

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

On the 3rd day of November, 2021, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m., before Jamie Young, Shorthand Reporter in the state of New Jersey.

P R O C E E D I N G S

MR. TONCHI: Good morning and welcome to day three of the second session of the Affordability and Student Loans Committee Negotiated Rulemaking Process. My name is Emil Totonchi and I'll be facilitating this morning. Before we dive into substantive discussion, I just want to take a roll call of everyone that's here. I will start with Heather Perfetti and Michale McComis, who are primary and alternates for accrediting agencies.

DR. PERFETTI: Good morning, everyone. Heather Perfetti here.

MR. MCCOMIS: Good morning, Michale McComis.

MR. TONCHI: Next, I'd like to welcome Dixie Samaniego and Greg Norwood, who are the primary and alternate negotiators for dependent students.

MS. SAMANIEGO: Good morning, everyone.

MR. NORWOOD: Good morning, Greg Norwood.

MR. TONCHI: I would like to welcome Rajeev Darolia, who is an adviser for economic and/or higher education policy analysis and higher education data.

MR. DAROLIA: Morning.

MR. TONONCHI: I'd like to welcome Jaye O'Connell and Will Shaffner, who are the primary and alternate negotiators for federal family education loan lenders and/or guarantee agencies.

MS. O'CONNELL: Morning, Jaye O'Connell.

MR. TONONCHI: Is Will Shaffner present?

MR. SHAFFNER: I'm having a conversation by myself, sorry, I'm on mute. Hi, everyone, I need more coffee.

MR. TONONCHI: Fair enough. Welcome. Alyssa Dobson and Daniel Barkowitz, the alternate of the and I apologize, I reversed those, the alternate and primary for financial aid administrators and postsecondary institutions.

MR. BARKOWITZ: Morning, everyone, Daniel Barkowitz here.

MS. DOBSON: Good morning, Alyssa Dobson.

MR. TONONCHI: Marjorie Dorime-Williams and Rachelle Feldman, the primary and alternate negotiators for four-year public institutions of higher education.

DR. DORIME-WILLIAMS: Good morning,

everyone, Dr. Dorime-Williams here.

MR. TONCHI: Rachelle Feldman present? Okay. Michaela Martin and Stanley Andrisse, the primary and alternate negotiators for independent students.

MS. MARTIN: Morning.

DR. ANDRISSE: Good morning, everyone. Pleasure to be here with you.

MR. TONCHI: Bethany Lilly and John Whitelaw, primary and alternate negotiators for individuals with disabilities or groups representing them.

MS. LILLY: Morning, everybody.

MR. WHITELOW: Good morning, all.

MR. TONCHI: Persis Yu and Joshua Rovenger, primary and alternate negotiators for legal assistance organizations that represent students and/or borrowers.

MS. YU: Good morning, everyone.

MR. ROVEMBER: Morning, everyone.

MR. TONCHI: Noelia Gonzalez, alternate for minority serving institutions.

MS. GONZALEZ: Morning, everybody.

MR. TONCHI: Misty Sabounh and Terrence McTier, primary and alternate negotiators for

private nonprofit institutions of higher education.

MS. SABOUNEH: Good morning.

DR. MCTIER: Morning, Dr. McTier here.

MR. TONCHI: Jessica Barry and Carol Colvin, primary and alternate negotiators for proprietary institutions.

MS. BARRY: Good morning, everyone.
Jessica Barry here.

MS. COLVIN: Good morning.

MR. TONCHI: Heather Jarvis, adviser on qualifying employers on the public on the topic of Public Service Loan Forgiveness.

MS. JARVIS: Good morning, Emil. Good morning, everyone.

MR. TONCHI: Good morning. Joseph Sanders and Eric Apar, primary and alternate negotiators for State Attorneys General.

MR. SANDERS: Morning, everyone.

MR. APAR: Morning, everyone.

MR. TONCHI: David Tandberg and Suzanne Martindale, primary alternate negotiators for state higher education executive officers, state authorizing agencies and/or state regulators of institutions of higher education and/or and/or loan servicers.

MR. TANDBERG: Good morning, everyone.

MS. MARTINDALE: Morning.

MR. TONCHI: Jeri O'Bryan-Losee and Jen Cardenas, and I'm being deliberate about Jen, primary and alternate negotiators for student loan borrowers.

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

MS. CARDENAS: Buenos dias, good morning, everyone.

MR. TONCHI: Bobby Ayala and Christina Tangalakis, two-year public inst primary alternate negotiators for two-year public institutions of higher education.

MR. AYALA: Good morning, everyone.

MS. TANGALAKIS: Morning.

MR. TONCHI: Justin Hauschild and Emily DeVito, primary and alternate negotiators for U.S. military service members, veterans or groups representing them.

MR. HAUSCHILD: Morning.

MS. DEVITO: Good morning.

MR. TONCHI: And also, Jennifer Hong of the Department of Education.

MS. HONG: Good morning, welcome back.

MR. TONCHI: And who is present here

for the Department of Education, Office of General Counsel this morning?

MR. DAVIS: Good morning, everyone. Todd Davis back again. Thank you.

MR. TONCHI: Excellent. Did I miss anyone? Excellent. Okay, well, let's get rolling with the program today. Before we jump into Borrower Defense, which is our next big topic to discuss, I understand Jennifer from the Department has a few general remarks.

MS. HONG: Morning everybody just wanted to flag, today is Wednesday. We're midway through session two of the negotiations. We have a lot on our agenda, as you all know and a lot to discuss. We really appreciate the discussions thus far. It sounds like, just to review, I want to backtrack because I'm growing a little bit concerned about where we are on different issues. Sounds like interest capitalization is the one issue where we are all in consensus under the current proposal. So I'm pleased about that. We're pleased about that. I realize, Jaye is still interested in the FFEL language if we're being able to vote on the discharge issues, however, I felt like TPD was an encouraging discussion. We're going to go back and we're going to review for the end of the week again because I think it bears repeating what the sticking points are for some of

these issues. And as I mentioned before, you know, going back on the five years with TPD, we're taking that under consideration. I believe that was the main issue for total permanent disability discharge. So I think that is in a good place as well. With regard to closed school, I'm a little concerned about where some of the committee is with regard to reenrollment and then the institutional representatives in terms of the definition.

MS. HONG: I don't know if that's something that we can carve out some time for you all to discuss and find a meeting place. We are we are bound by the master calendar, the master calendar stipulated in the Higher Education Act that we that we've got to publish any, you know, the outcome of these rules if we reach consensus by November 1st, the following year. So I just want to remind people that this is our goal here is consensus. We want to have everybody on board. We're here in good faith. But if we don't reach consensus, then the Department will publish, you know, whatever rule or policy direction that we see fit. So we just we really want to remind folks about the goal of consensus. It is Wednesday in session two, so as much as we can remedy kind of sticking points, articulate those sticking points so that we can be clear on where we are with these things, I think that would be very fruitful going

forward. And I thank you all for your continued commitment to this process.

MR. TONCHI: (Inaudible) hands before doing so, I'd like to recognize that Josh is present for legal aid and that Greg is present for dependent students. If there were any other folks who don't intend to be at the main table right now that still have their cameras on, please turn off your cameras at this time. Alright, thank you, David.

MR. TANDBERG: Appreciate those points by Jennifer. We are working under a, you know, fewer hours than typically are operated under with a negotiated rulemaking. And the last negotiated rulemaking that I was, I participated in, which was the last one before this one, we actually added an hour per day and actually added days in order to reach consensus. And so I, none of us want to spend any more time on Zoom than we have to, but it may necessitate us going to perhaps 5:00 Eastern Time if that worked for folks. I know that people out east may have obligations to pick up kids, et cetera, but I wonder about adding start going to five moving forward or perhaps even adding a day or two, or keep open the option of adding a day or two on on the back end if we reach that point. But it sure does seem like we have short days, even though they also feel long at the same

time. But we have five hours each day, which actually for a negotiated rulemaking is not much time. So just wanted to put that on the table of going until five each day Eastern Time.

MR. TONCHI: Daniel?

MR. BARKOWITZ: Thank you. In response to Jennifer, and again, thank you, and I appreciate the fair and accurate representation of the desire to move to consensus. It would be helpful. I had asked yesterday if Raj could present some data on closed schools. And I wonder if we have or can make time today if Raj is ready with those data. Again, I think that would be helpful to give us the context. So we have a sense of how big of an issue this is and where this takes place. Because again, my sense is this is a much larger issue than I think we understand.

MR. TONCHI: I understand that Raj will have something to share at some point today, most likely the afternoon. Bethany.

MS. LILLY: Jessica was actually ahead of me, I'm not sure why she bumped over.

MR. TONCHI: I don't know why, either. Jessica, please proceed and thank you, Bethany, for for that.

MS. MACK: Really quickly. Sorry,

Jessica, if you put your hand up and then take it down and then put it back up, it will move you to the end of the line. So I just want you to know that folks move themselves when their hands go up and down. So we'll continue to call on the first person. So if you do inadvertently lower your hand, please put it right back up and we'll get to you in that sequence list.

MS. BARRY: Yeah, which is exactly what I did. So thank you and thank you, Bethany. Jennifer, I just wanted to ask. I know there was a lot of support for the proposal that we put forth on closed school discharge, but I know you said the Department had some concerns with it. Is there any way we could get feedback, even like a red line document with feedback on it? I think that would help us come to consensus.

MS. HONG: You know, that's why I tried to address it as succinctly as I could. Unfortunately, and you got you all know that you submitted more proposals yesterday that we appreciate. I urge you to do so, and getting the proposed language allows us to review that more expeditiously. We can't provide written feedback to you guys on every single proposal. We can discuss them here at the table. And just in general in the definition, we appreciate that discussion and what you're trying to address in terms of mergers and and

those issues, but in general in general. You know, the idea here and the policy direction from the Department is to just has to cast a net to capture students and address the proprietary, I'm sorry, the predatory actions of some of the institutions with regard to closed school discharge. And we have that being said, to the extent possible, we've tried to address in the proposed language through comments verbally, through quick emails, you know, any issues that you have with your proposals, but we can't do a red line back to each and every proposal. We just don't have that bandwidth.

