

Supplemental Complaint

Exhibit Index

Deposition Transcripts

Transcript Order	Deponent
1	Mark Brown
2	Diane Auer Jones
3	James Manning
4	Colleen Nevin

Deposition Transcripts

Cited in Supplemental Complaint, March 19, 2021

Transcript 1 – Mark Brown

December 15, 2020

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

- - - - - X
THERESA SWEET, et al., on :
behalf of themselves and all : Case No.:
others similarly situated, : 19-cv-03674-WHA
Plaintiffs, :
vs. :
ELISABETH DEVOS, in her :
official capacity as :
Secretary of the United :
States Department of :
Education, et al., :
Defendants. :
- - - - - X

Remote Videotaped Deposition of MARK BROWN
Tuesday, December 15, 2020
10:03 a.m. (EST)

Job No. 332249
Pages: 1 - 250
Reported by: Dana C. Ryan, RPR, CRR

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1
2
3 December 15, 2020
4 10:03 a.m. (EST)
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8 Remote Videotaped Deposition of MARK BROWN,
9 held via Zoom video teleconference, before Dana C.
10 Ryan, Registered Professional Reporter, Certified
11 Realtime Reporter and Notary Public in and for the
12 State of Alabama.
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1 A P P E A R A N C E S C O N T I N U E D
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3 Also present:
4 Daniel Macom, Video Technician
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C O N T E N T S

EXAMINATION OF MARK BROWN: PAGE:

By Ms. Torchiana 12

E X H I B I T S

(Attached to the Transcript)

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Of Mark Brown

Exhibit 25 Declaration Of Mark Brown 19

Exhibit 26 Document Titled Standard 56
Protocol With Cover Sheet
Titled Exhibit 18

Exhibit 27 Declaration Of Mark Brown 136
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Exhibit 29 Borrower Defense Unit Claims 142
Review Protocol PowerPoint
With Cover Sheet Titled
Exhibit 10

Exhibit 30 Affidavit Of Rudolph Howell 227

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PREVIOUSLY MARKED EXHIBITS

(Not attached to the transcript)

DEPOSITION PAGE:

Exhibit 19 Defendants' Response Regarding 198
The Court's Request At The
October 1, 2020 Class Hearing

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PREVIOUSLY MARKED EXHIBITS

(Not attached to the transcript)

DEPOSITION PAGE:

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Office Of Inspector General
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Orders Partial Loan Relief
For Many Duped Student
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Exhibit 18 October 27, 2020 Oversight 213
Committee Press Release
Titled New Documents Show
Department Of Education Froze
Tool To Help Defrauded
Student Borrowers

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. We're now on the record. Participants should be aware that this proceeding is being recorded and as such all conversations held will be recorded unless there's a request and agreement to go off the record.

This is remote video recorded deposition of Mr. Mark Brown taken today, Tuesday, December 15th, 2020. The time is now 15:03 in UTC time. We're here in the matter of Theresa Sweet versus Elisabeth DeVos, et al. My name is Dan Macom. I'm the remote video technician on behalf of U.S. Legal Support which is located at 90 Broad Street, in New York, New York. I am not related to any party in this action, nor am I financially interested in its outcome.

At this time, I'll ask our court reporter, Ms. Dana Ryan, on behalf of U.S. Legal Support to please enter the statement for remote proceedings into the record.

THE COURT REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition

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1 remotely. They further acknowledge that, in lieu
 2 of an oath administered in person, the witness
 3 will be sworn remotely and will declare his
 4 testimony in this matter is under penalty of
 5 perjury. The parties and their counsel consent to
 6 this arrangement and waive any objections to this
 7 manner of reporting.
 8 If I could now get counsel to please
 9 indicate your agreement by stating your name and
 10 your agreement on the record.
 11 MS. TORCHIANA: Ms. Claire Torchiana, I
 12 agree.
 13 THE COURT REPORTER: I'm sorry. I
 14 didn't hear anybody else.
 15 MS. TORCHIANA: Can you hear me?
 16 THE COURT REPORTER: I can hear you,
 17 Claire.
 18 MS. TORCHIANA: Okay.
 19 MR. HANCOCK: Can you hear me?
 20 THE COURT REPORTER: Kind of. Not
 21 really.
 22 MR. HANCOCK: Okay. Let me go off my
 23 earbuds.
 24 THE VIDEOGRAPHER: Yeah, Mr. Hancock,
 25 your batteries might be going low on those. You

Page 11

1 might be able to use those later on.
 2 THE COURT REPORTER: I can't hear you.
 3 Try again.
 4 MR. HANCOCK: Let's see. How about
 5 now?
 6 THE COURT REPORTER: Yes. Very good.
 7 MR. HANCOCK: Great. All right.
 8 THE COURT REPORTER: Thank you.
 9 MR. HANCOCK: So this is Kevin Hancock,
 10 and I agree as well.
 11 THE WITNESS: This is Mark Brown, and I
 12 agree.
 13 THE COURT REPORTER: Thank you,
 14 Mr. Brown.
 15 I'm going to need a government-issued
 16 photo ID. Do you have a license or a passport
 17 handy?
 18 MR. HANCOCK: Dana and Dan, sorry, I
 19 didn't think of this before. But can we go off
 20 the record for the presentation of the ID, if that
 21 would be okay.
 22 THE COURT REPORTER: Sure.
 23 THE VIDEOGRAPHER: If there is no
 24 objection. We'll go off the record. The time is
 25 15:05 UTC time.

Page 12

1 (Written record only.)
 2 (Witness presents government
 3 photo-issued ID and identity confirmed.)
 4 THE VIDEOGRAPHER: We are now back on
 5 the record. The time is 15:08 UTC time.
 6 *****
 7 MARK BROWN,
 8 having been duly sworn, testified as follows:
 9 *****
 10 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
 11 BY MS. TORCHIANA:
 12 Q Mr. Brown, my name is Claire Torchiana.
 13 I'm an attorney with Housing and Economic Rights
 14 Advocates for plaintiffs. I'm just going to go
 15 over a couple of things first before we begin.
 16 Could you please state your name for the record?
 17 A Mark Brown.
 18 Q Okay. And could you please communicate
 19 that there's no one else in the room with you
 20 right now?
 21 A There's no one else in the room with me
 22 right now.
 23 Q Okay. And could you confirm you won't
 24 communicate with anyone during the deposition via,
 25 you know, smartphone or email or anything like

Page 13

1 that?
 2 A I will not communicate with anyone via
 3 any type of device.
 4 Q Okay. And are there any electronic
 5 devices in the room with you right now?
 6 A There are phones on the -- over on the
 7 side, and they're turned down, but they're in the
 8 room.
 9 Q Okay. If you could just keep them out
 10 of sight, that would be great.
 11 And you can take breaks when you need.
 12 You can just ask. All I ask is that we finish
 13 questioning before you take a break, so if I'm in
 14 the middle of a question, that we finish up that
 15 question and then take a break after.
 16 Is there anything preventing you from
 17 being truthful today?
 18 A There is not.
 19 Q Okay. And government counsel may
 20 object to some questions, but you can still answer
 21 unless your counsel instructs you not to.
 22 And what did you do today to prepare
 23 for this deposition?
 24 A I worked with my --
 25 Q Before today?

