel I believe kicked off some of the conversation with relating to a definition of closed school. And I know that that has been an important theme over the multiple sessions. But I also want to thank Jennifer, who provided us with a school closure of branch campuses and additional locations chart, which the Department uses to reflect current procedures relating to closed schools, and it clarifies what is considered a closed school or location and what would not be considered a closed school and location. I think that is quite helpful at getting at some of the areas where we were seeking clarification. And I know Jennifer

talked with us about the ability to make that more prominent and more widely shared to assist with some of the nuanced situations that are surfacing with institutions to best determine what is considered a closure under closed school discharge. So I did want to acknowledge that document, and I know we were inquiring as to whether that was shared broadly with the full committee, and I would ask that we distribute that document if it's not been distributed yet. I also want to reflect a little bit on Joe's comments about the 180 days because I know that was a concern of the group as well. If the goal is to lessen confusion for students and the 180 days is a critical point in time from the closure date, because the way the closure date is framed as when most programs cease or when educational instruction for most students ceases, I think it would be difficult for students to know when that 180 days has been defined. And so I would just ask that we think more intentionally about how students understand when that 180 days is triggered, if the barometer is most programs or most students without most being defined in any meaningful way. So I did just want to follow up with both of those remarks.

MS. JEFFRIES: Thank you, Heather. Joe before you speak, I'd like to acknowledge that Christina

Tangalakis is now at the table for two-year public institutions instead of Robert Ayala. Okay, Joe.

MR. SANDERS: Thanks. Yeah, I'd be interested in seeing that chart, I think that would be helpful for me as well. I just wanted to briefly push back on a couple of the concepts that Jessica had mentioned in her last time at the table, particularly the idea that all students are now going to on mass transfer once there's a closure. I don't think that that's the case, for two reasons. One, as this group has acknowledged in this context and others, there are a lot of problems with transfers and a lot of credits don't transfer. Absent in articulation agreement, it's spotty even when you're going from regionally accredited to regionally accredited. So I don't think you're going to see transfers on mass for that reason. In addition, students, when their closure is announced, they're very concerned about the time that they've put into a program. And so particularly for students who are in the back side of completing a program, they're not going to willy nilly walk away if they have the option to not have that time taken away from them. So I don't think that that that situation where everyone will just transfer now is going to come to pass. That's my on students and transfers under this proposed regulation.

MS. JEFFRIES: Thank you, Joe. Josh.

MR. ROVENGER: Thanks. So I'll just have a few different sets of comments, I'll start by echoing the request for that chart to be made as public as possible. I think more transparency is always better to the extent that can be circulated. That'd be great. I also want to respond to some of industry's talking points on this because I want the record to be clear on them, and frankly, I feel like I may be reading a different statute and regulation because I don't I just don't share a lot of the concerns that have been raised and don't see how they're actually manifest in this proposed language. So start with this idea that it's redefining what constitutes a school closure such that a school that modifies a number of programs would somehow be deemed a close school. I don't, I mean, the language is quite clear ceases to provide educational instruction in most programs. I don't think we're talking about a school that changes one program at a certain time, all of a sudden it's going to be subject to closed school liability. And moreover, you know, you're talking about a school that has three to four programs. Frankly, if you're changing the nature of the program or getting rid of the program while students are enrolled in them, you may you may not have closed school liability. But

frankly, I think you may have UDEP or BD liability because you're upending settled expectations of the program the student is choosing to enroll in. With respect to the comparable program requirement, I know that the long standing statutory interpretation was invoked and I would ask where, where in the statute is that requirement? Because I think we talked about in session two the language is quite broad and clear on closed school discharge, and there is nothing that requires that comparable program requirement. It was something, in our view, not only read into the statute, but incorrectly read into the statute. I also don't see on the incentives question how this regulation could impact a student, specifically pre 2014, whose school closed. Said differently, if we're talking about a hypothetical student whose school closed in 2008 while they were attending, I don't think including or not including the comparable program requirement, is going to impact what they choose to do in any way because they've already made their decision. I also think to echo Joe's point that when we're talking about what a future student might do when their school closes, I think giving them the full agency over their decisions and not forcing them one way or another into programs is not only the best outcome for students, but ultimately

yields the best outcome more broadly. Finally, on the retroactivity question. So if a student, if a school closes after 2023, I don't see, I mean, there wouldn't be a retroactivity concern. And then if a school has already closed, I don't see any language in this regulation that suggests that the Department is going to try and recover monies from a essentially a judgment proof dead school as to kind of yield retroactivity problems.

MS. JEFFRIES: Thank you, Josh. Josh, do you have your hand back up?

MR. ROVENGER: I do. So I'm going to move on to some technical fixes that I'd like to point out in the current regulation. So in the direct loan section, in subsection D, I or D 1, there's a cross reference to paragraph H but I think it actually should be a cross reference the subsection C for auto discharges because I think H is now exceptional circumstances. And then another small technical point at D 1 little i b, there's a reference to paragraph I, which no longer exists, and I think that should be should be a cross reference to paragraph H, the exceptional circumstances provision. And then the last thing I have is on the definition of program and stacking, I just want to make sure that this covers

everything that it needs to. So the example that we provided was a student who wanted to attend a bachelor's program was forced into an associate's program because they were told it was necessary for the bachelor's program. And I just I guess I want to confirm that 3 A, A in the definition of program is what's being used to capture that and then but also be interested in hearing from the Department what they're intending to capture with subsection B in the in that provision.

MS. JEFFRIES: Okay. Thank you, Josh. Jennifer, did you want to make those technical changes live or do you have them?

MS. HONG: Thanks for that. I just want to cross, I just I just want to take them back, I just want to look at them, the technical changes.

MS. JEFFRIES: Okay. Alright, great. Daniel, I see your hand is up.

MR. BARKOWITZ: Thanks. I just want to respond to Josh. So first of all, I think I think this will be helpful by having the chart out. I think, Josh, the concern, you raised a question I want to make sure I answer the question. The question was asked was the concern of financial obligation for a closed school. And going into this what I expressed in week one is my concern that the way that definite definition is

written, the school could be considered closed even if it still exists and it's still offering services. So in that situation, the school would have a possibly significant financial liability. So that's why, in a sense, the presence of the chart defining when and under what conditions the Department considers it a closed school is essential from my point of view, because there is institutional liability. If the pendulum swings the other way, which is any closure of any program at any campus by definition relates to the entire institution as a closed institution. This goes to the report that Raj provided earlier where we saw 14,000 closed schools. You know, this is a much larger issue than simply a school closing. We have some some audio coming through.

MS. JEFFRIES: Yeah, somebody needs to mute. Can you look at that, Brady?

MR. BARKOWITZ: Thank you. So, so Josh, this is why I, you know, I'm fervent for the for the need to promulgate as Heather has indicated and others, a definitional expansion of what is considered closed so that institutions don't take on liability in those situations where in fact the school isn't closed, but maybe a program is closing. Again, I fully support that, students who signed up for that program have legitimate complaints to be aired and legitimate

remedies to offer or to be offered. But the question is around whether that in and of itself constitutes a closed school.

MS. HONG: Can I respond real quickly, Cindy?

MS. JEFFRIES: Absolutely.

MS. HONG: Yeah. I just, I, first of all, I just appreciate the institutional colleagues agreement that this table that was distributed to them and yes, we can widely distributed that to the to the other negotiators provides the clarification that they need as some regulatory guidance. And we're happy to make that more prominent, perhaps part in the preamble or in other guidance to ensure that we have clarity on what we mean when we talk about closed schools to further interpret what we've already have in the regulation. And I believe that that that clarification satisfies the concerns of most of the institutional colleagues. In terms of the comparable program, we did, this was a significant change, we talked a lot about it in session two. We landed here because, you know, we were convinced that any kind of disruptions, the type of disruptions on a closed school introduces to a borrowing student by no fault of their own, you know, ought to they ought to have the opportunity to have their loans

discharged. We're less concerned about, you know, borrowers electing that option if they're close to finishing their program. We do believe that students that are close to finishing and are in a teach out would avail themselves of the teach out because they're interested in completing their degree. And so we are less concerned about that, that issue that was raised by Jessica. In terms of retroactivity, we will not be assessing liabilities retroactively so the liability is applied prospectively, and I don't know if that assuages some of your concerns, Jessica. But I'd like to hear more about where you're landing on that issue. And also in terms of, I think, Joe's question about counting the days, if we're discharging without application, the number of days kind of becomes less relevant. So we are less concerned about that as well. Thank you.

MS. JEFFRIES: Thank you, Jennifer.
David, I see your hand up.

DR. TANDBERG: Yeah, thank you. To the question that Jessica raised, well, first, let me say I'm really happy on the whole with the changes that have been made by the Department to these regulations. I think they represent a significant improvement over what was first presented to us and a dramatic improvement over existing regulations. So the question of, you know,

an institution wrongly being identified as closed, right. So that, they make some innovative changes to their programs, which would somehow make them meet the threshold for being defined as a closure. First, I don't think that's too likely. I think it would be extremely rare if it happened at all. But wouldn't there be, I believe, a process for the institution to wave their hand at the Department say no, we're actually not closed, we're still operating, we're just operating in a new form that students are fine. I mean, some sort of a appeal process for the institution to argue that in fact, they're not closed. I think that exists, correct? I guess that would be a question for Jennifer.

MS. JEFFRIES: Thank you, David. Joe, I see your hand up.

DR. TANDBERG: So real quick, I didn't know, Jennifer, is that a question you're capable of answering now?

MS. HONG: Let me get back to you, David. I may think in general, the general principles, right? Like where, yeah.

DR. TANDBERG: Okay, thank you.

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

MR. SANDERS: Yeah. Just to respond

quickly to Jennifer's point on my comment, I agree that discharging of that application is great. I think that that's a real positive. It does not address my issue, which is that if the closure is announced more than 180 days from the closure date, students are going to act then, they're not going to wait around and think about it, well, should I continue to go here? Should I not? They're going to drop. If their decision is to drop, they're going to do it, then because they don't want to spend any more money and take on any more loans. And once they've dropped, then they're outside the 180 day window and somebody's got to come in and make the case either internal within the Department or external, somebody outside has to make the case, this is an exceptional circumstance, we need to move the date back. And so automatic discharge doesn't get at the problem of when the closure is announced and students taking action right then. And, you know, to Heather's point, you know, I don't even know when a closure is announced, I don't even know that you can backdate and figure out in that moment when the closed school date is going to be. So I think, if there's something wrong with my proposal that makes it not workable that when the closure is announced, that's when that kicks in. Please let me know. But I think that that would create certainty for

the students that's not there under the current proposal.

MS. JEFFRIES: Thank you, Joe.

Alright. Justin, you put your hand down, you don't, you changed your mind?

MR. HAUSCHILD: Well, so I would just like to circle back to a point, I think Daniel raised about the language in the provisions that deal with discharge without application. We're also interested in that I should have plus one that earlier, I didn't, so I want to reiterate that. I'd also just be interested, broadly, the Department sounds like we'll be coming back to us with a few details. They should we, I mean, I would imagine we'd expect that information today or how are we are we looking at those responses prior to voting on on consensus here?

MS. HONG: Sorry Justin, on what issues?

MR. HAUSCHILD: So I guess there's been there's been a few items folks have raised, whether they be technical corrections. I think Daniel's point was another great example, just saying that the Department will take a look at that and get back to us. I'm just curious if we should be expecting that before before we might vote on consensus today?

MR. BARKOWITZ: Jennifer as a reminder this is the may versus shall language Secretary under the conforming language on Perkins and FFEL.

MS. HONG: Got it. Yeah, we can, we will get you that prior to voting, if that's a deal breaker.

MS. JEFFRIES: Okay. Jessica.