MS. BARRY: Can I just comment on that real quick? I totally understand that. I just think there are some situations that we presented that are not coming from a predatory place that I think we're where discharges are being applied, that is just not the Department's intent. So I hope when we're talking about closed school discharge next time and maybe if we see this data to that Daniel's talking about, maybe we can continue that conversation just a little bit further.

MS. HONG: Nor nor was I suggesting I was suggesting that we were trying to address the predatory practices for the additions that we made after session one.

MR. TONCHI: A few more hands up, you

know, we'll welcome those comments, obviously, we want to get into Borrower Defense. But go ahead, Bethany.

MS. LILLY: I'll be very brief. I just I appreciate the Department's very clear focus on getting us to consensus, but I also want to just acknowledge that I think there are going to be things we're not going to reach consensus on. I think there are just large gaps between perspectives, and so I appreciate the reminder that that is our goal and that is something that we have agreed to in in the protocols, but that I think sometimes we just end up at that point where we're not going to be able to get there. And I I want to acknowledge that as part of this discussion, because I don't think that's a bad thing. I think people are just going to have different perspectives.

MS. HONG: If I if I could just quickly respond to that. Thank you, Bethany, and we realize that that's always a possibility. I would just ask you to think and contemplate whether the current regulations, as written, is something that you would prefer than in the alternative, because that is the alternative, as are the current regulations, we're trying to improve upon them. So that is really the the issue that I wish I would like for you to consider when you look through these regulations, whether they are an improvement and whether

you can kind of move the thumb toward the middle or whether you prefer the current regs as written, so that that's the standard that we're looking at right now.

MR. TONCHI: Josh.

MR. ROVINGER: I just initially was just coming on here to voice support for adding time if needed, because I do think the discussions have been fruitful. But I do also want to respond to two points that have just been made. One, I actually respectfully disagree with the Department's framing of what we're doing here. The Undersecretary and Secretary and President have made very clear commitments to borrowers, and so I don't think it's I don't think the question we're faced here is current regulations, many of which were entirely decimated by the prior administration and what the Department has put forward. I think the question we need to be asking when we're evaluating these regulations is do these meet the commitments that the Secretary and the President and the Undersecretary have made to borrowers and students? And I think that's where a lot of the pushback that's coming towards the Department's positions is anchored. I also just want to address Jessica's comment and that proposal. Just to clarify the record-

MR. TONCHI: Excuse me, one second,

Josh. Someone has unmuted themselves and we can hear them, which means we can't hear you clearly. Can everyone ensure that they are muted if they're not currently speaking? Thank you. Josh, proceed.

MR. ROVENGER: Sure. So while those specific proposals may not be coming from a predatory place, I think I think from the legal aid constituency they're, as written, a nonstarter. And so I don't think they had a significant consensus, as was alluded to.

MR. TONCHI: I see a few more hands up. Daniel.

MR. BARKOWITZ: Thank you. I want to just circle back to something that Dixie, I believe it was Dixie had said yesterday or asked yesterday about the question of again going back to school, the question of liability. In re-reviewing the document last night, I didn't see anything in the closed school discharge section about institutional liability. Dixie had asked the question about whether this was borne out of a concern for institutional liability, and it is in part for me. Again, if a campus of an institution shuts down, which I think we're going to find happens often, not the entire institution, the question of liability becomes germane. So I don't know, Jennifer, if there's any ability to provide any context on that or if I'm just

missing this. It doesn't appear in the regulatory proposal that was provided by the Department, so I'm not sure if it's in a different subsection or if there's a different place where institutional liability is mentioned as part of closed school discharge. So that would be an open question for me.

MR. TONCHI: If you can note that in the chat, that would be great, Daniel. Justin.

MR. HAUSCHILD: Yeah, I just I also understand what the Department is getting at here in terms of timeline and improvement in the regulations. But I also have to disagree with the framing that in a an improvement on currently deficient regulations is somehow adequate or sufficient. I mean, I think if we're going to, it's not. It's not the appropriate framing to be looking at deficient regulations and saying that simply approving them is good enough. Just improving bad regulations isn't enough, and we should be looking to see how we can make them as sufficient as possible. Ok. That's it. Thanks.

MR. TONCHI: Yeah. All I ask as facilitators, you know, this means you're there and you like it [indicates thumbs up]. Here is you can live with it [indicates sideways thumb]. Just make sure that this accurately matches where you're at. If that if that's

fair. Okay? David.

MR. TANDBERG: Yeah, I'd just like to call the question on adding an hour to each of our days if we could discuss it or just skip straight straight to a vote.

MR. TONCHI: Oh, I. Jennifer, go ahead.

MS. HONG: Yeah, I just want to jump in here and thank you, David, for the suggestion. All of, please note that my comments are in the context that we're doing this for the first time virtually. I think it's gone very well. We extended it to, you know, rulemaking is usually three days when we do it live. We extended it to five days purposefully and made the days a little bit shorter because there's a real Zoom fatigue or virtual meeting fatigue that's very real and I think the facilitators have had a lot of experience with this. So it becomes, strenuous hours together, I think becomes counterproductive at some point. But more than that, we have real limitations in terms of our technology and our commitments in terms of the people that are making this possible. So we would not be able to add time and I don't want to belabor this discussion anymore. My my point was simply, you know, great job, guys, thank you, and we just a reminder let's let's remember what the end goal is here

and that we are we we is we are dealing with a limited time frame that's the whole pressure of negotiated rulemaking, whether it's live, whether it's virtual. So to the extent that we can caucus or do whatever we need to do to kind of build some bridges on these sticking points before the end of the week, that would be really great.

MR. TOTONCHI: Jessica, and then I'm going to call on myself.

MS. BARRY: This will be quick, just to Josh's comment, I don't want to over-represent the support for that proposal. I just got excited about some support, so I just wanted to say that.

MR. TOTONCHI: Folks, thanks so much for the comments. I'm sure you can see us in terms of the facilitators and what we're trying to help the parties accomplish is really zeroing in on where those gaps are. Anything you can do to help us with that is appreciated in your comments. Again, solution-oriented comments, you know, specific changes are ideal at this stage. So with that, keeping that mindset in our minds, if we could move to Borrower Defense. And with that, Jennifer, I'll ask you to tee that up for us.

MS. HONG: Okay, thank you, Emil. I believe Vanessa's on if she could queue again, just

there's three Borrower Defense to repayment documents. The one has a proposed language, the lengthy one has a proposed language for our proposal. There is a cross reference to another set of regulations under our General Provisions section that has to do with an existing definition of misrepresentation that we will be cross referencing. But first, we will begin with the with the proposed language on Borrower Defense to repayment. Yesterday, I went through the general title so you can see from the titles the different processes that we're proposing and we'll go through each each one of them. So. Alright, this is the applicability, we we started getting into that, I believe Josh put some language forward to ensure that we're clear in terms of the new sub part being applicable to all loans pending before the Secretary, as well as applications received on or after July 1st, 2023 is when we're aiming to effectuate these regulations so we can just start in on page four. That is where we left off. The black, all this is new proposed language again and and definition. So we have definitions under the general sub-part. We did flag some areas where we've had some questions. If we pull stuff in from 2016, the first one that you will see on the middle of page four, subparagraph five is the term for provision of educational services. And I'll just read the definition

aloud aloud, it means the educational resources provided by the institution that are required by an accrediting agency or state licensing or authorizing agency for the completion of the student's educational program. And so we just wanted to tee that up to you guys from 2016. Are there any comments on that? And I see Joe's hand up.

MR. TONCHI: Joe, please proceed.

MR. SANDERS: Thanks, Jennifer. I'm going back to look at this. On the document that's Borrower Defense proposal. Sorry. I don't know what it's called the first Borrower Defense document, which just has language that I sent you guys. And the violation of State Law section, it talks about the provision of educational services. So I can hold these comments until we get to that State Law section. But in caucusing with my constituency, I did have people raise some concerns about the scope of provision of educational services as it relates to a State Law claim of Borrower Defense to repayment. Very brief overview, the concern was that there have been some very high profile cases of sexual harassment and sexual abuse of students at play. For example, the sports program cases like Michigan State or Penn State football and gymnastics programs. And so my constituency raised the concern, does provision of educational services cover things such as participating

in a sports program or using the pool at the campus gym. Situations where students could come to sexual harm and then not feel safe at the school and so have to withdraw, so that may that, I think applies to this definition and something that we just ask the Department to consider.