Page 14

1 A Worked with my Department of Justice
 2 attorneys.
 3 Q Okay. And which attorneys did you meet
 4 with?
 5 A I -- I have not committed all of their
 6 names to memory. I will say that the lead
 7 attorney was Kevin P. Hancock.
 8 Q Okay. And how long did you meet with
 9 them for?
 10 A I don't know the exact amount of time.
 11 For several hours on three different occasions.
 12 Q Okay. And did you consult any
 13 documents?
 14 A I read the declarations of myself. I
 15 read the declaration of the lead borrower defense
 16 for our organization, borrower defense attorney.
 17 And I read the declaration of the under secretary
 18 Diane Jones.
 19 Q Okay. And did those refresh your
 20 recollection?
 21 A In some instances, yes, but not in all.
 22 Q Okay. Okay. And have you ever been
 23 deposed before?
 24 A I've never actually sat through a -- a
 25 deposition.

Page 15

1 Q Okay. Okay. So now if you could
 2 turn -- our first exhibit is just going to be your
 3 deposition notice, and that's behind tab 24. And
 4 in the electronic files it should be bracketed 24?
 5 A Okay. I will need to open the box and
 6 pull them out.
 7 Q Okay.
 8 A Okay. I have tab 24 in front of me.
 9 Q Okay. Great. And did you receive this
 10 notice?
 11 MS. TORCHIANA: And can we mark that as
 12 Exhibit 24?
 13 (Deposition Exhibit 24 was marked for
 14 identification and attached to the transcript.)
 15 THE WITNESS: (Reviews document.)
 16 I did.
 17 BY MS. TORCHIANA:
 18 Q Okay. Now we're just going to start
 19 with some background information. Could you
 20 please tell me about your employment history
 21 starting with your graduation from college?
 22 A Yes. I graduated from Tuskegee
 23 Institute University in Tuskegee, Alabama, in May
 24 of 1986. After graduation, I was commissioned a
 25 second lieutenant in the United States Air Force.

Page 16

1 Six months prior to going on active duty in the
 2 United States Air Force, I worked as an intern on
 3 a Southern Bell teleworking company in Atlanta,
 4 Georgia.
 5 After that, I went to my first military
 6 assignment which was in the Republic of the
 7 Philippines where I started my military career. I
 8 moved around 16 times in different areas across
 9 the country. I lived in the United Kingdom. I
 10 lived in Spain. I lived in Turkey. I worked in
 11 Iraq.
 12 After 32 years, I retired at the grade
 13 of major general as the deputy commander for all
 14 of Air Education and Training Command which
 15 trains, recruits and develops United States Air
 16 Force airmen.
 17 Upon retirement, I moved back to
 18 Washington, having spent many years in Washington
 19 at the Pentagon, and moved into Alexandria,
 20 Virginia, where I was a consultant -- defense
 21 consultant in the areas of education and training
 22 for the defense industry.
 23 Upon about -- about one year into that,
 24 I was recruited to be a senior advisor at the
 25 Department of Education. I was recruited by the

Page 17

1 deputy of secretary of education.
 2 I started that job in October of 2018,
 3 and for approximately the next six months, my
 4 portfolio involved human capital management where
 5 I was looking at how we hired and recruited people
 6 and the speed at which we could go through that
 7 system of recruiting for Federal Student Aid. I
 8 did that in ten of our regions and across the
 9 country in all of the elements that are Federal
 10 Student Aid.
 11 In March of 2019, I was appointed by
 12 the secretary of education to be a chief operating
 13 officer, the position that I hold today.
 14 The one correction I would say is I may
 15 have said October of 2019, meaning October of
 16 2018, six months leading into the March of 2019
 17 when I became the chief operating officer of
 18 Federal Student Aid.
 19 Q I think you said 2018.
 20 When you joined as the -- I didn't
 21 catch -- what was your position when you joined in
 22 October of 2018?
 23 A Senior advisor.
 24 Q Okay. And other than what you've
 25 mentioned, do you have any other involvement in

Page 18

1 higher education before you started this role?

2 A My involvement in higher education is

3 through the higher education that is presented in

4 the United States Air Force. I was the deputy

5 commander of air education and training command

6 and would do assignments with oversight of

7 educational facilities, dormitories, as well as

8 curriculum and students and those kinds of things

9 because we are part of Air Force's education.

10 Q Have you ever had any board member

11 positions that are relative to higher ed?

12 A I have. I've been a -- no higher ed,

13 but ed to say to be specific. I was a board

14 member of the KnowledgeWorks Corporation which is

15 a 501(c) organization that's focused on education.

16 For some time, I let that board membership go to

17 avoid a conflict of interest when I became the

18 chief operating officer here, shortly thereafter.

19 No other board memberships.

20 Q Okay. And when did you resign from the

21 board of KnowledgeWorks?

22 A I don't remember the exact date. It

23 was probably within three months or so of taking

24 the job as the chief operating officer.

25 Q Okay. Did you consider resigning

Page 19

1 before then or . . .

2 A No. No, I -- I didn't consider

3 resigning until it appeared to be a conflict of

4 interest, and so I -- I resigned.

5 Q Okay. Okay. And if you could now turn

6 to -- it's tab 25. And in the electronic files

7 it's bracketed as [25] ECF 71-3.

8 MS. TORCHIANA: And if we could mark

9 that as Exhibit 25.

10 (Deposition Exhibit 25 was marked for

11 identification and attached to the transcript.)

12 THE WITNESS: I have the exhibit.

13 BY MS. TORCHIANA:

14 Q Okay. So do you recognize this

15 document?

16 A (Witness reviews document.)

17 I do recognize this as my declaration.

18 Q Okay. Did you write it?

19 A I never write my full declarations. I

20 do that with the assistance of an attorney.

21 Q Okay. And who helped you write it?

22 A I could not tell you the individual's

23 name. I could tell you that an attorney within

24 the Office of General Counsel and assisted by

25 whoever assists them inside the Office of General

Page 20

1 Counsel. I could not give you the individual

2 names. I don't know them.

3 Q Okay. And is that your signature on

4 line --

5 MS. BERMAN: I'm sorry. Claire, what

6 tab are you on?

7 MS. TORCHIANA: Twenty-five.

8 MR. HANCOCK: I think there may be two

9 25s.

10 MS. TORCHIANA: Oh, yeah. It's 25 --

11 it's ECF 71-3, declaration of Mark Brown.

12 MS. BERMAN: Okay. Thank you. There

13 are two tab 25s. Thank you.

14 MS. TORCHIANA: Great. Okay.

15 BY MS. TORCHIANA:

16 Q Okay. And if you could turn to

17 paragraph 2, and if you could just tell me -- so

18 your current role is the COO of FSA, and you

19 started March 4th, 2019; is that right?

20 A That's correct.

21 Q Okay. And who was your predecessor?

22 A My predecessor was Mr. Manning.

23 Q Okay. And when you started, did you

24 have any discussions with him about borrower

25 defense?

Page 21

1 A I did not.

2 Q Did you meet with him?

3 A I did not, not -- if your question is

4 did I meet with him on borrower defense, the

5 answer is I did not.