MS. BARRY: Yeah, there was a question that came up over lunch. I just want to make sure I'm understanding correctly. So to give you a scenario, so if a borrower attended a school that closed before July 1 2023 and applies for closed school discharge after July 1 2023, and they were not part of a teach out program, but they transferred to a comparable program, another institution, and they either completed that program or they're still enrolled. Are they eligible for closed school discharge? I'm just a little bit confused about what happens before that July 2023 date.

MS. JEFFRIES: Thank you, Jessica. That may be something that Jennifer needs to look at and get back to you on. So is there anyone else that wants to speak on this issue at this point? I think what I'm hearing, especially from Justin, the exchange between Justin and Jennifer a few minutes ago, is there are a number of things that were brought up that the

Department needs to have a chance to look into. And I believe it was, at least from Justin's perspective, have that information prior to taking your consensus check. That is up to you. You could take a check now just to see where you're at or we can table this and come back to it. David.

DR. TANDBERG: I think, not. I don't know that we're ready for official consensus vote, but a temperature check might be a good idea.

MS. JEFFRIES: Jennifer, did you have quickly before, Josh, did you, I didn't mean to block Josh off, but oh, Jennifer your hand is down.

MS. HONG: Yeah, no, I just, if I could jump in here real quickly. So I guess I guess the issues that are outstanding, I just perceive of them as minor technical issues in terms of the may and the shall and I think there was some minor issues that Josh had raised regarding cross reference. And to answer Jessica's question, the answer is yes, that in the scenario you provided, that borrower would be eligible for discharge. We did make a significant change by removing the enrollment concept between sessions two and three. That's really the issue here. I mean, whether whether we say may or shall, those are kind of drafting conventions and I'm trying to get a sense of where we

are. We we really spent a lot of time in response to this committee's concerns overall. I'm understanding that the table that we provided addresses the institution's concerns that realized Jessica has some other outstanding concerns. It seems like we are pretty much on board with this proposal. And I guess I was prepared to take a consensus check, absent, you know, keeping in mind, we will find the best course of action for these technical revisions, make sure that the cross references are accurate, etc. But I didn't, I don't see any other substantive issues as issue definitional issues. We talked about that with the institutions. We're going to get this regulatory guidance out. Make it more prominent. I mean, I don't I don't know what else there is here. So I just I'm interested in understanding that better.

MS. JEFFRIES: Thank you, Jennifer Justin. You're on mute, Justin.

MR. HAUSCHILD: Thanks so much. So I should have been clear, and I should have said this in advance, but I mean, we're certainly appreciative of where we are with this text and appreciate the strides the Department's taken with this specific regulatory text. I just was more curious than anything in the Department's response to Daniel, and I might have missed

for this, but I thought there was something along the lines, we'll just get back, that specific language might have been intentional. And I was just more curious than anything because I know the Department has seen fit to in a number of other areas and regulatory text that we'll look at today, especially in TBD or including TBD, which we just looked at, they looked at similar language around discharges without applications and saw fit to make those changes. And it almost appears internally inconsistent within this document, which I think is something that may be even Daniel not to. So we're just more curious than anything certainly appreciative of Department's efforts and where things stand in the regulatory text. But to the extent that these discharge without application provisions are different intentionally than some of the things we're seeing elsewhere throughout regulatory text today, I'd just be curious in learning why that's the case. Thanks.

MS. HONG: And that's a totally fair question. You know, my instinct is to say that let's change it to shall, it really doesn't make any difference. However, I, you know, I can't make that decision on my own and my, what you'll notice that there are these there are differences between the loans programs, so they fundamentally the FFEL language if you

looked at it looks very different. For good reason because of it's a different program and it's implemented differently. However, even the language, it could be better conformed and we didn't sometimes that has to do with technical changes, like we hadn't made changes in the FFEL program. So it's not necessarily that it's intentional, but it won't it won't necessarily mirror the direct loan language, right. So it might just be kind of legacy language, that's kind of how we wrote it back then. It gets to what we want the substance of the issue, there's a general sense that, you know, if time permitting, we're going to we'd like to clean up that language and make the technical changes that we want to make to make it clearer and more precise. Sometimes when we don't have that time, we're going to error on the side of what's already existing language and amend it accordingly. So that kind of constitutes some of the difference you might see, Justin, and that is not entirely intentional that some of this language is different or the legacy of how it's when it's when it was amended, when it was changed. If that helps. But all that being said, you know, the may or shall that should be easily remedied.

MS. JEFFRIES: Thank you, Jennifer.

David.

DR. TANDBERG: So I guess I'm hearing the back and forth. I mean, I would like the may shall thing resolved, sounds like shall is a distinct possibility. I think I'd be prepared for a consensus vote now.

MS. JEFFRIES: Thank you, David.
Heather.

DR. PERFETTI: Thank you. So, I just wanted to note that I attempted to place the document that was shared with us from the Department into the chat, which is the school closure of branch campuses and additional locations that you've heard referenced. And so if you haven't had an opportunity to see that, I've just inserted it there. I did just also want to raise and this goes back to, I think a question that Joe raised actually is around the 180 days to make sure that that's been resolved because that was one of the other concerns that I heard repeatedly, including one that I had mentioned.

MS. JEFFRIES: Thank you, Heather.
Alright. Jessica.

MS. BARRY: Sure, I just want to make sure that I let everybody know of two other concerns that I talked about in other meetings, and there's still a concern for me that haven't brought been brought up

today and it's under exceptional circumstances. So I still think it's an issue that we include when a accreditor puts a school on probation or show cause. And I've talked about before how they can be on probation or show cause for reasons that have nothing to do with the school's closure. So I still have an issue with that one. I also would like to point out to that if it's a state agency finding that that finding material and not just a finding because sometime findings are given an example before can be that we don't have a faculty members college transcript in their files. So I want to make sure that it's something material. And then also HCM2 a school could be on HCM2 a couple of years before their closure, get that resolved, then get off HCM2. So I just want to would want to add that they are on HCM2 at the time of closure. So just a just so everybody knows exactly where I am. I've stated the other reasons why I have concerns that those things I'm still concerned with too.

MS. JEFFRIES: Thank you, Jessica.
Michaela.

MS. MARTIN: Yes. On that 180 days from the announcement, like as much as I really want to say that, I agree that it's important because once that announcement is made. But like what you would consider

an announcement would be really really difficult for us to put in statutory like language because, for example, my school went from we're going from ABA to Calbar, so I'm currently a part of a teach out program as they're changing that status. And the announcement came in like waves, right? Like, like you start hearing about it and then like, there was kind of like an informal announcement to students that are like all of the one (inaudible), have like one study class together. So we had like an announcement then they didn't make like the formal announcement for a little longer. So I just like as much as I I totally agree with you, Joe, that folks start jumping ship. I think that that would be really difficult, and I hope that it's not like a sticking point that we don't pass up an opportunity for some like, really improved regulations.

MS. JEFFRIES: Thank you, Michaela.

MS. HONG: Yeah, I again, to Michaela's point, this is these are significant changes based on what we discussed in session two. And regarding your concerns, Jessica, I just, you know, by definition, the section you describe these are exceptional circumstances, in other words, based on the discretion of the Secretary, so it's not a given the Secretary will consider each situation on a case by case basis. So

that's why that is included in there. So in the case where an institution is put on probation for a relevant circumstance that a borrower ought to be discharged under closed school, the secretary will make that determination within the scope of his purview. So just add that for your concerns.

MS. JEFFRIES: Michaela is your hand back up or? Okay, go ahead.

MS. MARTIN: Yes, sorry. I also meant to address Jessica. Sorry. What she was saying about having concerns about that discretionary piece. I know that sometimes like when it says like up to the discretion of somebody else and you don't have that clarity, it can feel like really uncomfortable. But I also think that institutions have other forms of recourse where if you were if the Department attempted to, like, hold somebody accountable and they really thought that that was wrong, right? There's still the whole legal system where students who then now don't have a degree and have had their school closed don't have that same level of access or resources to go that route. And so I also encourage you to not allow students who have been wronged by an institution not to have the opportunity to have their student loans forgiven because somebody else might have to go through a difficult

process like we kind of have a balancing system here. And I just really would encourage you to not let that stop what is really great improvements on regulations.

MS. JEFFRIES: Okay. I'm seeing no additional hands, and after carefully listening to the conversation, especially the (inaudible), we will go ahead and call for a (inaudible) on this. I'd like to remind you that if you are a thumbs down, you will be asked to articulate your reasons if they are different than what you already articulated and you will be asked and expected to provide alternative language in it to address your concerns for consideration. So with that, let's go ahead and please put your thumbs high. I do need to call out the thumb positions on this, and so bear with me recognizing that sometimes our virtual screen moves on us. Alright. So at the end, I will be asking if I missed anyone, just to be sure we have a complete record. Okay? Alright. So with that, let's go ahead and see the thumbs, please. I see Heather is a sideways thumb. Josh is thumbs up. David is thumbs up. Dr. Marjorie Dorime-Williams is a thumbs up. Justin is a thumbs up. Daniel is a sideways thumb. Joe is a sideways thumb. Christina is a thumbs up. Jennifer, ED negotiator Jennifer, is a thumbs up. Misty thumbs up. Bethany thumbs up. Jaye sideways thumb. Jessica Barry thumbs

down. Noelia is a thumbs up. Jeri thumbs up. Michaela thumbs up. Dixie thumbs up. And Anne Precythe, are you weighing in on this?

MS. PRECYTHE: For now, I'll abstain, thank you.

MS. JEFFRIES: Okay. Just for the record, when a party abstains or is not present at the table, that is considered a thumbs up in agreement. So we do have one thumbs down. Before I get to you Jessica, Josh, you have your hands up, your hand up.

MR. ROVENGER: I can go after Jessica.

MS. JEFFRIES: Okay. Jessica, I need you to speak to any additional concerns that you have and to present proposals to correct it that would make you able to move forward on this.

MS. BARRY: Sure. And I want to be clear, I'm not trying to keep students from getting discharges that that deserve discharges. I mean, that's the last thing that I want to do. I just want this rule to be as clear as possible, so schools understand the rules. Again, it's not just schools that are closing completely, sometimes these schools are still open and and have to deal with these with these changes. In our caucus, we talked about some of the concerns that I had. I'm willing to draft some language to be able to present

to the committee tomorrow, but that's if you're interested in seeing it. I know some of my differences are pretty philosophical and broad, and I don't want to waste your time because I know there are other things that we want to get to that need our attention. So I guess I would love to hear and maybe from Jennifer what you think you know my concerns. Would you like to see updated regulatory draft from me or would you rather move forward?

MS. HONG: Do you want to, maybe Josh go first and then I can respond to Jessica.

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

MR. ROVENGER: Thanks. I was just going to say that it seems like there's near universal consensus other than industry. I mean, we have broad support from four-year public institutions, two-year public institutions, student borrowers, AGs, et cetera. You know, I would urge, I think I think, you know, to Jessica's point, there are just philosophical differences, and I would just urge the Department, though it is not legally committed to adopting what it has proposed to treat it basically more or less as consensus and use this language in its MBRM.

DR. TANDBERG: Plus one on that so I

wanted to say it out loud.

MS. JEFFRIES: Thank you. Jennifer, did that give you enough time?

MS. HONG: Yeah, I mean, I agree that everything that Jessica enumerated seemed broad and philosophical nature. We have a policy position and we stand behind it. If the proposed language is averse to that, we wouldn't be able to consider it to the extent that they're minor tweaks to the language. We were happy to consider it. I don't want to just say no flat out. We are here in good faith, but to the extent that, I mean, the change that we proposed between two and three is rather significant, and we stand by that change. So if it's proposing to bring the reenrollment language back, I think we had a lot of deliberation on our end to arrive where we are today. So again, I leave it up to you.