MS. HONG: Thank you for that, Joe, and we'll unless are there any other comments on the definition, we can proceed and we're going to be pulling down your document shortly to discuss the other components of what constitutes the claim under the proposed federal standard. Okay, so moving along on page four. Okay, under the General Definitions, school and institution can be used and interchangeably, that's existing language. Okay, so so paragraph B is a federal standard for Borrower Defense applications. Again, we've repeated here that it's not based on disbursement, but receipt on or after July 1st, 2023 or applications pending before the Secretary. This also includes a Direct Loan or other federal student loan that could be consolidated into a federal direct consolidation loan may assert a defense to repayment under this subpart. And we've identified five bases for a claim; misrepresentation, omission of fact, breach of contract, aggressive, deceptive recruitment tactics, judgment against a school or, the Department's adverse action

against the school. So moving on to page five, we are going to pull up the misrep documentation just a moment, but before we do that, while we're on the discussion about educational services, there is a comment under paragraph three on page five, which comes again from 2016 and whether this should be tied to the provision of education services or not. And that is the institution that the borrower received the direct loan or other federal student loan that could be consolidated into the Federal Direct Consolidation Loan Program to attend failed to perform its obligations under the terms of a contract with a student. So we'll tee that up for you to kind of chew on. In the meantime, I would like to use this time to kind of get into the misrepresentation discussion and if we could queue that document now. Vanessa, that is subpart F of proposed language. So what we were proposing under misrep, you see from the bottom of page four to page five in the main text, it makes a cross reference to made a misrepresentation as defined in 34 CFR part 668 subpart F in connection with the Borrower's decision to attend or to continue attending the institution. And this is subpart F existing language, and you'll see the red lines are additions that we would like to make. So if we scroll down here. Yeah, if you could just scroll down to the first red line here, this

is this is the definition of misrep. We are also including here omissions of fact as defined under section 668.75. We've added some language under 668.72 regarding the nature of education program or institution and adding the clause, "which may be included in the institution's marketing materials, website, or communications to students," any misrep pertaining to those issues. Again, the black text is existing language. (b) (1), the general or specific transferability of coursescourse credits. clarified that language. Under 2, acceptance of credits earned through prior work at another institution toward the educational program at the institution. We can keep scrolling down. Size, location, facilities or institutionally provided equipment, books or supplies. Down. Yeah, and then there's a deletion there, and I think it's because we captured that elsewhere. And then the second deletion we've captured below some re-numbering on the headings and then a new (m) (n) (o)and again, some of these are additions from above. But let me just read those aloud to summarize. "Actual institutional selectivity rates, rankings, or student mission profiles if they're materially different from those included in institution's marketing materials," and a representation regarding tax status of the institutionthat's different from the tax status as determined by the Secretary for

purposes of administering Title IV HEA programs. (o), specialized programmatic or institution certifications accreditation approvals that were not actually obtained or that the institution fails to remove from marketing materials, websites, or other communication. (p), assistance that will be provided in securing required externship or the existence of contracts for specific externship sites. And again, that is a new element that we would like to seek additional feedback on. Let's scroll down. I see your hand, Josh. Let me just get through this piece. Disclosures under those rules that are cross-referenced. And then, well, let's let's pause there because I see Josh's hand up, so it's a lot, and David.

MR. TONCHI: Josh, you're on mute.

MR. ROVINGER: Yep, there we go.

Thanks. So I'll just start off by saying, I think there's a lot of good stuff in here that the Department has put forward, and we're generally supportive of these changes to the misrepresentation section in 668. My question, though, actually relates to subsection B in 685.401. And I'm I'm interested in hearing from the Department, whether it's a policy choice or whether the Department feels that there's a legal requirement for it to limit individuals who have a balance due to apply for Borrower

Defense at any time. I don't know, Jennifer, if you can answer that for me.

MS. HONG: Well, this is the Borrower Defense regulations are with regard to discharges of loans, right, so if there's no loans outstanding, there's no claim to be brought.

MR. ROVENGER: But isn't one of the, one of the remedies that the Department can offer a refund of monies paid? And if that's the case, is it a borrower who has paid off all of their loans but was defrauded, entitled to that money back under the Borrower Defense regulations? And so I guess that's where I struggle. I don't know if it's a policy choice then I would urge the Department to reconsider that choice because those borrowers would have a valid Borrower Defense claim and be entitled to their money back. If it's a legal restriction, I would be interested in hearing what the restriction is.

MS. HONG: Thanks, Josh, I can take that back.

MR. TONCHI: I see Todd has come off mute. Todd, do you have a response?

MR. DAVIS: Yeah, Josh, I feel like we may have to circle back as far as fleshing this out a little more, but I think it's safe to say we have taken

the position and that it is a legal restriction and that this references outstanding money owed and you have to have, you know, a dollar and announce this specifically relates to loans and but you have to have some kind of outstanding direct loan balance. That's been consistent with our position about in pastimes consolidating FFEL into a Direct Loan program so that we can get this section of regulation, but if you'd like us to flesh that out a little more, I understand, and we can circle back on that.

MR. ROVENGER: That would be good, yeah.

MR. DAVIS: That was a legal position, not a policy choice in terms of the Department's current policy team.

MR. ROVENGER: I understand. Yeah, that would be great if the Department could flesh that out a little bit. Thank you.

MR. TONCHI: David.

MR. TANDBERG: Within the existing text or the red lines when we're discussing misrepresentation is job placement rates included among the items that could be that considered misrepresentation. I didn't see it, so I'm thinking not, but that can be a more significant factor than some of the other admissions

factors that are included in the list. I guess I'm saying if it's not included, I would like to see job placement rates included among the items around the misrepresentation.

MR. TONCHI: Thank you, David. Joe?

MR. SANDERS: This is kind of a baseline question, but are the enumerated misrepresentations the only misrepresentations that can be considered or is or is this a non-exhaustive list? So if we're looking at 668.72, it's got all the, you know, this kind of gets at David's comment, right? Do we have to list job placement rates for that to be considered a misrep?

MS. HONG: No, but to David's, David's point, we're going to get to it on page five there. We have captured job placement rates there, but it is not meant to be. It's, what does it say? It says not limited, Okay, which may, may be included. The point is it's not exhaustive. These are just examples that we're providing here.

MR. SANDERS: Okay. Okay, thank you.

MR. TONCHI: Justin.

MR. HAUSCHILD: Yeah, and I think maybe I'll just limit my comments recognizing that this is a non-exhaustive list, we'd like to see a few other things

included, particularly when it comes to nontraditional credits earned and representations made by institutions in that regard, or accommodations available to folks with physical or mental health issues. But we'll just make some suggestions, understanding that this is nonexhaustive and just provide a general support for what's going on in this area. Thank you.

MR. TOTONCHI: Yeah, please place those suggestions in the chat. Jessica.

MS. BARRY: Thank you. I'm not sure if this is the right time to ask this question or not, but so I see that there's a definition of substantial representation and that that the student had to rely upon the misrepresentation or be harmed by it. Is that the basis of the Borrower Defense of the approved Borrower Defense claim is substantial or is it just misrepresentation? Because I think when you remove substantial, then you can get kind of back into that mistake standard of an inadvertent mistake, and I'm just not clear about it. So maybe someone can help you with that.

MS. HONG: Thank you, Jessica. The the cross reference here is to cross-reference the misrepresentation definition generally.

MR. TOTONCHI: Joe.

MR. SANDERS: Yeah, so to go to, to get back to Jessica's question is, is reliance required here?

MS. HONG: So no, because we're not relying on the substantial misrep definition, just misrepresentation.

MR. SANDERS: Okay. If for the record, you know, reliance is not an element of Illinois's Consumer Fraud Act, I think Massachusetts and other states have the same standards, so we don't think reliance needs to be in there. It wouldn't be required under State Law claim. We don't think it should be required here either.

MS. HONG: That is helpful, thank you. I can go ahead and proceed to 668.73 on page four. Unless, I see Heather's hand up, if you want to, if you had a comment on what we just talked about, Heather.

DR. PERFETTI: Thank you, Jennifer, it was really relating to the provision on tax status, I think I understand what you're trying to convey. I just wondered if there was some clarity that could be offered there and certainly happy to post it in the chat. But I think that IRS tax status is trying to be distinguished from the Department status that it uses for Title IV access, is that right?

MS. HONG: That's exactly right. You

know that we review changes of ownership and it's a different type of review, nature of review that IRS does. So the standard here is representing your tax status as understood by the Department.

MR. TONCHI: Shall we proceed with the shared screen?

MS. HONG: Great, thank you so. Some additions to page four. Major financial charges or financial assistance on date, we've added some language regarding to pay the cost of attendance at the institution to include part-time employment, housing, transportation assistance. There's a new (g), the amount, method or timing of payment of tuition and fees that the student would be charged for the program. And this is relevant to what was just raised regarding placement rates. Employability of graduates is the next section under 668.74. There's a comment on the bottom of page four regarding the incorporation of that element, which is actual licensure passage rates if they are materially lower than those included in the institution's marketing materials, website, or other communications made to the student. And then this is followed up by all the text on page five. We're really interested in getting your input on these, whether this language will address known examples of job placement rate manipulation and how it

will interact with existing rules for placement rates that accreditors in our states may use. Certainly interested in hearing from State AGs and Heather as well. If I could just go over some of these. I think it bears reading aloud. "Actual employment rates if they are materially lower than those included in the institution's marketing materials, website communications". "Actual rates are calculated in a manner that is inconsistent with a calculation formula established by an accreditor, licensed body or the institution" or "actual rates that the institution does not disclose are inflated by means such as", and you see some A through D examples there. Whether that's "including individuals in an employment rate calculation who are not bona fide employees, such as those individuals placed on a one-day job fair, an internship, externship or employment subsidized by the institution." (B), "Including students in employment rate calculation who are employed in the field prior to graduation. (C), "Excluding students from an employment rate calculation due to the difficulty of placing that student" or (D), "Excluding nonrespondents to a survey for calculating an employment rate." And we ask that the institution furnish these documentation and other information used to calculate the institution's employment rate calculations. We can either we can sit on

this if you want to stew on it, I see hands raised so I'm going to go on mute.

MR. TONCHI: I was on mute too.

Misty.

MS. SABOUNEH: Thanks. I think at least from my perspective and scenarios, I think that this touches on, I mean going through you can actually remember instances where all of these things happened. And so I think it's really important to include this for the intent but the thing I want to bring up, and I don't know that it's necessarily regulatory changes. Maybe it's a Dear Colleague Letter that comes out after. The idea is we want schools to disclose this kind of information, but it's kind of difficult so like unemployment rates, there's not really a standard that schools can measure apples to apples. So if there was some kind of definition on how you should measure your employment rates, I think that would help for students who are comparing. And then on (B), including students employment rate calculations that were employed in the field prior to graduation. I think this is important and we need to measure this. But from a school's perspective, I don't know how you would do that. Would we survey students before graduation and track that? So it's more just in the technicality of how schools could actually go about doing this in a

consistent way.