6 Q Okay. Did you meet with him at all?

7 A I did.

8 Q But you didn't discuss borrower

9 defense?

10 A I did not.

11 Q Okay. What do you recall discussing

12 with him generally?

13 A Human capital.

14 Q Okay. And did you discuss -- by "human

15 capital," do you mean staffing?

16 A Human capital as it related to my

17 portfolio which was how to hire quicker with

18 unique talents into Federal Student Aid.

19 Q Okay. And did you discuss anything

20 about hiring within the borrower defense unit?

21 A We did not.

22 Q Okay. And did he -- did Mr. Manning

23 tell you anything about any concerns about

24 staffing at Federal Student Aid?

25 A Concerns about the speed at which we

Page 22

1 could hire personnel into Federal Student Aid.

2 Q Okay. But not in borrower defense?

3 A We did not -- again, we did not discuss

4 borrower defense.

5 Q Okay. And could you tell me who do you

6 report to?

7 A I report to the under secretary who is

8 assigned those duties.

9 Q And has that changed throughout your

10 time at FSA?

11 A It has not changed since my time as

12 chief operating officer of Federal Student Aid.

13 Q Okay. And before you were chief

14 officer, who did you report to?

15 A Mr. Manning would have been the chief

16 operating officer of Federal Student Aid.

17 Q So when you were -- just to be clear,

18 so when you were a senior advisor, you were

19 reporting to Mr. Manning?

20 A Yes.

21 Q Okay. And do you report to any

22 political appointees as COO and then before when

23 you were a senior advisor?

24 A Mr. Manning was a political appointee

25 assigned temporarily to Federal Student Aid. How

Page 23

1 he was classified at the time, I actually don't

2 know.

3 Q Uh-huh.

4 A The under secretary that I report to is

5 a political appointee.

6 Q Okay. And how often do you meet

7 with -- by under secretary, I assume you mean

8 Diane Auer Jones. How often do you meet with her?

9 A It varies depending on what's going on

10 at the time. It could be once a week. It could

11 be more than once a week. So it varies just

12 depending on the tempo of work at the time.

13 Q Okay. And would you say at a minimum,

14 it's one a week?

15 A I would not. I would say it varies.

16 Q Okay. And do you have any standing

17 meetings?

18 A I -- I would say that it varies. I

19 don't believe we have any standing meetings.

20 We -- we have one-on-one sessions, I believe,

21 every week now, but that has not always been the

22 case. And, so, I'm more comfortable saying it

23 varies.

24 Q Okay. And when did you start having

25 weekly meetings?

Page 24

1 A It was within the last five or six

2 months, I believe.

3 Q Okay. And was there a reason you

4 started having weekly meetings?

5 A Because she requested them.

6 Q Do you know why she requested them?

7 A No, I don't. She's my boss, so when

8 she requested them, I submitted them.

9 Q And how do you communicate with

10 Ms. Diane Auer Jones?

11 A Routinely, I call her, or in our

12 situation that we're in now, I do what you and I

13 are doing right now. I talk to her via some form

14 of social -- some form of platform like we have,

15 Zoom or MS teams, something like that.

16 Q Okay. And how often did you meet with

17 the secretary of education?

18 A I meet with the secretary of education

19 around every two weeks.

20 Q Okay. And are those regular meetings

21 scheduled as standing meetings?

22 A They are regularly scheduled standing

23 meetings.

24 Q And has that been true since you

25 started as COO?

Page 25

1 A I believe that has been the case since

2 I started as chief operating officer.

3 Q Okay. And what form do these meetings

4 take? Are they over the phone, in person?

5 I know it's changed since the pandemic.

6 A It varies. Routinely, for some time in

7 person. Now in the method that we are using now,

8 that's how they -- they normally would happen.

9 Q Okay. And generally how long were

10 these meetings? I know it varies, but . . .

11 A Generally 45 minutes or so, but I would

12 be more comfortable saying it varies.

13 Q Okay. And did you ever discuss

14 borrower defense with her?

15 A Yes, we have had that as an agenda item

16 at times.

17 Q Okay. And could you tell me when --

18 well, we'll get into that later.

19 Okay. So could you tell me what your

20 understanding is of Diane Auer Jones' role within

21 FSA?

22 A I can tell you that Diane Jones

23 controls the policy of the -- policy element of

24 the department, and -- and, therefore, by virtue

25 of that, has a natural relationship with Federal

<p style="text-align: right;">Page 26</p> <p>1 Student Aid that -- that executes policy.</p> <p>2 And, so, that is how I understand her</p> <p>3 relationship. She is delegated the duties of the</p> <p>4 oversight of FSA from the secretary specifically</p> <p>5 as it relates to policy.</p> <p>6 Q Okay. And you mentioned -- how often</p> <p>7 do you meet with not Diane Auer Jones, but members</p> <p>8 of her team?</p> <p>9 A I didn't mention meeting with members</p> <p>10 of her team.</p> <p>11 Q Oh, do you -- do you meet --</p> <p>12 A I don't believe --</p> <p>13 Q -- with members of her team?</p> <p>14 A I do not.</p> <p>15 Q Okay.</p> <p>16 A I don't meet with members of her team,</p> <p>17 so no.</p> <p>18 Q Okay. What is your understanding of</p> <p>19 Ms. Nevin's role within FSA?</p> <p>20 A Do you mean Colleen Nevin?</p> <p>21 Q Yes.</p> <p>22 A Colleen Nevin is the leader of the</p> <p>23 policy defense team.</p> <p>24 Q And does she have a policy role?</p> <p>25 A Federal Student Aid does not do policy,</p>	<p style="text-align: right;">Page 28</p> <p>1 March, how often were you meeting with her in,</p> <p>2 let's say, the first two months that you were COO?</p> <p>3 A Within the first month that I was COO,</p> <p>4 I met with members of the borrower defense team</p> <p>5 almost daily because of my interest in the</p> <p>6 borrower defense issues or my education on the</p> <p>7 borrower defense issues.</p> <p>8 Q Okay. And what -- what was interesting</p> <p>9 to you about -- when you say you're interested in</p> <p>10 borrower defense issues, what do you mean?</p> <p>11 A I was interested in the process of</p> <p>12 borrower defense, the status of borrower defense,</p> <p>13 our portfolio in borrower defense. I was</p> <p>14 interested in it as the chief operating officer</p> <p>15 because that became the operations of the</p> <p>16 organization and became my responsibility and that</p> <p>17 was a part of it. I had not been exposed to it as</p> <p>18 the senior advisor. So that, amongst other</p> <p>19 issues, I emerged myself into.</p> <p>20 Q And was there anything when you started</p> <p>21 that concerned you about borrower defense?</p> <p>22 A The number of cases concerned me, and</p> <p>23 the amount of staffing available to do those cases</p> <p>24 concerned me after I became educated on those</p> <p>25 facts.</p>
<p style="text-align: right;">Page 27</p> <p>1 so no one at Federal Student Aid has a policy</p> <p>2 role.</p> <p>3 Q Okay. Would you say she does</p> <p>4 operations, then?</p> <p>5 A I would say that everyone at Federal</p> <p>6 Student Aid does operations.</p> <p>7 Q Okay. And how often do you meet with</p> <p>8 Ms. Nevin?</p> <p>9 A It varies.</p> <p>10 Q Okay. At a minimum, how often do you</p> <p>11 meet with her?</p> <p>12 A Again, I say it varies because I've</p> <p>13 been the chief of Federal Student Aid since March</p> <p>14 of 2019, and that varies. Sometimes I have not</p> <p>15 met with her on a weekly basis; sometimes I have.</p> <p>16 It just depends on what things are -- what's going</p> <p>17 on again and what the issues are.</p> <p>18 So, you know, I -- if you said you --</p> <p>19 your question to me was at a minimum if it was</p> <p>20 weekly. If I think of that whole period of time,</p> <p>21 I would still come back to it varies because I</p> <p>22 can't tell you that more times than not I met with</p> <p>23 her at least a week -- once a week. I don't know</p> <p>24 that to be true.</p> <p>25 Q Okay. Let's say when you started in</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Okay. And, specifically, what do you</p> <p>2 mean by the number of cases?</p> <p>3 A What I mean is just that; that there</p> <p>4 were a lot of cases and that represented workload.</p> <p>5 And as an operating -- a chief operating officer,</p> <p>6 I would immediately go to "are we sufficiently</p> <p>7 staffed to do a workload of that -- of that</p> <p>8 level." That's what I mean by number of cases.</p> <p>9 Q Okay. And when you started when you</p> <p>10 were meeting with Ms. Nevin, how did -- why did</p> <p>11 you understand there to be so many cases?</p> <p>12 A Because the borrower defense team</p> <p>13 showed me the number of cases that they had and</p> <p>14 the history of the cases, how long they had had</p> <p>15 them and the history of borrower defense. And,</p> <p>16 so, it was very obvious that there were</p> <p>17 significantly more cases than there had ever been</p> <p>18 in the history of borrower defense.</p> <p>19 Q Right.</p> <p>20 I meant and why did you understand that</p> <p>21 to be the case? What was the reason that there</p> <p>22 are so many cases?</p> <p>23 MR. HANCOCK: Objection: vague.</p> <p>24 BY MS. TORCHIANA:</p> <p>25 Q Okay. All right. We'll get into that</p>