MS. BARRY: Okay. I just wanted to add real quick, just thank you for everyone's honesty, and thank you, Jen, for that.

MS. JEFFRIES: Alright. So at this point, there is the committee does not have full consensus on this. We will table this and circle back to it as time allows or if time allows or if Jessica you submit something that the Department wants to address,

we can certainly take a look at it. But for now, we're going to move it to the tail end of the agenda. And if there's time we will circle back to it. Okay? Alright. So with that, brings us to our next topic, which is, here it is, eliminate interest capitalization for non-statutory capitalization events, issue number three. Jennifer are you ready to walk the committee through that?

MS. HONG: Yes. Thank you, Cindy. If we could cue, an interest capitalization language, I want to point something off something out on the outset and that is the draft we just actually made we just noticed something right now that we didn't remedy in the draft that we provided to you. When we when we rewrote for session three, the language for ICR, we didn't make the conforming change to the regulations for interest capitalization. So it's really a technical change because we've rewritten Section 209 embedded in the proposed ICR plan that you have in front of you. So if you scroll down, Vanessa, Vanessa's got the actual current version, which it's a deletion. It's a deletion of everything under 209, which there was a line there that wasn't deleted regarding partial financial hardship. That's the only thing that has changed and that just change right now because we call it the

technical error on our end. Otherwise, we stand by removing capitalization for non-statutory capitalizing capitalizing events. We had tentative agreement on this. As it stands, I realize we said that we would explore capitalization under consolidation. After our deliberation, we've just left what we have here. So this does not include consolidation. And this is it so I'm hoping that this is another consensus victory for us but I see Persis's hand raised so I will let her speak.

MS. JEFFRIES: Let me, thank you Jennifer for that. Let me just make a couple of notes here for the record. Yes, Persis is back in for legal aid and Carol is in for proprietary schools. So with that, Persis go ahead.

MS. YU: Thank you. And but no but Persis is back is needed here. I actually just have a clarifying question on the technical change that you were just describing. So as I was looking at the language before today, it was the issue with the partial financial hardship because I think there's a distinction between how pay as you earn legal authority for pay as you earn and for Income Based Repayment, are you saying that there will be no income or there will be no interest capitalized when a borrower ceases to have a partial financial hardship in both Income Based

Repayment and pay as you earn? Or is it that this only applying to pay as you earn?

MS. JEFFRIES: Thank you, Persis. The Department may need a little bit of time to get back to you with that. Any other hands? There are go. I am not seeing any other discussions, so, with that, we'll go ahead and move to consensus and see where we're at. Unless Jennifer, if you had a response or anything you wanted to say before we move to consensus.

MS. HONG: Does it look that way? I'm sorry, so that's just it's just for pay. Persis.

MS. YU: Okay, thank you. I just wanted to clarify. But that the intention is that pay as you earn will not capitalize when the borrower ceases to have a partial financial hardship. Is that correct?

MS. HONG: Correct.

MS. JEFFRIES: Okay. Alright. No other hands up at this point, so let's go ahead and move to consensus if I could see those thumbs high and clearly, I would appreciate it. Okay. Heather is a thumbs up. David thumbs up. Marjorie thumbs up. Justin thumbs up. Daniel thumbs up. Joe thumbs up. Christina thumbs up. Misty thumbs up. Bethany thumbs up. Jaye thumbs up. Noelia thumbs up. Jeri thumbs up. Okay, it's looking kind of funny on my screen, I'm like, what is that down

there? Anne, are you abstaining again? And that is counted as a yes for consensus. Dixie thumbs up. Persis thumbs up. Carol Colvin thumbs up. And Michaela thumbs up. And then Jennifer from Department of ED is a thumbs up. So you have full consensus on this issue as well. Congratulations. Okay. Alright. Let's go ahead and start on your next issue, which is false certification discharge. Why don't we go ahead and get started on that and we, depending on where this goes, we may end up taking your afternoon break in there and resuming it. So Jennifer are you ready to walk us through that?

MS. HONG: Yes. Thank you, Cindy. So for false certification, the only conforming language in addition to the direct loan program is FFEL language. And this is a good example. Pages 1 through 16 constitutes a FFEL language, and it's a bit of a bear. The language doesn't necessarily mirror the direct loan language, the new language that we're proposing we've inserted in there. I will jump again to page bottom of page 16 for the direct loan language, and we can talk about any changes between two and three and begin the discussion there. The only minor technical corrections I think there was a correction to in the highlighted sections to a cross reference. 668.32 E on page 17 that's carried throughout the regulation on 18 missing

and on the bottom of page 19. For clarity on page 20, we've added the clause relating to the individual to ensure that the judicial determination of identity theft, if relating to the individual, as well as a police report alleging identity theft relating to the individual. And that'll take us all the way to the end. So these were just technical changes between sessions two and three. I know that legal had some questions or concerns that they wanted to discuss, and unfortunately we weren't able to connect between the sessions, so we're happy to hear them and talk about them. If you want to do that Josh at the table today, we're happy to do that. But that's where we are with (inaudible). I know that this is another one that we had tentative agreement with in session two.

MR. ROBERTS: You're muted Cindy.

MS. JEFFRIES: I'm sorry about that my mouse wasn't cooperating switching screens here for me. So thank you. Josh, go ahead.

MR. ROVENGER: Thanks. So I have a number of comments and questions. But I think I'm going to start with the most important one because when I took this back to my constituency, notwithstanding the tentative agreement, the last time there was really significant concern that the Department didn't include

the proposed language related to group discharges that we submitted or something comparable to it. Essentially, we need something in here that provides for an opportunity for borrowers to submit a group application that the Department then is committed to respond to. You know, one is a practical matter. A lot of borrowers don't even know about their right to file cert relief, and so the group process is particularly important. And two, what we've encountered in the past is when we have submitted group applications, the Department just hasn't responded to it at all. And so we do need some provision in here providing us with the right to do so. So that's kind of the biggest picture item for us. A few other points that I want to flag and I'll come back on because I think I'll go over my three minutes. So on corroborating evidence, so we understand why so we understand from the last session that the Department when it comes to ATB issues is not going to require any corroborating evidence. And we also understand that it's not going to be included in the regulation. I do, I think my constituency feels like if it can go in the preamble or some other form of guidance, that kind of tells us exactly what the what standard the Department is going to be employing. I think that would just be extremely helpful for us and for our clients. The last

thing I'll leave right now and then I'll pop back on is on the definition of origination. So I think I think we have two concerns on this and would urge the Department just to take out the definition entirely. The first concern is that by pegging it to the common origination and disbursement system, I think the Department I feel like this regulation is almost setting us up for problems in the future if the Department ever changes its systems or the process and procedure, because then we have this regulatory language that's tied to this one specific system that could possibly change in the future. And then just more broadly, the definition itself recognizes that a school must determine the students or parents eligibility for the loan and that that happens before the school submits the record to the Department's COD (phonetic) system. And if I mean, if this entire framework is dealing with the school's obligations to certify eligibility, it seems like it's at the point that the schools determining the students or parents eligibility, that that certification is happening. I'll pause there. The second two issues really important, but not deal breakers for us. The group language is critical.

MS. JEFFRIES: Ok, thank you, Josh. I should note you for the record that Josh did come back

to the table representing legal aid. Jaye.

MS. O'CONNELL: So my question is, is technical in nature, so under it would be for both DL and FFEL rules. So I'm looking on page 4 under the crime of ID theft and part of the change to the evidence. So, it you're listing, I think, five different evidence options, but there's an "and" at the before the last item, and we're wondering if that's really an "or"? So that's the first question. And I think the other thing we just wanted to bring up, so we under the FFEL program, there could have been denials of ID theft claims where there was a higher standard of evidence and just wanted to raise the concern that one of the experiences we've had is with soft fraud or family fraud and just the contemplation of if you have a lower standard of documentation evidence, if we might see that relief companies kind of getting in the mix here to encourage this soft kind of fraud. Just an experience we had during our tenure as originators. So that's it.

MS. JEFFRIES: Thank you, Jaye.

MS. HONG: I can quickly respond and thank you for that second point, will take that into consideration. I think the "and" is fine here. It's an inclusive list, so you know, it's listing out all examples of supporting evidence, so I think the "and" is

fine. Thank you.

MS. JEFFRIES: Thank you. Josh.

MR. ROVENGER: Thanks. So a few other items. So the first thing I know we talked about a little bit about this last time the reported not having a high school diploma or its equivalent provision. Again, I think we have concern about the reported language in there. Many borrowers don't know that not having that this is related to their eligibility for federal student loans at all and so wouldn't have any reason to report that they didn't have a high school diploma. And what we're concerned about is that the most vulnerable borrowers are the ones who are going to be denied relief by including that obligation on them. I think that is particularly I think that risk is particularly significant when compared to any kind of countervailing interests that may exist. You know, one, it is the school's obligation to certify eligibility. And so it's the school's responsibility to make sure that the student has a high school diploma. And two, I just I struggle to see that taking out the reported language would open the door to any potential fraud or misconduct as to outweigh the harm that could that will be caused to students by this requirement. So that's one issue. The second issue relates to disqualifying status.

So right now, so we had proposed some language to expand this provision, not only to include legal requirements, but also de facto requirements that are imposed by states. So obviously we want to see the Department go further on this, that it is that it has. But even just looking at the language right now, I think we have concerns about it being limited only to state requirements. And I understand that state there is kind of serving a dual purpose of both individual states, but also a legal requirement. And our concern is that we've had clients who due to a disqualifying condition, have been denied eligibility have been denied employment from federal positions. And so it's also federal requirements that can impose a burden. And so we would urge the Department to change, to either say, state or federal requirements or legal requirements or some other variation within the disqualifying status provision. Now, if kind of on a broader point for disqualifying status, if a department is not willing to expand it to include de facto prohibitions with language like we proposed, we think this is a good place for the Department to consider utilizing and putting into regulation its broad settlement and compromise authority. And I think this was touched on a little bit in session two, but the Department really does have

significant settlement and compromise authority that can be utilized to effectuate the statutory purposes and intent and kind of ensure that these regulations accomplish what they're designed to accomplish. And so I think it's true both with respect to all certification and disqualifying status and but just more broadly across the discussion this week, I think where there are places where the Department can put that authority into regulation, it should do so. And I'll circulate a memo from the Student Borrower Protection Center that lays out some specific examples on how to do it. Now I'm going to hop off and I'll come back on.

MS. JEFFRIES: Thank you, Josh.

Justin.

MR. HAUSCHILD: Yeah, thank you, I just want to say we appreciate where this regulatory text is broadly. Did want to circle back to an issue I've raised previously and which is one that was kind of the basis for a few anecdotes I shared and I believe if memory serves some of the stories that veterans have shared in public comment throughout the duration of these proceedings, but if memory fails there, I certainly raised these anecdotes. And that's the issue of institutions functionally accomplishing an unauthorized loan where the borrower isn't aware that

they're actually authorizing the loan. So we think this is probably covered by Borrower Defense regulations, but we do think the Department missed an opportunity here to potentially deal with this issue explicitly. We also think that the outcome is functionally the same. The student is aware that they're taking out the loan and the institution is functionally complicit in ensuring that that the loan is taken out without the borrowers knowledge. So it's really an issue that's important to our constituency, one that we have seen in a documented fashion have a severe impact on them. Would appreciate the Department's consideration of the language we submitted were certain that the department did consider consider it, but would like to see its inclusion here, but broadly speaking, appreciate where this language stands.

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

MR. BARKOWITZ: Thank you. I want to address the issue of the high school diploma. I have comfort with the language of the compromise language that's been introduced by the Department. My concern about going forward with further language is that the Department itself is de-emphasizing the requirement of collecting documentation of high school completion.