MR. TONCHI: Joe.

MR. SANDERS: Thanks. I'll be brief here. There's a lot that could be said, but I think the two points I want to make, one, this section upon request, the institution must furnish the Secretary documentation and other information used to calculate employment rate calculations. That's really important because it's hard to capture all the different ways that a job placement rate could be manipulated or calculated, and so providing the backup information is really important. The Department did that in their DeVry investigation and I think that requiring that in that instance led to a really good outcome. Second point I would make is is, you know, the best resource from the state attorney general's side that we have in terms of what to look at for job placement rates is probably the multistate consent judgment with Education Management Corporation. There were significant allegations of job placement rate manipulation in that case, and we negotiated a set of terms with the operator of the schools that the Department could look at in terms of, you know, an evidence-based investigation of these issues, and I'm searching for a link right now, and I'll throw that, a link to that consent judgment in the chat.

MR. TONCHI: Thank you, Joe. Daniel.

MR. BARKOWITZ: Thanks, Emil. So I have two thoughts. The first is just a language question. And I believe number two, the way it needs to be clarified. So the way I interpret romanette two, it says actual rates the institution does not disclose are inflated, which means that the rates not disclosed are inflated by those means. I think the intention of the Department is the opposite. So actual rates that are disclosed are inflated by things that are that are actual rates are inflated by the following things not disclosed. So it's just a language construction question. I think the intention is reversed. In general, I have no issue with this. I think Misty raises a really interesting point and valid one on sub (B), and I would give a couple of examples for the Department to consider. For example, if I am employed, I'm thinking about my local economy, in a theme park local to where I live and I come into a program on hospitality and I graduate from that program and get a more advanced job in that theme park. By definition, I therefore have included my knowledge and grown my employability, but I would have to be excluded from the employment rate. So I would I would be, I would struggle a bit with that because again, you know, not necessarily. It's not necessarily the employability in

the field. It may be the skills are developing me for advancement in that field. I think the way this is written, this also again, sub (B) also provides disincentive for institutions to assist in externships and other programs that may lead to part-time employment prior to graduation. So at my institution, most of our students are part-time. It is likely that during their tenure, they will begin to find placement in the in employees in the field that could in fact lead to future opportunities. And we don't want to disincentivize that, and we don't want to penalize the school for encouraging students to explore the field prior to graduation. So again, I have some significant concerns about that sub (B) and thank you to Misty for highlighting that because I missed it on my first review.

MS. HONG: Thank you. Thank you for your comment, Daniel, real quickly, I just want to point out that this is that's definitely not the intent of this action. Remember, this is this is applying to graduates. So I mean, with with the with the idea that those internships and externship placements would lead to meaningful full-time work for the graduate.

MR. BARKOWITZ: Right. But I guess my feedback is that sometimes you're placed in an internship, say in your sophomore year that leads you to

part-time employment in your junior year. And by the time you graduate, you've already begun work in the field. That is not an internship or an externship. And by this definition, once I graduate, I would be, you know, I'd have to be excluded from that consideration. So, you know, the concept of prior to graduation is problematic. And again, it doesn't address my first point about further knowledge development in the field.

MS. HONG: Point taken, thank you.

MR. TONCHI: Thanks. I do want to note that Michale is now at the table on behalf of accrediting agencies. Michale, please.

MR. MCCOMIS: Thanks. Nobody can pronounce that word, really. So just to echo and add on from a practical component what Daniel was just talking about that Misty brought up as well. So for just for my agency, there sub (B) about including students in the employment rate calculation who were employed in the field prior to graduation. Yes, to Daniel's point, oftentimes students will obtain employment in the field that stems from either an internship or externship or that they sought out and were able to get on their own. An HVAC technician who halfway through their program, starts working as a helper part-time before they get the full-time gig after graduation is an example of that. But

we we have guidelines and with my agency for, you know, employment classification, who can be classified as employed as part of our reporting mechanism. And one of the areas is career advancement. And so what we require from institutions for in order to count students as employed who were already employed is that they were able to maintain the employment position due to the training provided by the school because maybe technical elements of the position changed and they needed to get additional training, or that the student would be able to attest that from both the employer or the graduate, that the training supported the graduate's ability to be eligible or qualified for advancement due to the training provided by the school. So we have those two carve-outs of what we call career advancement, and those are very important elements of the many programs that are offered, particularly in vocational fields. So I just offer that as probably being somewhat problematic to just a blanket you can't count anybody that was that was employed, you know, prior to graduating. I get what you're trying to do there. But the what happens more predominantly are these types of career advancement positions.

MS. HONG: This discussion is helpful, I'm just wondering if that's easily remedied by qualifying that it's employment that is unrelated to the

program study that we're talking about.

MR. MCCOMIS: If that's the case, then that would be a super useful clarification. I thought that what you what was intended here and reading it was that you were saying we've seen predatory practice where a student was enrolled, was employed as a medical assistant and they came out of graduation and they were still employed as a medical assistant. They didn't advance, they didn't get any gain, any gainful employment because of that. But if it's if it's no, you cannot count somebody in employment classification who was employed in an unrelated field, get the training and then still have that same job accomplished. If that's the intent, then that clarification would be very useful.

MS. HONG: I think we certainly want to grab that those that population that you described Michale, and if either Michale or Daniel have any suggested language to send regarding the career advancement piece, that would be useful for us.

MR. MCCOMIS: I'll post the, my agency's guidelines for employment classification in the chat and you'll see in there the specific language that we use. Would that be helpful?

MR. TONCHI: Jessica.

MS. BARRY: Yeah, I just wanted to

agree with Michale and Daniel on a lot of those points. I went through this with our career services director too, and he had some concern about internships being included because he's seeing that especially our highest-level employers, our most exclusive employers, a lot of them are starting almost every employment, at least at the entry level with an internship, and sometimes we have a really short window to place the graduate. And so he would hate to see for us to start shying students away from those internship opportunities when we have that short window, because sometimes those lead to the best employment opportunities. So just something to think about.

MR. TONCHI: David.

MR. TANDBERG: Just a point of clarification if, using the internship example, would those students under the red line text that we're reading now, would those students be excluded from both the numerator and the denominator? Or are they just excluded from the count of employed students? Because that that would make a big difference as to the incentives, right? If they count against the school, I could see an incentive being put there, but if they're not counted at all, then it wouldn't be the same kind of incentive that Jessica is highlighting.

MR. TONCHI: Michale.

MR. MCCOMIS: Well, well, just to David's question, that would not be an allowance that most accreditors would have. So you don't get you don't get to pick and choose which graduates. Now you report on there are some exclusions. But one of those that that my agency doesn't include students that were employed before. So that's the only way you can take them out as from both the numerator and the denominator. Otherwise, we're counting all graduates. Of that number, how many are employed utilizing the guidelines for employment classification?

MR. TANDBERG: And that was my assumption also. And I think that's the way most state agencies would calculate it. It wouldn't be an exclusion.

MR. TONCHI: Josh.

MR. ROVINGER: Thanks, I guess I'm a little confused by this discussion, just because, I mean, doesn't this provision only come into play if there are misrepresentations regarding what the institution is doing here? So let's say if an institution is puts forward an employment, a job placement rate and says this includes individuals who are placed in an internship or individuals who were employed in the field prior to graduation. I mean, that wouldn't constitute, I don't

think, a misrepresentation if the institution is being honest about it on the front end, though, if I'm incorrect about that, that would be helpful to know.

MS. HONG: Josh, thank you. That's you're absolutely right, the qualifier preceding this section is misrepresentation regarding the employability of an eligible institution's graduates includes, but it's not limited to limited to false, erroneous or misleading statements concerning everything under that section.

MR. TONCHI: Daniel, I see your hand is up.

MR. BARKOWITZ: Yeah, thanks. I just want to respond to Josh, I think this is my question about the romanette. And again, Jen, thank you for teaching me the word romanette, but the the romanette 2, I just I don't understand the English construction of that clause. The actual rates of the institution does not disclose. So is it is it that the rate is not disclosed or the information is not disclosed? That's where I'm, Josh, that's where I'm struggling in concert with the sub (B). And I appreciate your clarification, but I just I need some help on understanding what's intended by that. And I'm not sure the language gets to what you've stated, Josh. So as I read it, is it the rate we're not disclosing or the fact that the rate is calculated based

on what's listed below that becomes the issue?

MR. TONCHI: Michale. You're on mute, Michale.

MR. MCCOMIS: That's right, I mean, I think that the construction of the language here is that the that the issue is that the rate is inflated by using these means. That any use of these means, by definition, inflates the rate, you can't qualify that away.

MS. HONG: Yeah, I think that that wasn't intentional. I think we're talking about the inflation of the rate. That does not disclose (inaudible), Doesn't add anything (inaudible).

MR. TONCHI: Thank you all. Jennifer, at this stage, do you want to continue to proceed?

MS. HONG: Yes. Moving on to continuing on that same document. A new 668.75 in fact. And so we were just interested in your feedback. This is just an example of what we're considering and where we're considering placing it. I believe some of this was at least a result of our back and forth with state AGs and draws elements, terms from New Jersey's Consumer Fraud Act, including concealment, suppression or absence of material information. Except that Subpart (c) is drawn from language already in the federal regulations concerning misrepresentation. So we are open to feedback

on the appropriateness of this language and are open to feedback and alternate suggestions for the best ways to define omissions. Let me just read it again real quickly. "An omission of fact includes the knowing concealment, suppression or absence of material information or statement with likelihood that others rely upon such concealment suppression or absence in connection with the nature of the institution's education programs, financial charges or the employability of the institution's graduates. An omission of fact includes, but is not limited to, the knowing concealment, suppression or absence of material information or statement concerning- the entity that is actually providing the educational instruction. (b), the availability of slots or requirements for obtaining admission in a program where the institution placed the students in a preprogram at the time of enrollment. (c), factors that would prevent an applicant for reasons such as prior criminal records or preexisting medical conditions from qualifying to meet requirements that are generally needed to be employed in the field for which the training is provided. (d), the nature of the institutions, educational programs, institutions, financial charges or the employability of institution's graduates."