Page 30

1 later.

2 Okay. And is there anyone who reports

3 to you? Or who reports to you?

4 A So the way my organization is

5 organized, I have five deputy chief operating

6 officers; all report directly to me. And other

7 than that, it would be my administrative office

8 that would be in the front office kind of folks,

9 but those are the folks that report to me.

10 Q Okay. And could you give me the names

11 of those five deputy chief officers?

12 A Today -- as of today, those names are

13 Robin Minor, who is the deputy chief operating

14 officer of partner participation and oversight;

15 Dave Albers who is a deputy chief operating

16 officer for strategic planning; Joe Lindsey, who

17 is a principal deputy chief operating officer;

18 Chris Greene, who is a deputy chief operating

19 officer for student engagement and aid delivery;

20 and Colleen McGinnis, who is the deputy chief

21 operating officer for internal controls and those

22 kinds of issues. And that should make up the five

23 unless I dropped off a name.

24 Q And are there reports about your

25 performance?

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1 A Pardon me, ma'am. Could you repeat

2 that question, please?

3 Q Are there reports about your

4 performance?

5 A Mine, personally?

6 Q Uh-huh. Yes.

7 A Yes, I'm accountable for my performance

8 and there's an annual report.

9 Q Okay. And who prepares those reports?

10 A Who prepares them? The -- ultimately

11 the secretary of education approves my final

12 report. I prepare input for that report if that's

13 your question, and I send that input to the deputy

14 under secretary.

15 Was that your question?

16 Q Yes.

17 And are there any metrics by which your

18 performance is evaluated that you know of?

19 MR. HANCOCK: Objection: exceeds the

20 scope of the court-ordered discovery.

21 BY MS. TORCHIANA:

22 Q Well, do you know is anything about

23 borrower defense taken into account in your

24 performance metrics?

25 A We have many performance metrics in the

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1 Office of Federal Student Aid if -- if that's your

2 question, and borrower defense has -- has metrics

3 inside of Federal Student Aid. We're a

4 performance-based organization and by virtue of

5 that, we're a metric of which borrower defense is

6 one.

7 Q Sorry. You're cutting out a little

8 bit, but -- but I think I -- I understood that.

9 A I'm sorry.

10 Q Okay. And have you ever been advised

11 to improve your performance as it relates to

12 borrower defense?

13 MR. HANCOCK: Objection: exceeds the

14 scope of the court-ordered discovery.

15 MS. TORCHIANA: Okay. I would say it's

16 pretty relevant, but we can move on for now.

17 BY MS. TORCHIANA:

18 Q And do you evaluate anyone?

19 A I -- I ultimately evaluate the five

20 deputy chief operating officers that report to me

21 directly and those inside of my front office.

22 Q Okay. And are those formal reviews?

23 A Yes. Yes, they have -- they have

24 annual -- we are still a government agency, and so

25 at the end of a reporting period, at the end of a

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1 fiscal year, we have an end-of-year evaluation

2 done on employees.

3 Q Okay. Okay. And if you could turn to

4 paragraph 3 of your declaration. You say here

5 that you oversee the management of FSA.

6 Could you explain in more detail how

7 that relates to your work with the borrower

8 defense unit or with borrower defense generally?

9 A As I stated earlier, I have five deputy

10 chief operating officers. One of them that I

11 named was Ms. Robin Minor, who is the deputy chief

12 operating officer for partner participation and

13 oversight. One of Ms. Minor's organizations

14 underneath her as partner participation and

15 oversight is the borrower defense unit. And, so,

16 in this -- in regards to your question, I manage

17 the deputies who, in turn, manage subordinate

18 units, and one of the subordinate units inside of

19 partner participation and oversight is the

20 borrower defense unit.

21 Q Okay. Okay. And would you say of the

22 five deputies that you oversee, is Robin Minor the

23 only one who works with the BDU; is that true?