Namely, in last week's federal student aid conference, the Department announced that for 23 24 sorry for 22 23, they will no longer require as part of verification, completion of a high school diploma or high school transcript. So that leaves the only time in institutions going to have or require a high school transcript from a financial aid applicant in those situations where the school requires it for admission from every applicant for admission, and that is not a universal thing. So where I do see comfort is at least in the current language, there is some sense that if the school knowingly falsifies that, they be held liable, which I completely agree with. But the expanding that too much further is going to run a risk that institutions may or may not know and may need to rely on the Department allows this, and in fact, it's written in that the school could rely on the student's attestation of their completion as documentation of their completion. So just for the for the matter of the record.

MS. JEFFRIES: Thank you, Daniel.

Carol.

DR. COLVIN: I just have two quick questions. On page 22 at the bottom of the page at 685.215 section E 1 romanette 2, just curious as to why that language was removed. The as an alternative to an

official transcript or official copy of the borrowers high school diploma, the borrower submitted to the school and written attestation under penalty of perjury that the borrower had a high school diploma. I'm curious as to what the reason for that removal was? And then also Just to restate a previous concern, if a if it was determined that a student had a direct loan that was originated in at least one disbursement as a result of false certification, that there be some provision to automatically cancel or remove the master promissory note that was tied to that. So that we can be absolutely sure that there's no way that a student would be able to receive another direct loan under that master promissory note. Just as a protection for the student to make sure that they get all of those disclosures and all of that information, and that they are required to actually complete that MPM.

MS. JEFFRIES: Thank you, Carol. Josh.

MR. ROVENGER: Thanks. Just two more quick notes. The first is, and I mentioned this last time, the reapplication provision, and that's at the end of the direct loan reg. You know, again, right now, the regulation is silent on this and permits borrowers to reapply. I think we have a concern that this by including affirmatively including this language, it's

just inviting a future administration to reconsider that position and that there can be unintentional consequences by including it in here. We understand why the Department's doing it. We appreciate the sentiment. We think leave well enough alone on that issue. Then the other very small technical change on page 8 in the FFEL reg, if the Department could just turn he/she into the borrower or they would be appreciated. Thank you.

MS. JEFFRIES: Okay. Thank you, Josh. Any other comments or concerns at this point?

MS. HONG: I just, I want to, I can respond to some of the issues that Josh raised. In terms of group process, I know we talked about this before, we don't view anything in the current regulations in precluding group discharge, and I know we have a whole section on discharge with application and we just we can we can clarify that in future guidance. I think adding a whole other process for group discharge when it's not necessary to avail yourself of a group discharge. We just we didn't incorporate it, not because we, you know, we just don't view the regulations as precluding it as written. And so we can we can add further future guidance on how borrowers can avail themselves of group discharge, but we I'm understanding what you're wanting is some kind of steps of steps toward a group discharge

written into the regulation, and we just it's not necessary. Borrowers can avail themselves of that process under the proposed regulations. In terms of corroborating evidence, you're right that a lot of that we perceive as being under subregulatory guidance. So we can we can certainly clarify that standard elsewhere. Either in subregulatory guidance or in the preamble. We did look at your proposal regarding disqualifying status and we just had trouble reconciling. We we just found it difficult, the language difficult for the Department for the Department or guarantee agencies to make, you know, supportable determinations of eligibility based on that standard. So that's why we haven't added anything. The proposed language language that you submitted was a little bit too open ended for us and that's where we are with this and I'm trying to remember the other issues that you raised trying to keep them all in my head here. So I don't know if adding a successor system after this COD text may remedy some of your concerns about about successors, but technically origination is not tied to ED system, it is actually when a school creates a record in their system. So we didn't see an issue with how we framed it here. Carol, I want to, I'm sorry, not Carol, Josh, those are I'm sure I'm forgetting something, but I know you have your hand raised so you'll remind me.

MS. JEFFRIES: Thanks, Jennifer Josh.

MR. ROVENGER: Thanks. So

corroborating evidence, very much appreciate any clarification on subregulatory guidance and that sounds good. On the disqualified status provision, you know, I don't, I don't, that's not we're not going to withhold consensus on that issue. I do think that language comes from Colorado law. And so we do think it is administratable and that there's case law interpreting it that could also provide guidance and so would urge the Department, if not now, at some point in the future to reconsider that position. On group language, so the problem with the group, so we agree that as of right now, there the regulations permit, there's nothing in the regulations that preclude borrowers from submitting group applications. The problem is the Department sits on them and hasn't responded to them and without language in the regulation that explicitly acknowledges that right that that available right, it is more difficult for advocates and borrowers to fully obtain that remedy and seek relief if the Department does not act. And so if the Department agrees that this is something that already exists and doesn't have a problem with the concept, I guess I don't I guess I'm struggling to understand why the Department is resistant to

including even a very short like we proposed that just recognizes that right to relieve. And then finally, on origination, can you I think I'm just a little confused by the answer. Can you just clarify that? I think what you said is origination is when the when the school creates a record in their own system so it's even before the COD submission or something else?

MS. HONG: Yes, that's my understanding. When the school creates the record.

MR. ROVENGER: So I guess then that almost makes me think that the like then I guess I'm curious why the Department doesn't define origination as at that point at the time, the school creates the record? If it if it's happening even before the submission to the COD system.

MR. BARKOWITZ: And if I, if I, can add to that, Josh? The confusion I have then as an aid administrator is the origination system in COD is what validates the creation of the record. So I may package alone months before I batch that out to the Department. It's not really an originated loan until the Department acknowledges that through the COD system. So I'm back to the question that Josh has. I'm comfortable with the COD definition or whatever system of record the department has. But my adding the loan to a student financial aid

system may have nothing to do with the actual date in which they take on that loan.

MR. ROVENGER: And let me jump in again. I mean, one way, one option here might be to change the use of origination, so we appreciate what the Department is doing, moving away from distribution to to an earlier time origination. One kind of easier route may just be changing origination to certification and then leaving it to subregulatory application to determine the kind of certification with eligibility. And then it would also be more consistent with the language in the statute.

MS. JEFFRIES: Thank you, Josh. Jennifer, your hand us up is that from a previous? Okay.

MS. HONG: Yeah, that was from previous.

MS. JEFFRIES: Okay. Alright. Okay, so I'm not seeing any other hands. Why don't we go ahead and do a consensus, move to consensus, see where you're at and then we'll go from there and take a break. Okay? So on the issue of the false certification discharge, let's see your thumbs, please. Oh, I'm sorry, wait a minute, Michaela raised her hand.

MS. MARTIN: I'm sorry, so is this

like the formal last call consensus check? Or are we saying that there's the potential we could circle back and do like another consensus check because I just want to be clear on that.

MS. JEFFRIES: The way consensus works, Michaela, is anytime we call for any a consensus is called for, it is an official consensus. If it if it reaches full consensus like you have on a couple of issues today, then the issue is pretty much done. Except I do know that in the one case, there was a couple of technical changes that Jennifer was going to make the tweaks on. If there is not 100% consensus, then we follow the process of asking you what your serious concern is, okay, and ask you to provide concise and articulate what what it would take in language for you to become on board. What is it you need to have? Okay. And just as we did with the previous one that did not reach consensus, it does get moved to the end of the agenda. We will circle back as time permits. Does that did that answer your question?

MS. MARTIN: Yes. So what you're saying it is like it is the official consensus check, however, we could come back to it?

MS. JEFFRIES: If it doesn't pass, yes, yes.

MS. MARTIN: Okay.

MS. JEFFRIES: Yeah, that is true with any consensus because you don't have consensus, okay, if you don't reach consensus in time allows. certainly you would want to circle you could circle back to them. Okay? Josh.

MR. ROVENGER: Thanks. So so obviously defer to the Department and the group, but I would I would propose pushing the consensus check on this for a day, for a day or two. Just because I can't I can't speak for other negotiators, but for me, you know, I got a lot more pushback on the group issue than I think I relayed to the Department at session two. And so while there was tentative agreement at session two, you know, I think it would be beneficial if the Department could spend a day or two seeing if there's any possible movement on that issue. Before we took a consensus vote.

MS. HONG: I just I just want to just point out, I understand the concern from legal aide but it's a non regulatory problem that we're trying to address so allow us to remedy it through other means, operationally. I don't know that I don't know that, you know, adding more language to the regulations is going to remedy the issue of your constituency. But we can certainly make improvements internally to ensure that

these group discharge applications get processed because again, the regulations as proposed allow for it.

MR. ROVENGER: So can I respond?

Thanks. So I think our concern is less what this administration will do with respect to group discharges and more, what a future one will do without it in the regulatory language, it becomes much more difficult for us to seek to compel unlawfully withheld action or unreasonably delayed conduct without either statutory or regulatory language, specifically saying the Department has a duty to decide these things. And so while we appreciate the Department's willingness to beef up a process elsewhere, it really is important from our perspective to have it in the regulation.

MS. JEFFRIES: Thank you, Josh. Brian, did you want to add something?

MR. SIEGEL: Yeah, it's interesting Josh is taking or I guess the AGs generally have taken a different view on two different provisions. One, they want language in here that we think actually emphasizes or could emphasize a problem. And then they want to take out language on reconsideration or reapplication because they're concerned that that it may focus on it. I understand why you have a different approach in the two cases, but from our perspective, you know, we're taking

the opposite approach on the two. And while we can take it back and talk about it internally, I just encourage Josh and legal aid generally, are there things that we can include in the preamble that would provide enough confidence for you? And it may not. But you know, that's that's the way you're hearing pushback from us that we don't really want to include this in the reg. Is there a way we can address it through the preamble? I guess also keep in mind that if we include a group process, it it allows the future administration to focus on it and take it out. So there is a risk that it that it, you know, sometimes things that are not not in the regs, don't get as much attention. So just I'd encourage you to think about those areas.

MS. JEFFRIES: Thank you, Brian.

Justin, I had your next. Did you take your hand down and come back or?

MR. HAUSCHILD: I want to defer to Josh because mine is on a different topic.

MS. JEFFRIES: Okay, great. Thank you. Go ahead, Josh.

MR. ROVENGER: Thanks, Justin. So Brian, I appreciate all that, and I recognize that in one instance, we're asking for something to come out of the reg for that very reason. I think the distinction is

just there is so much case law about when an agency has an obligation whether an agency has an obligation to act and what you need to show for it to prove that the agency has unlawfully withheld action. And that's why it needs to be in the regulation. You know, if the choice is between what it is now and language in the preamble, obviously we're going to choose language in the preamble. But I think our it is our very strong preference for it to be in the regulation.

MS. JEFFRIES: Okay, thank you.

Jennifer, did you have a response to that or? You're on mute.

MS. HONG: Yes, sorry. I wanted to, well, first I realized I had to move back to Carol's question, but I looking at the chat and thank you Daniel, I think directed so, so Carol unless you continue to have questioned. It's not that that section on page 22 was deleted it's just replaced with language earlier on on page 18. So let us know if you have if you continue to have concerns. What I'm hearing from you, Josh, is that and what we the Department is putting forward is that we're we can capture these concepts in the preamble and have a good solid discussion about this very concern about group discharge. We can capture that in the preamble and in future guidance.

MR. ROVENGER: So. That's I mean, if the choice is between nothing and that, but I have, I think I have to withhold consensus unless it's in the regulation, at least unless there some legal bar for it to be in the regulation. And so again, we just ask the Department to take it back for consideration.

MS. JEFFRIES: Thank you, Josh.
Justin.

MR. HAUSCHILD: Yeah, and so this is sorry for the the different road here, but I'm curious if I could get the Department's position on why they chose not to address instances where schools effectuate the unknowing authorization of a loan by a student in these regs.