MR. TONCHI: Joe.

MR. SANDERS: So I want to make one point and then I'd like my alternate actually to weigh in here as well. I'm concerned by the term "knowing". I think it's very difficult to prove a school's state of mind on an omission, and, you know, that's not a part of, that's not under Illinois's Consumer Fraud Act, that's not required. And so I think any student is not going to be in a position to prove what the school knew or didn't know. And I think even from a law enforcement perspective, you know, we don't normally have to prove that. So it would be a higher standard than we are currently held to by our State Laws. That being said, you mentioned New Jersey, so I want to refer to my my colleague from New Jersey to the extent that he knows whether that would be an element in his state.

MR. TONCHI: Eric, if you could come on camera. There you are.

MR. APAR: Yeah, thanks, Joe, so I would have to go back to some of my colleagues and ask whether they've had experience interpreting the term "knowing" I don't want to speak out of turn here.

MR. TONCHI: There are no other comments at this stage, Jennifer.

MS. HONG: Yeah, I think. And then the last part is just a severability piece. Unless there are

any other comments, we can maybe take a, I see Heather.

MR. TONCHI: Heather, please proceed.

DR. PERFETTI: Thank you. And this may be a question for Jennifer, I'm trying to gain a sense for the interconnectedness of what is here with institutional information that's required under 668.43 or 668.45. So just trying to understand if there is a mapping certain information is required by institutions, is the misrepresentation and omission intended to be reflective at all of what institutions are required to provide for enrolled and prospective students under those other regulations?

MS. HONG: Right, so remember that, yes, the answer is yes, this is from this is under general provisions, so this is not under the BD regulatory section. We are just cross-referencing it for consistency sake. So this is under general provisions because we have an existing definition. We want to make sure that we can just as opposed to proposing or being redundant in the effort to streamline. We're just going to cross reference what already exists. And we've provided more other examples to the nonexhaustive list.

DR. PERFETTI: Thank you.

MR. TONCHI: Justin.

MR. HAUSCHILD: Yeah, thanks. I just

wanted to flag that I'm going to drop some alternative language into the chat on this. I think we're generally supportive of what the Department is trying to do here, but harbor some of the same concerns that Joe mentioned with regard to the word "knowing" and "reliance", generally speaking. And we'd like to see some additional categories included here to address things like omissions of back with regard to the academic experience and instruction who who's providing that at the institution specifically with regard to ineligible third parties, how academic terms are initiated in instances where a student isn't notified or they may be enrolled in a term without their express consent or knowledge. And then similarly, with regard to the structuring of programs and the student not having affirmative information with regard to how those programs are structured or bundled or staffed. So I'll drop that language in the chat. Thank you.

MR. TONCHI: Thanks, Justin. So at this stage, Jennifer, unless you would like any other guidance, let's take a temperature check for tentative agreement on the red line text that's currently in front of you now. So give me, please provide your thumbs and please be ready if you are, you know, if you haven't spoken up and if you have a serious reservation to speak up. Oh, we're cutting you off Joe and Daniel. Go ahead,

Joe and Daniel, and then we'll see if we can do a temp check after your comments.

MR. SANDERS: There's a lot that we just went through, and I don't feel like I'm in a position to temp check all that, right, that's like. And I understand that it's kind of a standard thing, but I mean, and in terms of we're dealing with a lot, but I don't know that I can temp check everything we just went through up to this point this morning in one go.

MR. TONCHI: Fair. Fair enough. That was a lot. Daniel, is your, the same comment?

MR. BARKOWITZ: Well, sort of, I guess I'm asking. I wanted to ask, is it specifically the misrepresentation section? Because we started on the much larger section. So I'm just trying to understand what it is we're temp checking. Are we temp checking the misrepresentation section or the language that also is included in the general overarching overarching language in the reg text pages one through five that we've already discussed? So I'm comfortable taking a temp check on the misrepresentation section. I just, I want to understand what it is we're temp checking.

MR. TONCHI: Yeah. Well, let's let's I actually appreciate. I mean, Jennifer, if you have another way of that, you'd like some feedback, please

suggest it. But you know, for example, Suzanne in the chat has suggested by section, we can do that. But Jennifer, do you have another suggestion?

MS. HONG: Yeah, if I would just if it's helpful to break it up. Like we've gotten to the federal standard, what, you know, the five bases that constitute a federal standard in the general BD regulations. If we could do a temp check to where we are for that and then another temp check on misrepresentation. I realize there's a lot in misrepresentation. I don't know if that's what Joe's concerned about, but just it's just a temperature check just to see generally how people are feeling up to this point on those issues. So two different temperature checks, one where we are generally, we talk about the structure of the BD regs, the probability of the BD regs and what the five bases for claim. And so that's one. And then and then temperature check on the definition of misrepresentation.

MR. BARKOWITZ: And again, I'm sorry, but one of the five representations is aggressive recruitment, I know we have yet to discuss that. So again, in theory, I could vote, but until we have, the particular conversation, it's going to hard.

MR. TONCHI: Are you referring to the

proposal that's been made by committee members, not the Department or?

MR. BARKOWITZ: No, the Department's proposal that is a separate document from the Department on what constitutes aggressive recruitment. And then there was a counter proposal made as well.

MS. HONG: You're right, we can ask, so would it be better because we're just going to get into the aggressive recruitment, that discussion is more, you know, more of a, I guess less refined. So if we what if we could take it, how about a temperature check on misrep and then we can move into the aggressive recruitment discussion if people are comfortable with that?

MR. TONCHI: Okay, is everyone clear with a temp check is on at this stage? You can say no if you're not. So let's take a temp check for tentative agreement on the misrepresentation section. Let me see thumbs please. Alright, I know a number of you have raised a number of points during our conversation, if there are any additional points you haven't raised, please do so. I can't tell if there are any thumbs down for for folks that did not speak during this section. If you haven't spoken, please share your serious reservation. Jessica, go ahead.

MS. BARRY: I've spoken, but I just

want to be clear, because I've been thinking about the conversation that's been going on. I just think that the Department should have to determine that there was a reliance upon the misrepresentation and the student was harmed or the borrower was harmed. So that's why I voted no.

MR. TONCHI: Joe.

MR. SANDERS: It's possible that I could be a sideways on this, but I have a 3:00 p.m. central time call with my constituency where this is going to be covered and so I don't want to give the Department that false sense that we're all behind this before I get feedback from, you know, I've got 50 other members that I should, because this is so central to kind of what we do, I want to get that feedback before I before I give the thumbs up, so that's that's the only addition I have.

MR. TONCHI: Thanks. David.

MR. TANDBERG: Yeah, I could likewise very easily be a sideways, and maybe if you'd asked me five minutes later, I would have been a sideways. The big concern I have is that just I need to, there was really important (inaudible) now written, and I'm not clear as to which points the Department has agreed with us on. And until I have clarification on those points, I can't

really be a yes. But I'm, you know, very close to it.

MS. HONG: Just just to follow up with that, David, you broke up a little bit. If you could speak more specifically about what, you broke up, so what points were keeping you from sideways?

MR. TANDBERG: Yeah, it was it's mainly around the language regarding the disclosure and misrepresentation. Are we, are the items there, things that cannot be used in the calculation, for example, of a job placement rate or are they items that must be disclosed if they are being included in the job placement rate? That's a huge difference or any of the misrepresentation, you know? And so, you know, clarification on that is the Department, what's the department's intent? That never became clear to me.

MS. HONG: Is that the same concern with the accrediting agency constituency?

MR. TONCHI: You're on mute, Heather.

DR. PERFETTI: You're asking about accrediting agencies, I was agreeing, yes, with David, I think until we can see the language and process how that would be implemented, it's hard to give us thumbs sideways even right now.

MS. HONG: Right, but we're we're talking specifically about the employability of graduates

section, the placement rate.

DR. PERFETTI: And I think also some of the conceptual language that Daniel was referencing, once that gets clarified, I think it would be helpful for us to see it rewritten as well.

MR. TONCHI: Well, at this stage, just before we move on, oh, Greg, you have a comment. Please.

MR. NORWOOD: Yeah, real quick and we were thumbs sideways, but I was just wondering how we could even prove, and I think Josh mentioned this, I mean, State AGs mentioned just earlier, how can you even prove reliance or how the Department of Education could prove that? And if like, if that is a prohibitor, I would just caution to maybe develop, how could we even as students know, you know, we're talking about students? Not not legal experts, but but students. How could we prove that an institution or whatever the case may be? Thank you.

MR. TONCHI: Thanks, Greg. Jennifer, before we move on, seeing as there's no hands up, does the Department, would the Department like any other guidance from the committee before we move on?

MS. HONG: No, I think this is helpful. We'll move on, we can move on to the document. The third

document, Vanessa, this is the one that says draft Borrower Defense to repayment language there is, it's a separate document, and this will help us talk about aggressive recruitment. Great, thank you. So this is, this is a document we've kind of collated suggestions from State AGs, some 2016 language, BD language and language from the CFPB. Let's put a, I wanted to jump down to, well, okay, we'll talk the violation of State Law. Actually, Joe, if you're on, can you talk about this piece on the violation of State Law? This is this is what you, your constituents have provided and then we can go into aggressive recruitment.