24 A I -- I didn't say that, and it would be

25 difficult to say that. I -- I wouldn't say that

<p style="text-align: right;">Page 34</p> <p>1 because things could go around for, you know,</p> <p>2 different parts of the organization, so I -- I</p> <p>3 won't say that none of the other organizations</p> <p>4 work with the borrower defense unit. I can only</p> <p>5 say that they report to Robin Minor.</p> <p>6 Q Okay. The BDU reports to Robin Minor?</p> <p>7 A That's correct.</p> <p>8 Q You say here -- we've talked about this</p> <p>9 a bit. You say here, Federal Student Aid is an</p> <p>10 apolitical, performance-based organization.</p> <p>11 Could you tell me a little bit more</p> <p>12 about what that means?</p> <p>13 A That means that we go across -- we</p> <p>14 don't change in or out based on political</p> <p>15 appointments; that we go across administrations.</p> <p>16 Much like the careers of public servants, we -- we</p> <p>17 don't attribute or work toward any political end.</p> <p>18 We work toward the execution of whatever</p> <p>19 legislation and authorities that we are given</p> <p>20 without regard to political affiliations.</p> <p>21 Q Okay. And on that subject, how is your</p> <p>22 compensation related to your performance?</p> <p>23 MR. HANCOCK: Objection: exceeds the</p> <p>24 scope of the court-ordered discovery.</p> <p>25 BY MS. TORCHIANA:</p>	<p style="text-align: right;">Page 36</p> <p>1 A When I started at Federal Student Aid?</p> <p>2 Q Well, as COO.</p> <p>3 A As COO?</p> <p>4 Q Uh-huh.</p> <p>5 A When I started at Federal Student Aid</p> <p>6 as COO, I was not clear on what the goals and</p> <p>7 objectives of Federal Student Aid was at the time,</p> <p>8 so I couldn't -- if you were to ask me what were</p> <p>9 they -- which I think you're asking me what were</p> <p>10 the goals and objectives of Federal Student Aid in</p> <p>11 March of 2019, I was not given a set of goals and</p> <p>12 objectives in March of 2019.</p> <p>13 Q Okay. So when you started -- so when</p> <p>14 you started, it was not clear to you that FSA had</p> <p>15 any goals?</p> <p>16 A That's not what I said. No, what I --</p> <p>17 I thought what you said was what were the goals</p> <p>18 presented to me when I started at my job as the</p> <p>19 chief operating officer at Federal Student Aid.</p> <p>20 Is that your question or --</p> <p>21 Q Yes. What were the goals and</p> <p>22 priorities that were presented to you that FSA</p> <p>23 had?</p> <p>24 A So my answer is that there were no</p> <p>25 goals or priorities presented to me when I started</p>
<p style="text-align: right;">Page 35</p> <p>1 Q Okay. How does your compensation</p> <p>2 related to processing borrower defense claims?</p> <p>3 MR. HANCOCK: Objection: exceeds the</p> <p>4 scope of the court-ordered discovery.</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q You can still answer unless your</p> <p>7 counsel instructs you not to.</p> <p>8 MR. HANCOCK: The witness may answer.</p> <p>9 THE WITNESS: I'm sorry. I couldn't</p> <p>10 hear the counsel. Say that again?</p> <p>11 MR. HANCOCK: The witness may answer.</p> <p>12 THE WITNESS: How does my -- could you</p> <p>13 repeat the question again? I'm sorry. I got</p> <p>14 caught up in the --</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q I said how -- how is your compensation</p> <p>17 related to processing borrower defense</p> <p>18 applications?</p> <p>19 A Well, my compensation is not related to</p> <p>20 processing borrower defense applications. I'm</p> <p>21 a -- I'm a -- there is no relationship that I'm</p> <p>22 aware of.</p> <p>23 Q Okay. And when you started at FSA in</p> <p>24 March 2018 -- 2019, sorry, what were your</p> <p>25 understandings of the goals and priorities of FSA?</p>	<p style="text-align: right;">Page 37</p> <p>1 the job as chief operating officer of Federal</p> <p>2 Student Aid. I -- I read the strategic plans of</p> <p>3 Federal Student Aid to -- to learn what the -- the</p> <p>4 goals and objectives had been across several years</p> <p>5 and found them to be broad.</p> <p>6 Q Okay. And did you -- when you started,</p> <p>7 did you meet with anyone, you know, for example,</p> <p>8 who onboarded you and explained to you the</p> <p>9 direction that FSA wanted to go in?</p> <p>10 A So I did not go through a formal</p> <p>11 onboarding process at Federal Student Aid. My --</p> <p>12 I simply started in March of 2019 and onboarding</p> <p>13 of myself.</p> <p>14 Q Okay. And what did you see as the</p> <p>15 goals and priorities of FSA?</p> <p>16 A I -- I believe we needed -- broadly, we</p> <p>17 needed to be a student center and responsive, and</p> <p>18 we needed to deliver on a large transformational</p> <p>19 objective which was called the next generation of</p> <p>20 Federal Student Aid.</p> <p>21 Q Okay. And when you joined, did you</p> <p>22 know that the Department of Education had not</p> <p>23 issued any borrower defense decisions since</p> <p>24 June 2018?</p> <p>25 A I knew what I had read in the media. I</p>