MS. JEFFRIES: Okay. Thank you, Justin. Did you want to put that question in the chat? Oh you have your hand back up.

MR. HAUSCHILD: Yeah, and I just I mean, I just was curious if I could, and maybe it's something they need to come back, get back with us on, but was just curious in terms of an explanation or any reasoning behind the Department's decision not to address that. Maybe Brian Brian has something here.

MS. JEFFRIES: Okay, Brian.

MR. SIEGEL: Yeah, we generally treat

that as fraud, and we have an application now that specifically addresses fraud, it's a common law cause of action. We don't have to go through the false certification process. That's why we drew that distinction a number of years ago. And so we've never included it in the definition of false cert.

MS. JEFFRIES: Thank you, Brian. I think I think here's where we're at with this. We're going to go ahead and take the consensus. Understanding Josh with, I mean, you articulated your position very clearly. But in holding true with the process that we've been utilizing and taking consensus votes on each of these issues as they are presented. We're going to go ahead and move forward with that and see where it is. And then obviously, if it does not pass a consensus this time around, as the proposals come in, we will circle back to it at a later date, just as we will time permitting with the others. Okay? So with that, I'd like to see your thumbs. If I may? Alright. Heather is a thumbs up. David Tandberg is a sideways. Marjorie Dorime-Williams thumbs up. Daniel thumbs up. Joe sideways thumb. Christina thumbs up. Misty thumbs up. Bethany sideways thumb. Carol thumbs up. Anne are you abstaining? That is considered officially as a thumbs up. Jeri is a sideways thumb. Noelia is a thumbs up.

Jaye thumbs up. Dixie sideways thumb. Josh is a thumbs down. Justin is sideways thumb. And Michaela is a sideways thumb. So Justin is the Justin is a sideways thumb, right? I got that right. Okay, thanks. Josh, anything else you want to add? Are you at this point just asking standing with your previous proposal if you have something different to offer to the Department, I would encourage you to do so and we will place this we'll table this for now and move back through these issues that did not pass consensus later on in the week as time permits. Okay?

MR. ROVENGER: Yeah. The only thing I would say is I would ask the Department to consider all the things that we discussed today. But the one that would change me from a thumbs down to sideways is the group issue.

MS. JEFFRIES: Thank you, Josh. Alright, with that, it is 2:26, let's take a ten minute afternoon break so people can get up, stretch, get something to drink. I'm actually going around that, I don't know, let's round it to 2:30 because everybody's clocks are different. So let's say at 2:40 will return here and if we could go off live stream at this point for that break. I'd appreciate it. Oh, Jennifer.

MS. HONG: Real quick, Justin, can you

can you put your question in the chat please? Just so I can circle back with you.

MR. HAUSCHILD: About unknowing authorization of the loan?

MS. HONG: Yes.

MR. HAUSCHILD: Sure. Yeah, thank you.

MS. HONG: Thank you.

MS. JEFFRIES: Okay, thank you. So if we can go.

MS. JEFFRIES: Appreciate it. With that, we'll pick back up there is Justin does have his hand up and will complete this before we move on to the next issue of creating a new Income Driven Repayment Plan. So Justin.

MR. HAUSCHILD: Thank you so much. I guess, I'm Just trying to get some additional clarification around the clarification Brian provided previously for the forgery process or the separate process that's meant to address the unknowing authorization of a loan that borrower did not want. So was curious if you just get some more information. I guess I'm broadly aware that there's kind of this forgery (phonetic) process at the Department maybe, maybe a new form of process within the last year or two. But you know, from what I can tell, it doesn't seem to

address the issue that we're talking about, which is where an individual actually signed the loan document. Their signature was effectuated, but they didn't they didn't know they were actually signing up for a loan. Or maybe they were even deceived into signing up for something that turned out to be a loan. So if I could just get some additional clarification around that? The issue would be that they didn't intend to take out the loans, but that they did sign the actual loan document. I think that's the issue here, at least if we're talking about forgery process.

MS. JEFFRIES: Thank you, Justin.

Jennifer.

MS. HONG: I think that's why I'm confused, Justin. I just want to make sure so this is what you're describing, isn't that encompassed under on page 17? Certifying under romanette 3, sign the borrowers name on the loan application or promissory note without the borrowers authorization.

MR. HAUSCHILD: I mean, from our perspective, it's not that the so I guess I'm thinking about this in the instance of electronic signature, right? And the borrower signing something that they're not aware of is (inaudible) yet or otherwise a loan authorizing document. They've actually signed it

themselves, but they're not aware that they've signed for a loan, right? Or they were told they were signing for something else or they were signing for a conglomeration of things, whatever it might be. So the problem here, my estimation is that they've actually signed it themselves, but they didn't actually intend to take out a federal student loan.

MS. HONG: That's what we were intending to capture, just the scenario you described, for example, under two at the bottom of page 17 for unauthorized payment. Right. So the Secretary discharges borrowers and endorsers obligation to repay a direct loan if a school without the borrowers authorization endorsed the borrowers loan check or sign the borrowers authorization for electronic funds transfer unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school. It's meant to encompass, you know, if.

MR. HAUSCHILD: I guess. Yes, go ahead. Yes, go ahead.

MS. HONG: No, no, go ahead.

MR. HAUSCHILD: I guess our concern is that it seems that the language is it's reliant on the school being the signer. And in the situation that that we're discussing, it's where the individual signs, but

not under the impression or with the intent to actually authorize a loan. So we're reading the language that that that's currently here in the text, you know, to be the institution's actions. You know, we're like, yes, right, where the institution endorsed, you know.

MS. HONG: We talked about this earlier about that what you're describing being BD more on the BD side. Because the false certification regs apply to institutions falsely certified.

MR. HAUSCHILD: Right. And we think the link here is that the institution is effectuating the unknown authorization of a loan. But do do recognize that this very well may fall within the structure of in scope of BD, but just feel that perhaps the Department's missing an opportunity here to very explicitly address the safety within the context of false cert where there's an arguable nexus between the institution effectuating the signature the student's signature unknowing authorization. But we just wanted to get some additional clarification. So.

MS. HONG: Yes, now I recall the discussion regarding this issue, and I think I mean, I understand your point and I think based on our internal discussions, we felt that that was our, you know, fell under Borrower Defense claim more than it did under.

Although although you're I'm following your logic here, but this is where we landed.

MR. HAUSCHILD: Okay, understood. And just if I could just get clarification, because if there is something out there that's already a process the Department there certainly would be veterans that that should probably be filling out any form or taking part in a process that's meant to address this issue. So if I could just get some clarification, it sounded like maybe there was a process at play to address this very thing, but was just hoping it could get a little more clarification on that.

MS. JEFFRIES: Brian, I see came off mute. Did you want to say something?

MR. SIEGEL: No, Jennifer covered what I was going to say, so.

MS. JEFFRIES: Okay. Alright, great. Thank you. So with that, we will table that issue for now and move on. I do want to remind everyone both on the committee and the public listening in that public comment will start around 3:30, from 3:30 to 4. We do have a full list with a waiting list, but we encourage you to continue your process and we ask that those of you with scheduled times that you please sign in several minutes before your scheduled time so that we can get in

as many people as possible during that time period. So with that, we'll move on to creating a new Income Driven Repayment plan. Jennifer, are you ready to walk us through that?

MS. HONG: I see Persis's hand. I also, I think Carol had her hand up. I don't want to miss, I'm not sure if she had an outstanding false certification issue.

MS. JEFFRIES: Yeah, I did see Persis come up as I was speaking and now Carol. So Persis.

MS. YU: So my comment is as it relates to the Income Driven Repayment of a more overarching conversation, so if Carol has one that's that relating back to false cert, I will defer to Carol.

DR. COLVIN: I was just going to state that I think regarding Justin's concern that that would hopefully fall under misrepresentation or BDR claim. But it does go back to the to the question that I had earlier on making sure that there is no outstanding MPN. So it would give a student every opportunity to understand that they were taking out a loan, so that there was absolutely no chance that they could use an MPN that was falsely done, somebody who had completed for them or that they had been ushered through without a complete understanding. It just as an added layer of

protection to make sure that they understand if they have to complete a new master promissory note and are able to walk through that process in order to get a new loan. That was it.

MS. JEFFRIES: Okay. Thank you.

Alright, Persis.

MS. YU: Thank you. I wanted to take a brief minute before we start diving into the details of the Income Driven Repayment because when we received the the proposal from the Department of Education, I think that there was a lot of, I won't speak for everybody else, but there was a lot of discontentment with the proposal that we received. And I I wanted to express that right off the top as a broader issue that we came into these negotiations with a lot of hopes of solving a lot of problems. The Department, in their first issue statement, identified a lot of the problems. I think a lot of folks here are concerned with issues around the racial justice implications of the fact that our Income Driven Repayment programs are not working. The fact that folks have smaller balances and very low incomes and are not getting cancelation well most people are not getting cancelation at all, but certainly and not a timeframe that is reasonable. The proposal that the Department has provided us seems like frankly just tinkering around the

edges of what we've seen before. And there's a sense that a lot of us don't want to be here again in a couple of years just to re renegotiate tinkering of the terms one more time. I would, before we get into the details, like to call a caucus of all of the nonfederal negotiators so that we can have an opportunity to discuss this together and including also our advisors, Heather and Raj.

MS. MARTIN: Persis, can we hear from the Department just like if they have any opening before we do that?

MS. YU: I'm happy to listen to an opening if we are going.

MS. MARTIN: Sorry, I just wanted to see if they have any, you know, any like newness out of optimism. Sorry.

MS. HONG: I'm sorry, Michaela, I missed the first part of what you about the do I have an opening? Is that what you're asking?

MS. MARTIN: Yeah, like if you were planning on just like going through the changes as proposed or if there was anything else at the Department wanted on our radar or like conversationally? Before we went into a caucus situation that Persis asked for.

MS. HONG: Yeah, I understand your

need for caucus and I regret that, you know, you know, in terms of expectations. But I do think that there are some really good things about this this plan that we're putting forward. I just I want to remind you that this was we had this at the end of session one. You know, we were we were doing the best that we could to kind of put some reg language together so that we come to session two. That was still very much in draft form. There were there were a lot of unanswered questions that we really went back and tried to consider everything that was discussed here. So I I guess maybe it's best you can all caucus and I'm happy to go over the changes as proposed for session three when we return.

MS. JEFFRIES: Thank you, Jennifer. So Brady, I'm going to ask you to set up that breakout room, and while we do this, I would like us to stop the livestream while we set up for that and the party's caucus. And then once they return to the main table, we will resume the live broadcast. If you could let us know when we're no longer live. Okay. Welcome back from caucus. We can go ahead and proceed unless I see any hands. I'm going to ask Jennifer from the Department to walk us through the document that the Department has provided.

MS. HONG: Okay great. Thanks, Cindy.