MR. SANDERS: Yeah, sure. So, you know, our concern here was with consideration of State Law claims and not wanting to create additional burdens for students who wanted to have a State Law claim considered. And so, we also heard the Department on the administrative burden of considering State Law in all instances, and so we tried to come up with a compromise here and so we pulled language from the 2016 rule, that's the language in red. And I should note that we had feedback and actual help drafting from the legal services community, so kudos to Josh and Persis's colleagues at the National Consumer Law Center for their work on this. So we pulled the language from the 2016 rule that's in

red, then we tried to create this compromise between the Department's original proposal, which was that you'd have to appeal and bring your State Law claims separately after denial. And so if you look at section (a), section (a) has a requirement that the State Law be alleged in the application. And it gives the Department the discretion to look at the State Law piece prior to the federal piece should they choose to do so. And then in (b), we have a component that allows the Department to, should the Department choose to do so, they could consider it without the allegation. So bottom line here, we're trying to bridge a gap that would reduce a burden on students, but also not place an un-administrable burden on on the Department, that's the goal. Happy to take questions if I can clarify for this.

MS. HONG: Actually, I did. I put you on the spot and I asked you to talk about this. If we could put a pin on this piece, I did want you to present it so that folks can kind of sit with it. We're going to talk about this proposal and the state review generally when we get into the adjudication. If we could put a pin on that discussion and then continue with aggressive recruitment. But thank you for that, Joe. And again, this is, this continues with language that the State AGs had put forward and that is, I can read that out loud,

aggressive, "aggressive recruitment means exerting unreasonable pressure upon a consumer to enroll in an institution without limiting the general application of foregoing the following conduct is a violation of the section" and again, and Joe, you can jump in here as well, because I realize you provided this, these are all different citations where some of these subsections come from. But just to give a quick review, "Exploiting a consumer's fears, anxieties, insecurities, or any specific misfortune or circumstances of such gravity as to impair the consumer's judgment to influence the consumer's decision with regard to the institution. (b), Interfering with the ability of a consumer to understand a term or condition of enrollment or a financial product or service related to enrollment. (c), Taking unreasonable advantage of someone's lack of understanding of higher education and financial aid by reason of socioeconomic background, lack of familiar experience and higher education or other reason." We've heard a lot about that throughout this discussion session one. "(d), taking unreasonable advantage of someone who recently relies on the recruiting individual or entity to act in their interests; Reasonable reliance shall be presumed if the recruiting individual uses a title that implies they're acting in the best interest of the student,

including but not limited to admissions for guidance counselor or academic adviser. (e), unsolicited contact with a borrower that has previously requested not to be contacted. (f), the use of threatening or abusive language or behavior. And (g), exerting unreasonable or unsubstantiated time pressures upon a consumer." Just to go back to the issue of reliance. I just wanted to loop back to Greg and I think Jessica. Remember, we're inferring reliance if a reasonable person could have relied upon it. And let's let's pause there and see if there's any questions or concerns about that. Everything under aggressive recruitment in that first paragraph.

MR. TONCHI: Daniel.

MR. BARKOWITZ: Thank you, Emil. So, first of all, I note that this is one of I think, three options that are listed from the Department or, you know, captured in this document. And then a group of us provided a fourth definition and concept for discussion as well. I do have, so first of all, I want to be very clear, none of these things are good and appropriate. And so I have I have reasonable agreement with with this definition in terms of the the fact that all of these are bad actors and bad actions. I have a concern, though, about the subjective nature versus objectivity and reliance on objective statistics for some of these. So,

for example, I'm not sure how one would demonstrate the exploiting of a consumer's fears or the interfering with the ability to understand the term. So I'm looking for some help with some of that. And again, this is, others of this piece are very objective. So the use of threatening or abusive language is objective and can be documented. But the subjectivity concerns me on some of these. And while I understand the intent and support the intent, I wonder if there's another way to get to this without it being a subjective piece. So if we're in a meeting, I could be accused of subjecting or exploiting your fears or anxieties without without knowledge. So that's that's really, I think the objective and and I would suggest again, I know we're not there yet, Jennifer, but let's, you know, if we can also look at the group of proposals that that some of us put forward as part of this conversation. We've tried to be objective in our in our assessment.

MS. HONG: Thank you. Thank you, Daniel. And yes, let's revisit some of the language that you put for you and others put forward. And the point is well taken. We have the same concerns here, so we are open to, you know, these these are the concepts that we're trying to get out. What does that look like in terms of when you're adjudicating these claims? And I

think getting to language that is measurable in terms of what this result in, I think that's we would appreciate any feedback or proposals or proposal language on those issues.

MR. TONCHI: We have a number of hands up. And I am curious as to whether the hands have to do with this specific option or if it's another option. So just if your comment is going to be regarding another option that we haven't gone over yet, just please be clear about that, okay? David.

MR. TANDBERG: Yeah, in all of these items, one of the concerns that I have in my constituency is whether these can be written to apply to agents of a college. So we see increasingly that nonprofit and public institutions are contracting with external for-profit firms for their recruitment admissions, enrollment management services, often their contracts are written in such a way that they try to provide themselves protection against such regulations and laws. And so we would want a misrepresentation, aggressive recruitment and other rules that we write to apply to the institutions or the agents of the institutions. And so I see Joe. Yeah, yeah. Thank you, Joe. So that that hopefully it sounds like is in the language that we work with Joe on. And but something to keep in mind for all of the rules that we're considering

is when do we want them to apply to other entities contracted acting on behalf of the institution? Because that's a growing problem.

MR. TONCHI: Thanks, David. Greg.

MR. NORWOOD: Yeah. Quickly, I just wanted to, first of all, appreciate fin-aid for, financial aid, for for the comments. But I think again, I think when when you come, I think context matters and when you're talking about individuals from low income communities, from, you know, people of color, or even our veterans, I think that some institutions know how to play on some of the fears that that the future isn't possible without a college education from this particular institution or that, you know, just there are different ways by which institutions use context to try to almost suggest that without this collegiate experience, there is no hope type, type, type of thing. So I think that is something that is relatively easily, relatively easy to approve. And I think that while it would be a challenge, maybe towards institutions, I understand your object and subject of conversation or comment, but I think that I think that this is one that that happens all the time. And certainly, I think a lot of students have an experience whereby they were contacted by a recruiter, contacted by someone who essentially told them that this

institution is the only institution and there's no other way to go about success. And that's not necessarily true at all, particularly those within the context of the one that I come from. Right, low-income, you know, colored community.

MR. TONCHI: Alright, Joe.

MR. SANDERS: Yeah, so I want to push back on the idea that this standard is somehow subjective and can never be proved because that's just not the case. This was common practice in the industry, the for-profit school industry for a long time. We have investigations where we have training manuals that talk about things like the pain funnel, right? This is a term that a lot of us on the call today have heard that exploit the borrower's pain funnel. And this is the type of thing that Greg's talking about. Schools would train their recruiters to specifically get the person talking about their hopes and goals and dreams. And then they would push the person to enroll by saying, well, don't you want to provide a better life for your family? Don't you want to do this? Don't you want to do that? You know, you can do it. Just sign up with us today. Right? So this is well-established activity. It can be proven through internal documents from the company. It can be proven through call recordings. I have listened to a lot of

recruiting phone calls in my eight years at the Attorney General's Office and they're the type of things that make you blush when you when you hear the stuff that recruiters tell students in order to get them to enroll. And so, this standard here, you know, we have to get at this conduct, this is what aggressive recruitment has looked like for the last 10 years. Happy to talk about tweaking the language, but am 100 percent against removing it, because it's too subjective or anything along those lines.

MR. TONONCHI: Thanks, Joe. Jeri.

MS. O'BRYAN-LOSEE: I'm going to agree both with Joe and with what Greg was saying, It's, you know, consistent phone calls. It's, you know, blowing up emails, which is one of the reasons students don't answer their emails, they get blown up with all of these, you know, time's running out. You're not going to be able to have the future you want unless you go through us. I don't think it's it's it's hard to prove at all. And it's I think it's necessary language to make sure that our students are protected in in these cases.

MR. TONONCHI: Thanks, Jeri. Justin.

MR. HAUSCHILD: Yeah, thank you. Just want to say that I think, broadly speaking, we're generally supportive of this particular approach to

aggressive recruitment, we'd be supportive of it actually being strengthened further to include some additional instances or categories of things that would satisfy or qualify as aggressive recruitment and also be supportive of that being strengthened, strengthened further. And I think there's some indication that that's in the works with regard to third parties that that is not a novel idea. There are examples of that very thing, both within DOD and in more more recent policy focused on the Department of Veterans Affairs. So I just wanted to express general support and support for it being strengthened further, especially in both of those areas. Thank you.

MR. TONCHI: Heather.

DR. PERFETTI: Thank you, and thank you to Joe for offering to tweak some of the language because I know I was a part of some of the discussions with Daniel in this smaller group, and I think that we were looking at some of the more specific areas that made it clear what the behaviors were to those that may not have the years of experience that that you all have seeing the behavior. So I certainly wanted to express appreciation for that. I also wanted to speak to David and Justin's comments from the accreditor perspective in terms of the contracts that may exist with institutions or what we may

call as third party providers. Certainly, there's an increased reliance on that by institutions and accreditors do hold institutions responsible for any activities or actions under their name. And so for us, we do have requirements for institutions relating to those arrangements and where they are problematic, we can certainly pursue noncompliance actions against the institution. So I did want to offer some support for that as well. And I did note that in the chat, Michale placed a comment there as well about his agency that they require recruitment to be done by institutional employees. So we do see some activities from the accrediting perspective that I think lend well here.

MR. TONCHI: Great, thank you, I do want to note that new language has just been circulated via email. So please take a look at that. Noelia.

MS. GONZALEZ: Oh, yeah, thanks. I just wanted to make sure that we differentiate between some of the aggressive practices we're talking about and what maybe some of the publics and nonprofit campuses are doing, specifically the marketing and outreach to students around the May 1 national intent to enroll deadline. There are a lot of emails that go out to students during that May 1 or just prior leading up to it to ensure that students don't miss that specific, very

important deadline. Because if they're not committing by that May 1 date, they may not come, attend that campus after that. So I do want to differentiate some of these email blasts that go out from the from the nonprofits and the the public institutions to ensure that students aren't missing vital deadlines.