<p style="text-align: right;">Page 38</p> <p>1 had not been educated on borrower defense cases</p> <p>2 until after I joined.</p> <p>3 Q Okay. And was this something that you</p> <p>4 discussed with your colleagues at FSA?</p> <p>5 A As the chief operating officer, I</p> <p>6 really only have subordinates inside of Federal</p> <p>7 Student Aid. I don't actually have what you would</p> <p>8 consider, I believe, colleagues or peers. So as I</p> <p>9 said earlier, I educated myself on borrower</p> <p>10 defense amongst other things as a part of my</p> <p>11 immersion into the organization.</p> <p>12 Q Okay. And did you discuss -- when you</p> <p>13 joined, did you discuss the fact that the</p> <p>14 department hadn't issued any borrower defense</p> <p>15 decisions since June 2018 with any of your</p> <p>16 subordinates?</p> <p>17 A When I became the chief operating</p> <p>18 officer in March of 2019, I met with all four</p> <p>19 parts of Federal Student Aid, one of which was</p> <p>20 partner participation and oversight in the</p> <p>21 borrower defense unit in which the borrower</p> <p>22 defense unit educated me on the history of</p> <p>23 borrower defense and where it was, and that</p> <p>24 included the status which included the fact that</p> <p>25 borrower defense issue -- borrower defense cases</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Okay. And did you discuss -- when you</p> <p>2 started, did you discuss that BD hadn't issued any</p> <p>3 decisions since June 2018, did you discuss that</p> <p>4 with anyone at the Department of Ed?</p> <p>5 A When I met with partner participation</p> <p>6 and oversight, this element of partner</p> <p>7 participation and oversight which was the borrower</p> <p>8 defense team, we did discuss the status of</p> <p>9 borrower defense cases which included what I will</p> <p>10 call a backlog and need to clear up backlog.</p> <p>11 And at that time, those issues that</p> <p>12 were beyond me or that where I needed clarity, I</p> <p>13 would discuss them, and I would discuss them with</p> <p>14 the Department of Ed, if necessary.</p> <p>15 Q Okay. And you said earlier that you</p> <p>16 met with the secretary of education regularly.</p> <p>17 When you first joined, did you -- did you meet</p> <p>18 with her?</p> <p>19 A I'm -- I'm sorry. Your voice went away</p> <p>20 there toward the end. I heard your first part,</p> <p>21 but I didn't --</p> <p>22 Q Yeah. I said earlier you said that you</p> <p>23 met with the secretary of education regularly.</p> <p>24 When you joined in March 2019, did you meet with</p> <p>25 her?</p>
<p style="text-align: right;">Page 39</p> <p>1 had not been issued for some time.</p> <p>2 Q Okay. And who are those discussions</p> <p>3 with?</p> <p>4 A While I don't recall all the names --</p> <p>5 because, you know, there are more of the names --</p> <p>6 I do recall that, at that time, the current</p> <p>7 borrower defense leader was the borrower defense</p> <p>8 leader at that time. So Colleen Nevin was -- was</p> <p>9 in charge of the borrower defense unit at that</p> <p>10 time and remains so, and Robin Minor was moving</p> <p>11 into her job that I have her in now, so she was</p> <p>12 included in that.</p> <p>13 Off the top of my head, those are the</p> <p>14 only names that I can recall. There were likely</p> <p>15 others, but I don't recall all of their names.</p> <p>16 Q Okay. And did they express any</p> <p>17 concerns to you about that ED hadn't issued any</p> <p>18 borrower defense decisions?</p> <p>19 A We went through a number of concerns</p> <p>20 and issues, and as you would expect, we explored</p> <p>21 the entire process of borrower defense and all of</p> <p>22 the issues and all of the concerns and where we</p> <p>23 needed to go to be productive. It was a dialogue.</p> <p>24 It was a -- it was a conversation and mainly</p> <p>25 intended to educate me on the program.</p>	<p style="text-align: right;">Page 41</p> <p>1 A I -- I don't know if I met in the month</p> <p>2 of March, but I had a routine meeting with her</p> <p>3 every two weeks, and so possibly one in March</p> <p>4 depending on that -- that date, and then on -- on</p> <p>5 pretty much that rhythm of every two weeks having</p> <p>6 time with the secretary.</p> <p>7 Q Okay. And at those meetings, did you</p> <p>8 ever discuss that no borrower defense decisions</p> <p>9 had been issued since June 2018?</p> <p>10 A At those meetings -- and I cannot</p> <p>11 recall each time -- I don't recall -- I certainly</p> <p>12 don't recall March and April meetings</p> <p>13 specifically.</p> <p>14 Over the course of the times that I was</p> <p>15 attending meetings with the secretary of Ed, I had</p> <p>16 discussed borrower defense. I have discussed the</p> <p>17 status of it. I routinely talk about it as a</p> <p>18 backlog.</p> <p>19 Q Okay. And did you discuss the pace of</p> <p>20 decisions with the secretary of education?</p> <p>21 A Details of that level, I don't recall</p> <p>22 going into those kinds of details, per se, with</p> <p>23 the secretary. I would have done that probably at</p> <p>24 the under secretary level. But, frankly, I don't</p> <p>25 recall, you know, the specific conversations.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q Okay. But you did speak about the pace 2 of decisions with Diane Auer Jones, or you do 3 remember that?</p> <p>4 A No, I -- I have not -- while you have 5 used the term "pace of decisions," I have not used 6 that term because I don't remember having a 7 discussion about pace of decisions.</p> <p>8 I -- I remember having a discussion 9 about the backlog as it related to borrower 10 defense and as an operating officer the desire to 11 get after that issue from a production 12 perspective.</p> <p>13 I don't remember ever using or -- or 14 having a discussion specifically about the pace of 15 decisions.</p> <p>16 Q Okay. Sure. So did you speak about 17 the backlog with Diane Auer Jones when you joined?</p> <p>18 A I -- I did.</p> <p>19 Q Okay. And how often would you -- how 20 often would that come up?</p> <p>21 A Again, that -- that varies. Understand 22 that I had all of Federal Student Aid, and so it 23 may have been one of several topics at times when 24 I spoke with her. I -- I could not tell you 25 specifically how often I spoke to her about</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. HANCOCK: No. General Brown, you 2 may answer.</p> <p>3 THE WITNESS: I -- I did not mean 4 either of those. I meant because guidance can 5 take lots of forms. It can be verbal or it can be 6 a written decision memorandum. So I didn't intend 7 to indicate either of those. I just meant 8 guidance.</p> <p>9 BY MS. TORCHIANA: 10 Q Okay. And what form did that guidance 11 take?</p> <p>12 A I think there was -- when I first 13 started in March of 2019, I think there was no 14 specific guidance. There was confusion. And, 15 so -- and that's why I didn't indicate written 16 or -- or verbal. At the time -- at the initial 17 time, I don't believe there was clarity on either 18 of those.</p> <p>19 Q Okay. You did say there was guidance 20 not to issue any decisions when you started; is 21 that right?</p> <p>22 A That's not right. I -- I said that the 23 borrower defense team believed that they had 24 guidance not to issue decisions. That's what I 25 said.</p>
<p style="text-align: right;">Page 43</p> <p>1 borrower defense and -- and backlogs. 2 I -- I don't know.</p> <p>3 Q Okay. And do you remember what she 4 communicated with you about why there was a 5 backlog?</p> <p>6 A I -- I remember that the -- when I 7 initially started that the borrower defense team 8 believed that they had guidance not to move any 9 additional decisions on borrower defense; that 10 they should be adjudicating them.</p> <p>11 I remember that that was not clear from 12 the department and from under secretary Jones at 13 the time that they had issued that -- that 14 guidance in that manner. I would call that 15 confusion, confusion on what was to be done and 16 what was communicated. I do remember that.</p> <p>17 Q Okay. And when you say guidance, how 18 do you mean exactly? Was that, you know, formal 19 guidance that was written up, or what -- what do 20 you mean by guidance?</p> <p>21 MR. HANCOCK: I'm going to object to 22 the extent the question may call for deliberative 23 privileged information.</p> <p>24 MS. TORCHIANA: Okay. Are you 25 instructing the witness not to answer?</p>	<p style="text-align: right;">Page 45</p> <p>1 There was not -- they didn't have a 2 written document or some memorandum telling them 3 that. That's from my -- them educating me on 4 borrower defense cases. They believed that they 5 had that guidance.</p> <p>6 Q Okay. And why did they believe that 7 they had that guidance?</p> <p>8 A I can't speculate as to -- as to why. 9 I don't know what their -- what their -- what 10 their thoughts internally were. I believe when 11 the Manriquez case had been launched that they 12 believed that stopped them from doing anything 13 further in terms of issuing decisions, and they 14 continued to adjudicate and did not issue 15 decisions.</p> <p>16 Q Okay. And why do you think they 17 believed -- where did that belief come from? Was 18 it -- you know, obviously it didn't fall from the 19 sky.</p> <p>20 Who -- what -- why do you think they 21 understood that the Calvillo injunction meant they 22 couldn't issue decisions?</p> <p>23 MR. HANCOCK: Objection: vague.</p> <p>24 BY MS. TORCHIANA: 25 Q You can still answer.</p>

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1 A I -- I don't know. As I said earlier,
 2 I would classify it as confusion because I -- I
 3 don't know why they -- why they thought that.
 4 Q Okay. So was the stoppage a concern
 5 when you joined or, you know, you . . .
 6 MR. HANCOCK: Objection. Potentially
 7 calls for deliberative information.
 8 MS. TORCHIANA: The witness can still
 9 answer.
 10 THE WITNESS: I was just trying to make
 11 sure I understood your question. I didn't know if
 12 you were through with your question. You said was
 13 this guidance a concern. For -- for me when I
 14 started?
 15 BY MS. TORCHIANA:
 16 Q When you started, was it a concern that
 17 no decisions had been issued?
 18 A When I started, the overall backlog in
 19 production, borrower defense processes and system
 20 were a concern to me because of -- of -- as I said
 21 earlier, the sheer volume and the fact that they
 22 were not moving.
 23 And, so, not just -- not just the fact
 24 that the decisions weren't going out, but that the
 25 methodology and other things needed to be known so