So just by way of introduction, you've heard us a lot talk talking about our concern for defaulted borrowers. We think that IDR is a crucial benefit for borrowers, but our concerns have always been how can we attract more borrowers to the program? Despite the existence of these Income Driven Repayment plans, we still see a lot of borrowers defaulting. So many of the principles and ideas that the president has set forth regarding a proposal is akin to a lot of the principles that we've proposed here. And again, we've we're emphasizing undergraduates and lower payments, and I think this proposal reflects that. That's not to say that graduate credentials aren't important, we recognize that they are important. However, we've were focusing on undergraduate credentials as a ticket into the middle class, and it is the first boost from undergrad that is a key path to the middle class. So and also the fact that undergraduate borrowers are far more likely to risk default due to issues like (inaudible) completion, and that's really where we were trying to shine our light on in terms of this proposal. We believe that this proposal will significantly release student loan repayments for undergraduate borrowers. After some deliberation, we felt that the marginal rate will target benefits for those who have the lowest incomes while providing

benefits to those who earn more. We also appreciate all the ideas and issues raised by negotiators. We did consider them. There were many that we felt like we couldn't legally do to include monthly and annual cancelation. And others, we just felt like we couldn't we weren't comfortable with proposing at this time. So those are some general remarks, I'm happy to get into the text at this point. If we could get Vanessa to cue the text. We just get. Okay. Okay, so we've highlighted areas where we proposed changes between sessions two and three. The first one on page one is just pointing out the definitions for discretionary income eligible loan. This section doesn't apply to EICR just clarifies eligibility for plans that have a partial financial hardship and that's on page one. You may recall that we've condensed all the IDR plans into this one section of regulations. On page two, at the bottom, just to flag that the Department removed the language around proration from session to which we felt was confusing and rewrote this to make it a bit clearer. It's not it's not a substantive change, it's just a wordsmithing at this point. Right above that, the definitions for income AGI is reported to the IRS or alternative documentation of all forms of tax taxable income received. Just to clarify, monthly payment or the equivalent, means a

required monthly payment made under one of the repayment plans described above a month in which a borrower receives a deferment or forbearance. A repayment under one of the deferment or forbearance conditions listed in paragraphs K 4 4 A through K of this section, which we will get to. Or a month in which the borrower makes the payment in accordance with the Hold Harmless procedures described in paragraph K 6 of this section. So again, we're counting monthly payments for deferment or forbearances that we'll outline later in the proposal, as well as we've built in a Hold Harmless procedure for forbearance steering. That's been a real issue. So we wanted to put that in the regulation. We've always have the authority to make this account corrections as necessary, but we wanted to make that explicit in the regulation. I see hands up. Maybe we should take this. I saw I saw Persis and then I saw Bethany. Would it be helpful just to kind of take this section by section instead of going through the whole document?

MS. LILLY: So that was a question I actually had for the Department, because I think one of the takeaways from our caucus just now is that I think we have a major list like a we appreciate that the Department has updated this proposal. We appreciate that the Department has made changes that will improve

programs for undergrad borrowers. But we have a collection of kind of major issues and concerns that we want to discuss and we don't know. We thought it would be most helpful for the Department if we discussed each issue in turn, because then we can have that discussion where we can figure out why the Department didn't adopt proposals that we have made and figure out if there's a way we could work to something where we would all be a lot happier. And so I I'm happy to start like it was around the discretionary income piece, it was around the 400%. But like I would just it would be helpful to me to understand if that's helpful to the Department to move piece by piece, because that does make, I think, a little bit more sense to us. A lot of us have read over this document very carefully and I think care a lot about what's in it. So. And we do appreciate the amount of work that the Department has put into this, and we've certainly sent you guys a lot of proposals that I'm sure have been messy to compile.

MS. HONG: I appreciate that, Bethany. I think that makes a lot of sense, so let's see, so I, let's we can stop, why don't we stop right there. So I ended on definition of monthly payment and income and then we talked about, just like the minor technical change for partial financial hardship at the bottom of

page two. We talked about just kind of the overriding concept and targeting of undergraduate borrowers in particular, in particular lower payments, and that's what we prioritized. So why don't we stop there so we're looking at definitions under general all the way through the end of page two. We'll take, we'll put a pin there and then we can proceed because I see hands up.

MS. MACK: Cindy, you're on mute.

MS. JEFFRIES: Okay, I do want to remind you, we are six minutes from public comments, so we will get through as much as we can before that 3:30 mark. Okay? Bethany.

MS. LILLY: Well, part of the reason I was asking is that part of my comments rely on the EICR plan that we discussed later in the regulations, but are tied into this discretionary concept and ideas. And that's, you know, we proposed a 400% exclusion for the new plan. We thought that that would make the plan substantially better than all of the other plans out there. And that was our goal because we wanted to make this as simplified and easy for borrowers to understand. This is the plan you need to be in. This is how you get your payments like this is the best plan. Yes, there are other plans, but simplifying it as much as possible for borrowers so they don't face this massive list of plans.

That's kind of all over the place. And unfortunately, the exclusion of grad borrowers kind of implicitly it does that it forces grad borrowers to think about this differently than everyone else. But to the discretionary income point, I mean, I work with the federal poverty level all the time. And even at 200% of federal poverty, we are only talking about 200 or 25,000 dollars a year for people across this country. And then they have to start making payments on that. And I don't know about you, but I can't imagine trying to make you manage living, paying rent and doing everything else on 200 25,000 dollars a year, like that's incredibly low. So when we're talking about this to my mind, we should really be trying. I think the Department is correct. We should be trying to target borrowers. But one of the easiest ways to do that is to think about the amount of money that you're excluding just at that base level. So if it's not going to be that, then there are there ways that we could be getting at folks who are continue to be really low income or, you know, percentage wise, like low income. And maybe it's some combination between the discretionary income cap and then the percentage of payment, like because you with that 5%, you are only covering 100% of kind of that that transition period. The ACA subsidies go up to 400. You've got all of these

other federal programs that go higher than that. To my mind, if you're going to do it like at least build out kind of a phase in one way or the other, that doesn't have that cliff that goes straight from 5 to 10. I mean, that's a huge percentage change when you switch from 300% federal poverty to like 301% federal poverty. And to me, that's really not helping those kind of, I guess, I would say, low to middle income people. But like honestly, even 400% of the federal poverty line isn't approaching, what is the median income in this country? And so I I really struggle with the Department's decision there. And so I would appreciate some guidance around what is there flexibility there? Will the Department consider going up to 300? Because I think that's going to impact and Raj probably has a much larger point than me. But just as a starting point, that is that is where I am trying, struggling and trying to come to. Some come up with some ideas that will help me get to a place where I can agree to this proposal because I do think it has a lot of improvements in other spaces.

MS. JEFFRIES: Thank you, Bethany. Persis, you have approximately a minute and a half.

MS. YU: Okay, well then I will, I'll choose my statements and then pick up tomorrow. But I

mean, I think I very much appreciate I have worked my entire career with defaulted student loan borrowers and so I appreciate the focus on defaulted student loan borrowers. What I think the problem is that I don't think that this proposal fundamentally understands why borrowers default. And it does not take into consideration the multitude of problems. And I think affordability is one huge problem why borrowers default. I have some research that I am willing to share from my colleague that shows that like in many places, especially if you have children, it really is, over 300% of federal poverty is the self-sustaining self-sufficiency wage standard. So I'm happy to send that around. But borrowers default both because it's not unaffordable. But as a legal aid provider who's all of my clients are below 200%, you know, almost all of them have zero dollars and would have had zero dollar payments if they could get in. And so, yes, again, the having the future act implementation will be helpful in this. But we have almost all of my clients have been steered. And so the fact that we're not considering administrative forbearance is a huge problem.

MS. MACK: Please proceed, Persis.
Someone was off mute, mistakenly.

MS. YU: Got it. Borrowers continue to

see their balances grow and they feel hopeless. Borrowers that do find when I've counseled borrowers about Income Driven Repayment, the fact that cancelation does not come for 20 years is a huge disincentive. The fact that they see their balances grow is a huge disincentive because people do not trust the federal government is going to cancel their loans after 20 years. Fundamentally, people do not believe that is going to happen, and the evidence does not suggest that is going to happen. So there are larger structural changes that we need about restraining balanced growth, about shortening the time to cancelation. If you truly want to create a system in which borrowers do not default because of Income Driven Repayment.

MS. JEFFRIES: Thank you, Persis. With that, we will end this discussion for today, Persis, you will be first up tomorrow to fulfill the rest of your time that you were shorted today. It is 3:30, so we will start with the public comment. Kayla, who do we have first?

MS. MACK: I have admitted Karina Nielsen.

MS. JEFFRIES: Good afternoon, Ms. Nielson. Can you hear us? Can you hear us? Ms. Nielson, you are on mute, can you unmute yourself for public

comment? Ms. Nielsen, I would suggest that you mute your public live stream so you're not getting that feedback. Got it? Okay, thank you. Alright, so you will have three minutes to speak from the time you start speaking, so whenever you're ready.

MS. NIELSEN: Okay, great. Thank you very much. My name is Karina Nielsen and I work at San Francisco State University, and I'm calling in to provide some comment on the public service loan forgiveness waiver and specifically the rulemaking around spousal consolidation loans within the waiver program. And I'm especially concerned about the rulemaking for folks who have separated, divorced or estranged from their spouse and have a joint consolidation loan. So the joint consolidation loan just to make sure that we're understanding this was a program that no longer exists. It existed through 2006. Spouses were able to consolidate their loans together jointly and severally liable and then made payments together. The main motivation was to reduce the payments currently in order to manage those loans. You have to have good communication with the spouse. Sometimes that's not possible. And some of us may become eligible for public service loan forgiveness. Now, under the current waiver, under the consolidation case, my loans, let's say if I'm

the one who's been paying them off and is eligible would get forgiven, but I would still have to pay for my spouse's loans. And what my bottom line ask is the rule making consider the possibility of separating the spousal consolidation loans under the waiver. That is my bottom line ask. And it's especially beneficial for folks who are divorced or separated or estranged from their spouse. Sometimes they can't even manage the program, but they've made the payments. There is a bicameral, bipartisan bill that has been introduced for several years now it's called currently the Joint Consolidation Spousal Consolidation Loan Separation Bill. It sits in committee that's outside of the public service loan forgiveness, but these loans are treated very confusingly within the service the Fed loan servicer provider. A lot of the language doesn't make sense when you're going through and trying to provide the information you need and being unable to separate, it leaves one spouse responsible for another spouse's loans, and sometimes those loans can be very, very different in magnitude. So I'm asking for the committee to consider under the flexibility of the waiver to allow for the separation of those loans. So that's my whole comment. I really appreciate you considering it.

MS. JEFFRIES: Well, thank you very

much for your time today, Ms. Nielsen. You have a good day.

MS. NIELSEN: Take care. Bye bye.

MS. JEFFRIES: Bye bye.

MS. MACK: I've now, Cindy, admitted Julie Hynes for public comment. And she's connected to audio.

MS. JEFFRIES: I see. Ms. Hynes, can you hear us? Okay, if you could take yourself off mute. Okay, you will have three minutes, thanks for joining us today, you have three minutes to address the committee with your public comments and that time we'll start when you begin speaking, you will be given a 30 second notice before your time runs out. Okay?

MS. HYNES: Sounds good.

MS. JEFFRIES: Okay, go ahead.

MS. HYNES: Thank you. Thank you for the opportunity to provide my comments today. I'm a borrower that is about nine years into the public service loan forgiveness process, and I understand the goal of this rulemaking is to simplify the qualifying payment rules and allow certain types of deferment and forbearance to count towards the program. I have two recommendations for how we could simplify this related to forbearance. The first is that I think borrowers

should have forbearances count towards repayments if the amount they would have had to pay under the qualifying repayment plan was zero dollars for a similarly de minimis amount. Often, borrowers will start out their jobs in public service while they're in a forbearance, and it takes a few months to learn about the public service option. Think through the pros and cons, think about 10 years from now, all of this and make a final decision and submit the paperwork. The current rules do not give borrowers credit for those months in public service because borrowers are not in a qualifying repayment plan. However, these borrowers may not have owed anything at all had they been in the correct plan. So I think that PSLF rules should allow for credit for forbearance periods if the amounts that would have been due are at zero dollars or de minimis. It just seems like that would make things a lot easier and kind of achieve some of the goals of what this program was intended to create. My second recommendation is fairly similar, that borrowers should have forbearance count towards repayment if they were essentially forced to go into forbearance while they were still in public service while waiting for their annual income paperwork to be processed. In these situations, I think the borrower should make the federal government (inaudible) by paying

what would have been due during that temporary forbearance period with any interest. And to provide a little context on this, from my personal experience and from what I've heard from others, it takes a couple of years to figure out what you need to do every year to stay in the program. It's very easy to overlook an email. Your email might be your school's email or your personal email, and you might miss the call for your annual income paperwork. And I know I did that a couple of times. And if you do, you're kicked out of the program immediately and you get a huge bill. So for mine went from zero dollars to a thousand dollars and I didn't have that to pay. And when I called to kind of say, wow, I messed up, can I give you my information, I was told my only option at that point is to just go into forbearance and they'll process the paperwork and then I'll get back on the plan. And as a result, I'm still working in public service. The borrowers are still working, they're not receiving any qualifying payments during that time. The borrowers might have been very happy to make the payments required or to provide or to they may not have even owed anything, and I think that was the case for myself. So I think the PSLF rules should allow for credit for these forbearance periods that occurred due to late annual income paperwork if the

borrower makes the federal government (inaudible) by paying what would have been due. Thank you.