MR. TOTONCHI: David?

MR. TANDBERG: Yeah. Thank you, Noelia, that was something that Joe and I and others discussed via email and comments to the document quite a bit because recruitment can be a very good thing. And for, particularly students who don't think they are college material to be recruited wakes them up. They see more options. And and so we don't want to restrict helpful recruitment that is reasonable, that helps keep campuses alive, that helps students see their options. And so we actually did cut some language in order to allow for that. If there is more that needs to be done, I think we should because we do want students to be recruited. We want them getting mailers and emails. It can get annoying as a parent for two students who went through the college process, but at the same time, my student, my kids were so flattered, you know, it was kind of cool to be wanted. So absolutely.

MR. TOTONCHI: Thank you, David.

Jessica.

MS. BARRY: I just want to just support what Noelia and David were saying. I just want to add a comment. I started my career as a graphic designer and then moved into higher ed. So I've been working on marketing for a long time. And when I think about what we used to do 20 years ago to let even students know about an open house, you know, we used to send them an invitation and maybe follow up with some phone calls to get their RSVP. But because now there are so many different communication channels and not all students pay attention to the same channels. You know, I look at our marketing campaigns now, and they are so much more complicated because we're having to send emails and texts and we're still calling and sending direct mail. And we're also doing some social campaigns just because we're trying to reach the students. And I know everybody's recruiting students for different reasons. You know, it could be because in my case, their artistic talent, it might be academic or athletic talents. So yes, I agree with what's been said that we don't want to stifle that because that helps students make good decisions.

MR. TONCHI: Thank you. Jeri.

MS. O'BRYAN-LOSEE: Okay, I understand all that, but that's not what we're talking about. We're

not talking about the can you please come to my school? Here's my catalog. We're talking about predatory, the pain funnel. If you've never lived in the pain funnel, the pain funnel is real. It's it's not about general admissions that, you know, you go to a college fair. That's not what we're talking about here. We are talking about people who are targeted because of their economic status, because their first gen, because of that, they're targeted for a reason to get money that then students can't pay back. So I just want to like make sure we're really clear on the student aspect of this. This happens all of the time. And it's not a, we mean well, and we want you to do well because you're not represented, there's a way to recruit people who are underrepresented, who don't know the process and doing it through a pain funnel. I love that phrase. It'll be on a hat at some point, because that is the truest thing about what we're actually talking about here, is really what individuals are going through. Thank you.

MR. TOTONCHI: Thanks, Jeri. And I see Dixie is at the table for dependent students now. Please proceed, Dixie.

MS. SAMANIEGO: Yeah, so I really wanted to kind of push back a little bit on what folks were saying and especially as a CSU student. So I attend

Cal State Fullerton, which is housed within the largest four-year public university system in the nation. The Cal State University system, which is where Noelia is from as well, so, hey, but I also I do recognize and also there is important right to like, hey, May 1st deadline is coming up, right? That was particularly helpful for me. But the difference here is that students are being preyed upon on our inexperience and not having right the knowledge that we really need to differentiate like, oh, this, this campus or this university system is like reminder, right? We I when I was a senior, could not really differentiate like May 1st deadline with, hey, we're going to aggressively recruit you to our campus because you're a first gen Latina, right? You're the first person in your family to graduate high school, which was the case for me, right? Like, even despite having an older sibling like I was the first to graduate from high school and I went to a poor high school filled with brown students. And I'm a brown student myself. So of course I'm going to like, I'm going to be aggressively recruited. And so I want to push back on that idea that like, well, you know, these public institutions, right? Whatever, these institutions are doing it for the good of their heart and like, right, there is a difference, yes. But also the majority of these recruiting tactics are

aggressive. And so we need to, yes, that reminder email is helpful. But the difference, the difference in that and getting phone calls all the time to come to an event and this and that and this and that every every couple of weeks, that is aggressive, that is aggressive and it's tiring and it's emotionally and mentally, and at some point for me, physically taxing right to be someone trying to navigate an entire educational system, not knowing. And so I think a lot of what the points made here lacked a lot of perspective from students. And specifically, I shared my perspective and my experience as a first gen Latina student being aggressively recruited the first session. And so I wanted to bring that that experience back because that the reminders are helpful, like May 1st deadline. Right. That's different than getting phone calls from an institution consistently every week or every two weeks on the clock, on the hour, right? That's different. And I wish I could submit through the entire committee. Thank you. I could I wish I could submit could submit phone call records from institutions that I would like, cause I would be getting every week to attend things that weren't even pertinent to my degree pathway or what I was interested in, right? And so, right, we're being exploited until there is a difference between a reminder, then what is what we're

talking about here. And that's what the perspective and the point point of views that were shared that it lacked that perspective from a student that was aggressively recruited based on their identities.

MS. MACK: We're at time.

MR. TONCHI: Thanks, Dixie. Joe.

MR. SANDERS: Just very briefly, the definition of aggressive recruiting that we're looking at here, it wouldn't, we specifically excluded stuff that would have implicated what Noelia was talking about or what Jessica was talking about. They're, the only thing that would apply is unsolicited contact with the borrower that has previously requested not to be contacted. Right, so there's nothing in here that puts a bar on schools talking about May 1st or other substantiated time concerns. So we really did try to, you know, be thoughtful in protecting protecting students, but also allowing institutions to communicate with people that want to be communicated with.

MR. TONCHI: Thanks, Joe. Daniel.

MR. BARKOWITZ: Yeah, sorry, trying to find the mute and open up Word and everything at the same time, sorry about that. So Joe, if you can, and this is really helpful. Let me back up. First of all, Dixie, Greg and others, I appreciate the the voice you're raising.

And again, my concern is that I want to make sure that the way the the regulations are written, that we're not catching the good actors with the bad. I have no, I have no, and Jeri, I have exception to the pain funnel as well. I think it's that is ridiculous and and exploitative, and I just want to be very clear, right? My concern all along has been, though, that we not be so broad as to catch the good actors with the bad actors. And so I'll go back to where I started, which is, you know, I'm looking for something objective, something that that says this is the behavior that cannot be done. And I get that, Joe, to your point, earlier, these may fall under objective standards, but is written exploiting the consumer's fears as an example. Right? You know, documented how? So, is there a way for us to show or talk about how that could be documented so that again, we don't, you know, by casting a wide net, and I want to be careful because I want to cast a net wide enough to catch the examples that you've given. But by the same token, I don't want to cast it so wide that we snare institutions that aren't in place, and I'll use a a point of view that has been shared before. You know, this is going to depend on the administration, I think, in place at the time. I want to be careful that different administrations don't take a different view on this. To the students credit, I

want to be careful that we're protecting and and careful about student perspective. So I want to I want to cast the net wide enough, but also not cast it so wide. And so I look for some help. It also would would like us, we spent a lot of time on this first definition. I'd like us to look at some of the others because I think there may be pieces that we can pull and and, you know, reflect in to the to those pieces.

MR. TOTONCHI: Thank you. I see we have a few comments, we have about five minutes left in the morning session. I don't want to prematurely cut off the discussion. It would be nice before the lunch hour to take some kind of temp check given that there has been a lot of discussion and I don't want it to be lost. If that's not appropriate, that's fine but that's just as facilitator something I'm thinking about doing. Josh. Oh, Jen, Jennifer, go ahead.

MS. HONG: I was just wanted to we might need to take that temp check after lunch because we still we still don't. Yeah, but this is all good, it sounds like in general, people feel positively about the inclusion of this concept, so I feel good about this discussion.

MR. TOTONCHI: Well, I'll ask when we go to lunch, keep the conversation fresh in your head so

when we get back to it, we can pick up from where we left off. Josh.

MR. ROVENGER: Thanks. So we're very supportive of, in particular, the new proposal that Joe just circulated. I do have concerns, though, to Daniel, your comment. I understand, like I totally get that we want to distinguish between good actors acting appropriately and unfair and deceptive conduct. My concern is that if we get too specific in what we're listing out, bad, we've seen schools, particularly in the for-profit industry, find new ways to exploit people and take advantage of people. And if we're not, I don't want to use, if we're not broad enough in our language, we're going to end up creating a situation where these schools will just find new ways to take advantage of people. So for example, one school that has just been subject to a class action lawsuit school lawsuit, a former teacher testified in an affidavit that on smoke breaks, admissions officers would bring unhoused individuals into the office and get them, to exploit their financial situation and get them to sign up for their school. You know, I don't think we need to list that specifically in the regs, but it needs to be covered with whatever we end up with. And I think the language that Joe just circulate would capture that and does a nice job of distinguishing

between what we're what we're trying to get after here.

MR. TONCHI: Thank you. I just do I do want to note that Emily is at the table for veterans and military group. Joe. Joe, where did you go?

MR. SANDERS: Sorry, I'm here. I lowered my hand after you called my name. Two very quick things.

MR. TONCHI: Oh, go ahead. Sorry.

MR. SANDERS: Yeah, that's alright. Two very quick things, one, the Department asked for cites as to where we got these concepts, and so this is included in what you see here. Moving down from the first one, many of these are pulled from the Dodd-Frank Consumer Financial Protection Act. One of the reasons that we did that is because there are concepts in that law that are flexible in ways that Josh talked about. It's an established federal standard which should appeal to the to the Department here. And then, if you look at B and C, these are concepts that are pulled directly from Federal Law and that we saw as directly applicable to schools' conduct in lawsuits and investigations that we've been involved with. So we are trying to get definable standards here, to Daniel's point, we don't want something that isn't grounded in fact and law. So, second thing, I'm sorry for distributing the second version of

aggressive recruitment right as we're talking about it, but I got a lot of feedback from negotiators from my constituency. And so although the timing isn't the best, it was my best effort to consolidate everything I got and get and get it out there for the group to consider. Thank you.