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1 that we could move on with the cases.
 2 So I would -- I would say borrower
 3 defense as a whole was a concern for me when I
 4 started in March of 2019.
 5 Q Okay. And did you take any -- what
 6 steps did you take about the backlog when you
 7 started?
 8 A Specifically, and through -- through
 9 the deliberation with the team, I concluded that
 10 we needed more people. Specifically, we needed
 11 more attorneys and we needed more financial
 12 resources if we were to fix the systems that --
 13 that manage, collect, case management systems that
 14 support the team. And, so, as the operating
 15 officer, I went about focusing on -- on that and
 16 fixed it in the next several months.
 17 Q Okay. So when you say "fixed it," what
 18 do you mean?
 19 A Hire attorneys, recruit, hire, bring on
 20 board attorneys so that there would be more hands
 21 doing the work.
 22 Q Okay. And do you know --
 23 A Secure the financial resources --
 24 secure the financial resources necessary to
 25 upgrade and fix the systems that those -- that

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1 borrower defense cases would be -- would be
 2 managed by. That's when I use the term "fix it."
 3 To answer your question, that's what I mean,
 4 getting those -- getting those things in place so
 5 that this process could start moving.
 6 Q Okay. And do you know -- we'll discuss
 7 this more later, but do you know -- had there been
 8 any staff requests for the BDU before you joined?
 9 A I -- I actually don't know if there had
 10 been more staff requests for BDU before I joined
 11 because I would not have necessarily seen those.
 12 Q Okay. And how many -- how many staff
 13 people were working at the BDU when you joined?
 14 Do you remember?
 15 A I -- I don't know precisely, but it
 16 was -- in terms of attorneys, I would say probably
 17 10 to 12 at the most.
 18 Q Okay. And how many staff people did
 19 you estimate were needed to clear the backlog?
 20 A So estimate being the correct term,
 21 I -- I did not estimate. I -- I went to the
 22 borrower defense team and worked with them to see
 23 what they thought they needed based on the --
 24 based on the caseload. I can't tell you about
 25 their internal workings. I don't -- I don't know

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1 that, but collectively I do know we came out to a
 2 number of something around 60 -- we needed
 3 somewhere in that amount of attorneys in order to
 4 have people to adjudicate what was a growing
 5 backlog of cases, but I don't know how much -- I
 6 could not tell you today that that was some
 7 scientific equation. I can tell you it was the
 8 internal workers of BD team as you would go to
 9 your experts and ask about what do we need to --
 10 to tackle this issue.
 11 Q Okay. And did you make any requests to
 12 hire more staff for the BDU?
 13 A I did.
 14 Q Okay. And when -- when was the
 15 first -- or just how many times did you make --
 16 did you request?
 17 A I don't know. I don't know how many
 18 times I -- I made a request. I just know that my
 19 request was approved. I believe it was approved
 20 the first time I asked, so I don't know that there
 21 were more than one -- there was more than one time
 22 that I had to ask.
 23 Q And when was the first time you asked?
 24 A Shortly after taking over, but I -- but
 25 I can't tell you the exact time, but it was

<p style="text-align: right;">Page 50</p> <p>1 shortly after taking over, shortly after I had 2 been educated on the process of borrower defense 3 and -- and what we needed.</p> <p>4 Q Okay. And who -- who did you -- when 5 you made a request to hire more staff, who did you 6 make that request to?</p> <p>7 A I -- I made it through our HR system. 8 I made it verbally to the under secretary, and I 9 made it to the secretary verbally. And that's 10 what I'm calling the request. In other words, it 11 was all the same one; right? I was verbally 12 saying I would like to hire more people in order 13 to address the backlog.</p> <p>14 Q And do you have an estimate -- I know 15 you said you don't remember, but do you have a 16 rough estimate of when that was?</p> <p>17 A I do not other than what I just said, 18 which is shortly after I took over.</p> <p>19 Q Okay. So sometime in the spring of 20 2019?</p> <p>21 A Yes, and -- and I would just emphasize 22 that that's rough. I don't have a -- I can't -- I 23 can't tell you the exact -- I can't tell you the 24 exact time. I just simply don't recall that exact 25 time.</p>	<p style="text-align: right;">Page 52</p> <p>1 budget, and that normally drives hiring practices, 2 but I don't know what the decisions were prior to 3 March 2019.</p> <p>4 Q Okay. And do you know if there had 5 been any requests for more staff?</p> <p>6 A I -- I do not know. I would have no 7 firsthand knowledge of that. I'd only started 8 working with issues related to borrower defense 9 March of 2019. Prior to that, I did not have any 10 relationship with the borrower defense unit.</p> <p>11 Q Okay. Before, when you were a senior 12 advisor and working on human capital management 13 which started in October of 2018, did you have 14 any -- any work relating to hiring for the BDU?</p> <p>15 A Again, I was dealing with the speed at 16 which we hire, not -- and there's a nuanced 17 difference here, I think, in your question and 18 what I did. My job is about process improvement. 19 Why does it take long -- too long to hire a person 20 into -- why did it take too long to recruit them 21 or go find an expertise. I wasn't dealing with 22 this section or that section, use this person or 23 that person. I was looking to implement the 24 processing improving, and I don't remember any 25 conversations specifically about borrower defense.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. And when you made those 2 requests, how did -- for instance, how did the 3 secretary respond?</p> <p>4 MR. HANCOCK: Objection: calls for 5 deliberative information.</p> <p>6 MS. TORCHIANA: Are you instructing the 7 witness not to answer or --</p> <p>8 MR. HANCOCK: I am.</p> <p>9 MS. TORCHIANA: Okay.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q Okay. And, generally, how -- when you 12 made those requests, what was the response?</p> <p>13 A Yes.</p> <p>14 Q Okay. And do you know before -- you 15 said you don't remember, but what was your 16 understanding of why -- why there wasn't more 17 staff at the BDU?</p> <p>18 A I -- I didn't have an understanding of 19 why. You know, historically, I just wouldn't -- I 20 don't know. I wasn't -- you know, the borrower 21 defense unit is several years old. They precede 22 me by several years, and I just don't know what 23 the -- you know, what all the deliberations were.</p> <p>24 I think, as with most federal agencies, 25 you make decisions on resources and dollars and</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Okay. So when you were a senior 2 advisor before you were COO, you hadn't heard of 3 any issues with staffing the borrower defense 4 unit?</p> <p>5 A I don't -- I don't recall any 6 discussions about borrower defense group with me, 7 at least, before I became COO. Our -- our 8 questions were about the process, as I just said, 9 that's required for hiring, the process.</p> <p>10 Q So if you could turn to -- still in 11 tab 25, if you could turn to paragraph 4 of your 12 declaration.</p> <p>13 It says, Among FSA's responsibilities 14 is to make decisions on applications.</p> <p>15 Could you tell me a bit about what that 16 means in terms of your -- your role?</p> <p>17 A One -- one minute, please, if I could 18 read it.</p> <p>19 (Witness reviews document.)</p> <p>20 So if -- if I could just make sure I 21 understand your question, what that means as it 22 pertains to my role as the chief operating 23 officer?</p> <p>24 Q Uh-huh. Yes.</p> <p>25 A So the responsibilities of Federal</p>