MS. JEFFRIES: Thank you, Ms. Hynes. Kayla, who's next, please?

MS. MACK: I have admitted Rachael Snyder for public comment.

MS. JEFFRIES: Good afternoon, Ms. Snyder. You will have three minutes for your public comment. Where'd she go? I seem to have lost her. There she's back, okay. Can you hear us okay, Ms. Snyder? Can you hear us?

MS. SNYDER: Hi, yes. Yes, now I can. Okay.

MS. JEFFRIES: Okay. Great. Perfect. You have three minutes for your public comment, you will be given a 30 second reminder of your time being almost up. Your time will start when you begin to speak soon whenever you're ready please feel free to proceed.

MS. SNYDER: Okay, I'm ready. I'm going to give this my best shot. So my name is Rachael Snyder. I am a 36 year old licensed social worker in the state of New York. I am very passionate about the idea of the student loan crisis. I really, truly believe it is a true financial crisis across multiple generations. I had worked for the, excuse me, the municipal city

government for 13 years. So I have I am on a PSLF track. So many things that have come up in the past several years since I graduated in 2014 is hearing a lot of conversation about graduate degrees not being treated similarly to undergraduate. And I know that's definitely been something that's been brought up multiple times by stakeholders. So I definitely hope that that is listened to because there are many of us out there with graduate degrees. I'd also like to talk more about capping the discretionary income at 5% because living in a city like New York, you can imagine rent expenses are very high, and it was very difficult to try to start repaying my loans. Every time that I called fed loan, who is my servicer, I was constantly told that the only option I had, despite outlining my monthly budget cost for living, was to go into a general forbearance. I was never given any other option, and as we know now, these months don't count. So I lost several years on the PSLF track because of this. So one thing I think that could be proposed is at least adding maybe a buyback option where employment is certified if those years cannot count just because you were having financial hardships, if those months cannot count, given the option at least to buy back those years so long as your employment has been certified. I also think that this has been said by

other borrowers as well, adding some sort of loan forgiveness on a every year public service worked basis. I think having it all or nothing plan really does deter people from entering public service, and I think it also does not help people eventually, because if you do leave the public sector for any reason, you are now bumped out of the program. And with that being said too, I'd like to ask that the term public service, as it was mentioned in the week of November 1st hearings, be expanded somewhat. Like I said, I am a social worker. As you know, many industries have privatized and a lot of this leaves out a lot of occupations such as nurses, social workers, doctors who no longer who don't have that 501 3c status. I actually work for 501 3c now, however, the person who does my paycheck is a for profit agency, so I am now currently excluded, though I am doing full time 40 hour a week work for a qualifying 501 3c. The last thing that I really wanted to talk about was the capitalized interest. I'm sorry?

MS. JEFFRIES: Unfortunately, your time is up. We do appreciate it. Thank you for joining us today. So.

MS. MACK: Cindy, I have now admitted Lisa Voight for public comment.

MS. JEFFRIES: Thank you. Ms. Voight,

can you hear us? Do you see her in there?

MS. MACK: Let's move on to the next. Brady, if can reach out to Ms. Voight. Next, I have admitted Mikeal Swanson.

MS. JEFFRIES: Good morning or good afternoon, I'm sorry, I lost track of the day. Good afternoon. You will have 30 minutes to to give your public comment. Three minutes. Jeas, I'm losing it today on this call. You will be given a 30 second reminder just before your time elapses. It will begin whenever you're ready to speak, so please go ahead and proceed.

MR. SWENSON: Good afternoon. My name is Michael Swenson. I served in the U.S. Army for six and a half years, and I was deployed twice to Afghanistan, where I was wounded on May 16, 2011. I earned a Purple Heart that day. Upon discharge, I enrolled at Full Sail University in 2014, using my GI Bill and their bachelor program in music production. I had to drop out of the program after two years because the classes were so terrible. I'm now attending a community college that is of much higher quality. Even the introduction to music theory class at my community college taught me more than all four classes of music theory that I took at Full Sail, and one of them was an advanced theory class at Full Sail. Full Sail set

unrealistic expectations for its students and never taught us what we needed to know to succeed. For example, students were expected to learn to play the piano in one month. Coupled with the accelerated classes that lasted only a month, Full Sail curriculum is not designed to prepare students for a job because they didn't teach us anything. My instructor at Full Sail also had questionable credentials for teaching. One of them played in a band and apparently that that alone was enough to qualify him to teach. When I first talked to Full Sail before enrolling, they connected me with a recruiter who told me he was a former admiral in the U.S. Navy. Their recruiter used his military experience and his military rank to gain my trust. He told me Full Sail with peer graduates with employers and provide resources for their job search. I have now learned that nearly every promise made by recruiters was a lie. Because the school is not nationally accredited, credits were not transferable and my post-graduation job assistance was nonexistent. My program at Full Sail only had an 11% graduation rate, so I'm not the only one that knew this was a dead end. After I left Full Sail, all the school did to help me with my job search was give me unhelpful leads for jobs unrelated to what I was trained for. An example would be, a stagehand. I did not go to

college to become a stagehand. Now I have no GI Bill left, and none of my Full Sail credits will transfer. Even though I obtained an associate's degree in production from Full Sail, which granted me the degree years after I dropped out. I feel like Full Sail stole my hard earned education benefits from me because of Full Sail's deceptive recruiting practices and poor quality of teaching, I had to start college over again in my 30s. I have taken out federal student loans to attend community college. People look down on me because of the worthless degree I got from Full Sail University. I hope the Department of Education considers the painful stories of veterans like me as it develops policies to better protect us from coercive recruiting and worthless degrees. Thank you.

MS. JEFFRIES: Thank you, and thank you for your service, Mr. Swenson.

MR. SWENSON: Thank you very much.

MS. JEFFRIES: You're welcome.

Alright, Ms. Voight, are ready to join us now?

MS. VOIGHT: Yes, I am.

MS. JEFFRIES: Okay, great. You will have.

MS. VOIGHT: Sorry about that.

MS. JEFFRIES: No worries.

MS. VOIGHT: I can't really hear you guys. I can hear you a little bit, but not too much. And I do apologize. I kind of snuck out of work to call you guys.

MS. JEFFRIES: You will have three minutes.

MS. VOIGHT: What's that?

MS. JEFFRIES: You have three minutes to speak, okay?

MS. VOIGHT: So I want to make mine short and sweet. I know you guys have heard a lot of stories. There's been a lot of misinformation through the years. I would never have consolidated my loans if I would have known it was going to cancel out my payments that I had been making for so long. I had a lot of problems when I transferred my loans to fed loans. They immediately started calling me and threatening me to send me to a collection agency, starting the day after I transferred my loans. And even though they were all up to date for all my payments had been up to date. At this point, short, sweet, and I don't even know if this is the I've tried every I've tried to contact the Department of Education several times, fed loans several times, nobody can tell me anything. I have certified and recertified, they will only credit me for my current job

at the DMV. They will not look at or acknowledge the payments made while I was working for a government entity before consolidation. Nobody can tell me anything and I know I'm within 1 year of the 10 year payment at this point.

MS. JEFFRIES: We appreciate that. Thank you for your comment, Ms. Voight. Thank you for joining us today.

MS. VOIGHT: Alright.

MS. JEFFRIES: Alright. Okay. Kayla, who's next?

MS. MACK: Tammy McCarthy has been admitted for public comment.

MS. JEFFRIES: Okay. Ms. McCarthy, can you hear us? Brady, is she connected? She's not?

MR. ROBERTS: Not right now. Do you want to move on to the next one and I'll try to.

MS. MCCARTHY: I can hear, but I just can't see myself. Can you can you hear me?

MS. JEFFRIES: We can hear you. Yes.

MS. MCCARTHY: You can't see me, though?

MS. JEFFRIES: No, we can't see you.

MS. MCCARTHY: Oh, okay. Is that okay, though?

MS. JEFFRIES: That is fine. That is fine. So, you will have three minutes for your public comment today. We appreciate you joining everyone and your three minutes will begin when you begin to speak and you will be given a 30 second reminder just before your time elapses. Okay?

MS. MCCARTHY: Okay. My name is Tammy and I am an army veteran and have served in public service jobs for a total of 35 years. I used my GI Bill to help fund my undergraduate degree first at a community college and then at a state university. I am the first person in my family to attend college. In 2009, I earned a Master of Science degree in speech language pathology. The GI Bill helped fund my undergraduate studies, but taking out student loans was the only way I was able to afford to pay for graduate school. I currently work as a speech language pathologist for a county office of education, serving preschoolers with special needs. I have worked in this position for the past 12 years. Even though I have worked in public service jobs most of my adult life, I only have around 6 years of service and payments that count towards PSLF. At the start of my current career, I was given incorrect information by loan servicers. I was told that I was on the right track for forgiveness.

However, I was not told that my FFEL loans were not the correct type of loan. I also was not told that during times when I could not afford my payments, I could have had my payments reduced to lower payments instead of putting my loans on deferment or forbearance. When the recent news about PSLF reform came out, at first I was elated. I thought I would finally receive the loan forgiveness I was promised since I had worked well over the 10 required years and the years prior to my consolidating to a direct loan would now count. However, my joy soon turned into dismay when I realized that the years that I could not afford payments were not going to count. I felt defeated, but today I would like to make some suggestions to make PSLF fair. Number one, allow for all periods of deferment and forbearance to count towards the time needed for forgiveness. Not everyone is eligible for economic hardship deferment. I know in my case I was told I did not qualify and I was put on a general forbearance. However, my family was certainly in a financial crisis. My husband had lost his job and we were literally counting coins to be able to afford rent and groceries in California. Secondly, please cap income based payments at 5% of AGI for both undergraduate and graduate school loans. People from low income backgrounds like myself often qualify for a portion of

their undergraduate schooling to be paid. However, most people who go to graduate school have to take out loans regardless of their economic background. In closing, it is now well known that loan servicers gave misleading and incorrect advice regarding PSLF for years. This has resulted in many public servants still not receiving loan forgiveness. Please right these wrongs so that the promise of public service loan forgiveness is honored. Thank you for your time and consideration.

MS. JEFFRIES: Thank you, Ms. McCarthy, and thank you for your service. Okay, who's next?

MS. MACK: Jodie Parks has been admitted for public comment.

MS. JEFFRIES: Okay.

MS. MACK: Connecting to audio.

MS. JEFFRIES: Alright, can you hear us?

MS. PARKS: Yes. Can you hear me?

MS. JEFFRIES: We sure can, welcome. Ms. Parks, you will have three minutes for your comment today. You will get a 30 second reminder just before your time elapses, so whenever you're ready, go right ahead.