MR. TONCHI: So I see David and Emily have their hands up. We are at lunchtime, so David and Emily, you will be the first two to go when we resume the conversation, okay? Excellent. Well, with that, we are at 12 o'clock Eastern. We'll take a one-hour lunch. Thank you for the hard work of the committee this morning. Look forward to continuing the discussion this afternoon.

Appendix
Department of Education
Office of Postsecondary Education
Zoom Chat Transcript
Affordability and Student Loans Committee
Session 2, Day 3, Morning, November 3, 2021

DISCLAIMER:

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

From Brady FMCS to Everyone:

Morning all! I am handling tech issues today. Feel free to email me at broberts@fmcs.gov with any questions.

From Michaela Martin to Everyone:

I had to resist the urge to say "Here" like for class role call lol

From Will (A) FFEL Agencies to Everyone:

;)

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

Lol

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

HA HA HA!!!!

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

Is it "here" or "present" that is the proper response?

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

I vote for "present"

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

David and Suzanne win for the longest title...

From Brady FMCS to Everyone:

Would alternates mind switching off their cameras?

From Greg, A - Dependent to Everyone:

Sitting in for Dixie this morning

From Michaela [P] Ind. Students to Everyone:

I support this

From Will (A) FFEL Agencies to Everyone:

+ 1 David

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

+1 David

From Raj - Advisor Econ/Higher Ed/Data to Everyone:

I am ready

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

+1 Josh

From Joe; P, State AGs to Everyone:

+1 Josh

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

Is Institutional Liability considered through Closed School Discharge? There is no mention of Liability in the section on Closed School as currently mentioned. Is this something addressed in a different subsection? Or is there no liability envisioned by the Department to a school if they close a campus or have a merger?

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

Thank you, Jessica

From Jessica (P), Proprietary Schools to Everyone:

You're welcome!

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

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

+1 Josh

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

David, I think job placement is addressed by 668.74 (g)

From Joe; P, State AGs to Everyone:

We support use of Department's tax status here (subsection n)

From Heather (P) - Accrediting Agencies to Everyone:

Is "tax status" a term reserved to the IRS? The

deletion of the term "tax" and a more general reference to the status determined by the USDE may improve the clarity of this provision.

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

We'd like to ensure that misrepresentation also includes misrepresentations made concerning:

Accommodations available to students designed to assist with physical or mental health issues.

The award, acceptance, or transfer of credit related to non-traditional learning, including military experience and training.

The availability or nature of accommodations or resources for students impacted by military service obligations.

From Heather (P) - Accrediting Agencies to Everyone:

Alternate Michale will be joining to provide feedback. I'll turn my video off.

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

+1 David

From Jessica (P), Proprietary Schools to Everyone:

+1 Daniel

From Joe; P, State AGs to Everyone:

The EDMC consent judgment with 30+ states is a good starting point to evaluate job placement rate manipulation: <https://www.oag.state.va.us/consumer-protection/files/Lawsuits/EducationMgmt-EnteredConsentJudgment.pdf>

From Jessica (P), Proprietary Schools to Everyone:

+1 Michale

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

+1 Michale as well...

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

I think both are important to capture

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

+1 David

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

I don't. Michale can you help?

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh

From Rachelle (A) 4 year Pbulics to Everyone:

"The rates disclosed by the institution are inflated by means such as"

From Heather (P) - Accrediting Agencies to Everyone:

I am back now for Accrediting Agencies.

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

Or "the institution does not disclose that they have inflated their rates by means such as"

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

+1 joe

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

+1 Joe

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

+ Joe RE "knowing"

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

+1 Joe

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

+1 Joe

From Greg, A - Dependent to Everyone:

+1

From Suzanne Martindale (A) state regulators to
Everyone:

+1 joe, deception/misrepresentation in the civil
context does not include an intent standard

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

+1 Justin (particularly on the "who is providing the
instruction" item)

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

+ Justin

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

+1 Justin

From Suzanne Martindale (A) state regulators to
Everyone:

we could temp check by section, as we did and the end
of yesterday?

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

Agreed. My assumption is that the Dept has agreed with
some changes we've suggested but I'm not sure about
other suggested changes.

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

+1 by section

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

An omission of fact includes the concealment, suppression, or absence of material information or statement that deceives or tends to deceive. An omission of fact includes, but is not limited to, the concealment, suppression, or absence of material information or statement concerning—

[...]

the nature of the institution's educational programs, financial charges, or the employability of the institution's graduates

The entity that is actually providing the academic services or educational instruction, including failing to affirmatively disclose that such service or instruction is provided substantially by an otherwise ineligible third-party entity;

The initiation of academic terms, including failing to affirmatively disclose a student's participation in an academic term and obtain a student's consent to participate in the academic term, such as automatic course renewals, or sequencing course offerings in a manner that precludes dropping a course without penalty...

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

Enrollment in programs of education, including failing to affirmatively disclose a student's participation in an academic program and obtaining a student's consent to participate in an academic program.

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

How do you prove that then?

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

swapping in for legal aid just for a few minutes

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

That's the clarity I am looking for as well...

From Jessica (P), Proprietary Schools to Everyone:

+1 David

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

I'm back in for legal aid

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

+1 Greg

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

+ 1 Greg

From Joe; P, State AGs to Everyone:

+1 Greg

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

+1 Greg

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

+1 Greg

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

+1 Greg

From Joe; P, State AGs to Everyone:

We have updates to aggressive recruitment compiled from our constituency and other negotiators. I can forward that now.

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

I caution to include that in the language because there is no outright way for students to prove reliance. Especially with no guidance from ED. If ED and the negotiators who want to include reliance could provide examples and ways for students to prove reliance and the "knowing" aspect of the text it would actually be helpful.11:33:19 From Jessica (P), Proprietary Schools to Everyone:

+1 Daniel

From Joe; P, State AGs to Everyone:

I just distributed a version of aggressive recruitment to FMCS that covers agents, as David is expressing

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

+1 David

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

+1 David

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

+1 David

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

+1 David

From Joe; P, State AGs to Everyone:

+1 Greg

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

+1 Greg

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

+1 Greg

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

+1 Greg

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

+1 Greg

From Michale (A) Accreditation to Everyone:

To David's point, ACCSC only allows "employees" to engage in recruitment activities. No contractors. This is a huge problem, especially in the recruitment of international students.

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

+ Greg

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

Wow, "the pain funnel". That brings back horrible memories of when I was dealing with these issues while working in the PA state hi ed department.

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

+1 Joe

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

+1 Joe

From Joe; P, State AGs to Everyone:

+1 Jeri

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

+1 Joe and Jeri

From Joe; P, State AGs to Everyone:

I have included suggestions from Justin and his constituency in the version I just sent to FMCS for

distribution

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

Justin - Do please check the version Joe had sent to your e-mail. I think it hits on what you're talking about.

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

Thanks, David. Will do.

From Joe; P, State AGs to Everyone:

We cut some language to account for the situation Noelia described.

From Joe; P, State AGs to Everyone:

Happy to discuss if helpful.

From Greg, A - Dependent to Everyone:

THAT IS NOT WHAT WE ARE TALKING ABOUT!!

From Greg, A - Dependent to Everyone:

Thank you, Jeri!

From Suzanne Martindale (A) state regulators to Everyone:

+1 jeri - key terms like "exploiting" fear and taking "unreasonable" advantage show the distinction

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

I'll be in for Dependent Students right now.

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

+1 Jeri

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

+Jeri!!

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

+1 +1 - Absolutely

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

+ Jeri

From Michaela [P] Ind. Students to Everyone:

+1

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

+1 Jeri

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

I agree with you Jeri, and the concern is to make sure that the way the regs are written doesn't by accident include the good actors.

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

+Dixie

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

+1 Dixie

From Michaela [P] Ind. Students to Everyone:

+1

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

+1 Dixie

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

Exactly - that is the difference we're trying to hit at.

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

+1 Joe

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

+1 Joe

From Jessica (P), Proprietary Schools to Everyone:

+1 Joe

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

Importance is the consent of students to be contacted

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

and students forced to sit in the audience no mater
what

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

^

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

*matter

From Suzanne Martindale (A) state regulators to
Everyone:

@Daniel, school opportunity to respond with
information can address that

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

In addition to the most recent langauge submitted by
Joe, we'd also offer the following additional
categories of aggressive reruitment:

Providing inducements, including any gratuity,
favor, discount, entertainment, hospitality, loan,
transportation, lodging, meals, or other item having a

monetary value of more than a de minimis amount, to any individual or entity, or its agents including third party lead generators or marketing firms other than salaries paid to employees or fees paid to contractors in conformity with all applicable laws. Institutional scholarships or grants, tuition reductions, and other awards related to a student's completion of a program of education are permissible. (modeled off DOD MOU)

Refrain from providing any commission, bonus, or other incentive payment based directly or indirectly on securing enrollments or federal financial aid to any persons or entities engaged in any student recruiting or admissions. (modeled off DOD MOU)

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

Our alternate, Emily, will be stepping in to comment.

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

For example, I would support the second proposal language -- namely "demanding that the borrower make enrollment... immediartely".

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

How about "including but not limited to"... language?

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

+1 Josh

From Suzanne Martindale (A) state regulators to Everyone:

+1 josh, it's all but impossible to regulate for every fact pattern

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

Josh perhaps the language "Without limiting the

general application of the foregoing, the following conduct is a violation of this section" allows for the smoke break example?

From Heather (P) - Accrediting Agencies to Everyone:

Option 2 has ... include but not limited to ... perhaps that was intended for each of them but was not included in each one.

From Michaela [P] Ind. Students to Everyone:

Sorry forgot I was already off camera lol