MS. PARKS: Okay, good afternoon. My

name is Jody Parks and I'm a veteran of the U.S. Air Force. I'm here today to respectfully ask this panel to help make it easier for veterans like me to access the public student loan forgiveness program. For the past two months, I've had to jump through multiple hoops just to access these benefits. I understand the Biden administration has proposed reforms to the program to lessen the bureaucratic burden for students. However, for veterans, there's are still too much red tape involved, and to this day, I have not been able to access a temporary waiver for the public service loan program. I graduated from the University of Illinois in 2002 and had every intention of going back to school. I was in the Air Force from 2009 to 2015 and graduated from Maryville University in 2020 with a master's degree in occupational therapy. I have around \$48,000 in loan debt from both undergraduate and graduate programs, and I've been making payments on these loans each month. I did use my GI Bill for my master's degree, but because of the demands of coursework and field work, the school suggested I shouldn't work more than eight hours a week. So the PSLF program seemed like the answer to my loan debt. A brief synopsis of what these past few months have been like. I utilize the PSLF tool, which generated form 1845-0110, which requires employee information and

an address. I also need an employer certification signed by someone in the Air Force. Since I hadn't been in the service since 2015, I no longer have access to a commander or someone higher up to sign off my forms. I contacted the Department of Financing and Service, which gave me a random number to call, which went directly to a voice mailbox. The first time I spoke with a live human, the person on the other end of the line was completely unfamiliar with the paperwork. They told me I had to contact the civilian branch since I was no longer active duty. I contacted the civilian branch and they told me to contact the active duty branch. This went back and forth for a while. Mind you, I have DD214, which should be all the documentation needed as proof of service, but somehow it wasn't enough. I then tried going through the VA, but they told me to take it to a commander. Again, I have not been in the service for almost seven years at this point. Then I was passed to PSLF specialist who told me to check a box on yet another form and then submit it with my past W-2s. This, of course, was also challenging as I don't keep my forms from. My DD 214 should have sufficed. If I was applying to a program as a civilian, I could easily have had someone in my HR department sign the form. But as a veteran, I have had no definite answer. Almost

everything we can do can be verified by DD 214. I can have my W-2s printed off, but this has become time sensitive as the deadline to apply to the PSLF program is October 2022. The current, like the current wait time we're getting past W-2s is.

MS. JEFFRIES: Ms. Parks, unfortunately your time has expired.

MS. PARKS: Oh, sorry.

MS. JEFFRIES: That's alright. We thank you for your comments today and especially thank you for your service.

MS. PARKS: Thank you, ma'am. I appreciate that and everybody on the panel. Thank you.

MS. JEFFRIES: You're welcome.

MS. MACK: Cindy, I have now admitted Dawn Hayes for public comment.

MS. JEFFRIES: Alright.

MS. HAYES: Good afternoon. My name is Dawn Marie Hayes and I'm a professor at Montclair State University an eligible PSLF employer at which I have taught full time for the past 19 years. I would like to begin by thanking you for this opportunity to respectfully urge you to include FFEL spousal consolidation loans into the PSLF. I was the first in my family to attend college. My mother was a single mom and

I left for my first day of college in September 1986 from New York City Public Housing Project. I was determined to break a cycle of poverty and saw higher education as the way to do that. I did not know my father, and when I entered NYU, my mother earned less than the school's annual tuition. I was, in other words, solely responsible for financing my college education. Towards the end of my undergraduate years, I decided to pursue a career as a professor of history, a path that required a total of 12 years of full time study. I received my Ph.D. in 1998. During this time, I had married Joseph Hayes, my husband of now 28 years. We are the blessed parents of seven children. As we pursued careers while raising a large family, we did everything we could to simplify our lives. This included consolidating all loans in December of 2001, combining Joe's \$8,000 debt with my much larger \$74,000 burden for a total of \$82,000. As of today, we have paid over \$100,000 in interest and more than \$33,000 in principal. We have not missed a payment in 23 years. In spite of this sacrifice and commitment, without your help, we will continue to pay on this loan until 2033, when I will be 65 years old. Our responsibility to repayment has meant that we have struggled for years as we support a large family and one of the most expensive regions in

the country. All seven children live at home, and although Joe and I make respectable salaries, we still live paycheck to paycheck. No cash margin to provide a buffer should we encounter our financial emergency. We have lived responsibly and thankfully have been able to avert financial crisis over the past three decades. But the stress and worry of encountering a hardship outside of our control has been and continues to be enormous. As PSLF became public, Joe and I were told that although we signed off on a loan that has the word federal in its title, our federal family education loan is actually backed by the state of New York and as such, is currently ineligible for a PSLF. I implore you to include these loans after a process of loan deconsolidation in the loan forgiveness program that has been generously extended to other borrowers, including those holding a spouse or consolidate consolidation direct loan. Doing so would help me, as well as scores of other Americans who rank among the longest paying student borrowers in the country. Thank you.

MS. JEFFRIES: Thank you.

MS. MACK: I think we've now made it through all folks who logged in today for public comment.

MS. JEFFRIES: Okay, I appreciate

that. So just a couple of closing comments here for tomorrow. Tomorrow morning, we will pick up with the IDR discussion and presentation on the outlined agenda. It does talk about Pell for prison education programs being next after that, but I'm letting you know we will be holding that for Wednesday discussion. And so we will move accordingly to other topics beyond that so that we can honor the Wednesday date that we set aside for that prison education program. With that, I have no further announcements and I wish you all a good evening and we'll see you here tomorrow morning.

1 **Appendix**

2
3 **Department of Education**
4 **Office of Postsecondary Education**
5 **Zoom Chat Transcript**
6 **Affordability and Student Loans Committee**
7 **Session 3, Day 1, Afternoon, December 6, 2021**
8

9 **DISCLAIMER:**

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

16
17 From David Tandberg (P) - State hi ed agencies to
18 Everyone:

19 I'll be rejoining the table now.

20 From Christina, she/her (A) 2-Year Public to Everyone:

21 I'll be at the table now.

22 From Will (A) - FFEL Agencies to Everyone:

23 Thanks Daniel - very festive

24 From Justin (P) Servicemembers and Veterans to Everyone:

25 +1 Joe regarding transfers

26 From Bethany Lilly, The Arc (she/hers) to Everyone:

27 +1 Joe

28 From Michaela [P] Ind Student to Everyone:

29 +1

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

3 +1 Joe The evidence does not support the claims that
4 students will simply transfer all their credits

5 From Dixie (P) Dependent Students to Everyone:

6 +1 Joe

7 From Justin (P) Servicemembers and Veterans to Everyone:

8 +1 Josh on "most" programs

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

10 +1

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

12 +1 David

13 From Michaela [P] Ind Student to Everyone:

14 What are the issues lingering? I think I lost track
15 right now.

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

18 Thanks Heather!

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

21 Thank you.

22 From Bethany Lilly, The Arc (she/hers) to Everyone:

23 +1 to Michaela

24 From Dixie (P) Dependent Students to Everyone:

25 +1 Michaela

26 From David Tandberg (P) - State hi ed agencies to

1 Everyone:
2 +1
3 From Jeri (P) Student Borrowers (she her, they) to
4 Everyone:
5 +1 Michaela
6 From Michaela [P] Ind Student to Everyone:
7 There was time before this to do that
8 From Justin (P) Servicemembers and Veterans to Everyone:
9 +1 Josh
10 From Jeri (P) Student Borrowers (she her, they) to
11 Everyone:
12 +1 Josh!
13 From Bethany Lilly, The Arc (she/hers) to Everyone:
14 +1 to Josh
15 From David Tandberg (P) - State hi ed agencies to
16 Everyone:
17 +1 Josh
18 From Michaela [P] Ind Student to Everyone:
19 +1
20 From Marjorie (P), 4 Yr Public Inst. (she/her) to
21 Everyone:
22 +1 Josh
23 From David Tandberg (P) - State hi ed agencies to
24 Everyone:
25 +1 on sticking to the changes between 2 and 3,
26 particularly on the re-enrollment issue. Keeping that
27 will be key.

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

2 I'm coming back to the table

3 From Jessica Barry, Proprietary (P) to Everyone:

4 Carol is coming back to the table.

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

6 Josh is back at the table for legal aid

7 From Joe, P, State AGs to Everyone:

8 +1 Josh on benefit of group false cert applications

9 From Justin (P) Servicemembers and Veterans to Everyone:

10 +1 Josh regarding group process

11 From Daniel (P) - Fin Aid Administrators to Everyone:

12 Carol, I think the language you referenced is covered
13 by p. 18 (c) (ii).

14 From Carol (A)- Proprietary to Everyone:

15 Daniel, it is similar language, also appears on page
16 22 685.215 (e) (1) (ii) at bottom of the page

17 From Carol (A)- Proprietary to Everyone:

18 Just FYI for reference, here is the language regarding
19 definition of origination: from the FSA Handbook: The
20 date of origination for a Direct Loan is the date a
21 school creates the electronic loan

22 origination record in its computer system; this
23 may differ from the date the school transmits

24 the record to the COD System or when the
25 Department approves a record. A school may not

26 originate a Direct Loan for a loan period in

27 which the student is no longer enrolled on at least a
28 half-time basis, even if the student is otherwise

29 still enrolled at the school

1 here is the link
2 [https://fsapartners.ed.gov/sites/default/files/2021-](https://fsapartners.ed.gov/sites/default/files/2021-08/2122FSAHbkVol4Master.pdf)
3 [08/2122FSAHbkVol4Master.pdf](https://fsapartners.ed.gov/sites/default/files/2021-08/2122FSAHbkVol4Master.pdf)

4 From Justin (P) Servicemembers and Veterans to Everyone:
5 Why has the Department decided not to include language
6 in this regulatory text that would cover instances
7 where a school effectuates a borrower's signing of a
8 loan document where the borrower did not know they
9 were signing for a loan?

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

11 I am coming back for the legal aid seat

12 From Daniel (P) - Fin Aid Administrators to Everyone:

13 Are we live? One of our constituent members reports
14 she cannot log in...

15 From Brady FMCS Facilitator to Everyone:

16 Daniel- Can you DM me their issue?

17 From Joe, P, State AGs to Everyone:

18 +1 Persis

19 From Justin (P) Servicemembers and Veterans to Everyone:

20 +1 Persis

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

23 +1 Persis

24 From Bethany Lilly, The Arc (she/hers) to Everyone:

25 +1 Persis

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

28 Major issues/concerns:

- 1 - Time to forgiveness | 10 years for undergrad /
- 2 15 for grad or PLUS
- 3 - Counting of forbearances/deferments
- 4 - Should not distinguish between grad & undergrad
- 5 loans
- 6 - Increase to 400% of poverty level
- 7 - Proposed plan is more complex/confusing

- 8 - Married borrower regulations make this more
- 9 difficult

- 10 - Overall concerns about racial equity

- 11 - Growing balances

- 12 - Defaulted borrowers

- 13 - Counting payments | FFEL

- 14 From Joe, P, State AGs to Everyone:

- 15 +1 Bethany - EICR should be the clear best choice
- 16 plan. Anything less is a missed opportunity that
- 17 continues a systemic set of problems.

- 18 From Raj - Advisor Data & Econ to Everyone:

- 19 Keep in mind that I believe this is a marginal rate,
- 20 which is the rate on the "next" dollar, not the total
- 21 dollar amount

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

- 24 Or consider going to 400%?

- 25 From Joe, P, State AGs to Everyone:

- 26 +1 Persis on counting forbearances to account for
- 27 steering

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

1
2
3
4
5
6
7
8
9

+1

From Bethany Lilly, The Arc (she/hers) to Everyone:

+1 Persis on forbearances

From Bethany Lilly, The Arc (she/hers) to Everyone:

and everything else

From Daniel (P) - Fin Aid Administrators to Everyone:

400% is part of the new minimum Pell Grant calculation
so there is precedent for FSA to consider a 400%
allowance.