<p style="text-align: right;">Page 54</p> <p>1 Student Aid includes borrower defense, and -- and</p> <p>2 my role as chief operating officer is to ensure</p> <p>3 that borrower defense have what they need to do</p> <p>4 the responsibilities that are outlined here.</p> <p>5 That's my role. So by law, by legislation, they</p> <p>6 execute the laws of the borrower defense that</p> <p>7 are -- that are legislated.</p> <p>8 My role as the chief operating officer</p> <p>9 is to ensure that they have the resources, the</p> <p>10 talent and the time to -- to do that so that they</p> <p>11 can do it effectively. I don't -- I don't</p> <p>12 adjudicate cases. I'm not -- I'm not an attorney.</p> <p>13 That's my role.</p> <p>14 Q Okay. And do you have any authority to</p> <p>15 decide or approve an individual borrower defense</p> <p>16 application?</p> <p>17 A Not that I'm aware of, certainly not in</p> <p>18 a priority that I have ever even contemplated.</p> <p>19 I'm not an attorney.</p> <p>20 Q Okay.</p> <p>21 A Nor am I a borrower defense expert.</p> <p>22 Q Okay. And who at the department would</p> <p>23 you say has that authority to decide an individual</p> <p>24 application?</p> <p>25 A To -- you mean to decide if it has met</p>	<p style="text-align: right;">Page 56</p> <p>1 please?</p> <p>2 Q Yeah.</p> <p>3 MS. TORCHIANA: And could we also mark</p> <p>4 this as Exhibit 29 -- or, sorry, 20- -- are we at</p> <p>5 26?</p> <p>6 (Deposition Exhibit 26 was marked for</p> <p>7 identification and attached to the transcript.)</p> <p>8 MR. HANCOCK: Claire, just to make sure</p> <p>9 I'm looking at the right page, when you say</p> <p>10 page 16, are you referring to the ECF stamp at the</p> <p>11 top of the document?</p> <p>12 MS. TORCHIANA: Yes. Yeah.</p> <p>13 MR. HANCOCK: Thank you.</p> <p>14 THE WITNESS: (Reviews document.)</p> <p>15 I have not seen this chart before. I</p> <p>16 believe it may precede my time as the chief</p> <p>17 operating officer.</p> <p>18 BY MS. TORCHIANA:</p> <p>19 Q Okay. Do you know -- is this -- would</p> <p>20 you say that this is an accurate representation of</p> <p>21 how operations are run?</p> <p>22 A So I can't say that if you are talking</p> <p>23 about -- and maybe you can help me with the</p> <p>24 question here. Do you mean how operations run for</p> <p>25 borrower defense today or since March of 2019?</p>
<p style="text-align: right;">Page 55</p> <p>1 the criteria for -- for meeting the criteria for</p> <p>2 borrower defense?</p> <p>3 Q Yes.</p> <p>4 A While -- while I don't pretend to know</p> <p>5 all of the internal workings of the borrower</p> <p>6 defense unit, those authorities are that of the</p> <p>7 borrower defense unit and within it, they have</p> <p>8 been delegated down to attorneys who are guided by</p> <p>9 the law, yet they have a review process within</p> <p>10 borrower defense.</p> <p>11 And, so, what I -- what I would say is</p> <p>12 the authority to do those determinations as you</p> <p>13 would expect are given to an attorney trained in</p> <p>14 the business of borrower defense.</p> <p>15 Q Okay. Okay. If you could now turn --</p> <p>16 we'll get back to your declaration, but if you</p> <p>17 could turn to tab 29, and if you could turn to --</p> <p>18 oh, I'll wait for you to have that in front of</p> <p>19 you.</p> <p>20 A Tab 29, it says Exhibit 10.</p> <p>21 Q Yes, that's right. And if you could</p> <p>22 turn to page 16.</p> <p>23 A I'm on page 16.</p> <p>24 Q Okay. Have you seen this chart before?</p> <p>25 A Could I have a minute to look at it,</p>	<p style="text-align: right;">Page 57</p> <p>1 Is that your question? How is there --</p> <p>2 Q Since March 2019, yeah.</p> <p>3 A So this chart, as I said, obviously</p> <p>4 predates me, and it is not a representation, I</p> <p>5 think, of how borrower defense works from the time</p> <p>6 that I was there. I -- I don't know how it worked</p> <p>7 in 2017, and still I don't know about the accuracy</p> <p>8 of this chart from the time that it was written.</p> <p>9 Q Okay. Okay.</p> <p>10 MS. TORCHIANA: Could we go off the</p> <p>11 record and take a quick break?</p> <p>12 MR. HANCOCK: Sure. That would be</p> <p>13 fine.</p> <p>14 THE VIDEOGRAPHER: Okay. We're now</p> <p>15 going off the record. The time is 16:16 UTC time.</p> <p>16 (Recess -- 11:16 a.m.)</p> <p>17 (After recess -- 11:30 a.m.)</p> <p>18 THE VIDEOGRAPHER: We're now back on</p> <p>19 the record. The time is 16:30 UTC time.</p> <p>20 MR. HANCOCK: And sorry to interrupt,</p> <p>21 Claire. I just want to ask one clarifying</p> <p>22 question about the current exhibit we're working</p> <p>23 with, and maybe you're planning on moving on from</p> <p>24 the chart, but I just wanted to note that the</p> <p>25 electronic version for those of us using Dropbox</p>

<p style="text-align: right;">Page 58</p> <p>1 is oriented sideways, and I -- I don't -- maybe</p> <p>2 the option exists, but I don't see a way to kind</p> <p>3 of orient it horizontally, so this --</p> <p>4 MS. TORCHIANA: Okay.</p> <p>5 MR. HANCOCK: I know General Brown</p> <p>6 doesn't have that issue since he is using a hard</p> <p>7 copy, which is great.</p> <p>8 MS. TORCHIANA: Right. Okay. Yeah,</p> <p>9 thanks for noting that.</p> <p>10 MR. HANCOCK: Okay.</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q We're going to move on from that</p> <p>13 exhibit.</p> <p>14 Mr. Brown, I have a couple of follow up</p> <p>15 questions from some things that we talked about</p> <p>16 before. You mentioned that you meet regularly</p> <p>17 with Secretary DeVos. Are there generally agendas</p> <p>18 for those meetings?</p> <p>19 A There are generic agendas that -- that</p> <p>20 talk about how long we will meet, and I think -- I</p> <p>21 don't prepare the agendas. My -- my staff does,</p> <p>22 so I can't -- I can't tell you, you know, what</p> <p>23 goes on them other than the time, how long we</p> <p>24 should expect to be there, and I'm not certain if</p> <p>25 it -- if the actual topics are on those agendas or</p>	<p style="text-align: right;">Page 60</p> <p>1 I probably had the first meeting, I would imagine.</p> <p>2 Q Okay. And do you know whether she was</p> <p>3 meeting regularly with your predecessor?</p> <p>4 MR. HANCOCK: I'm going to --</p> <p>5 THE WITNESS: I would not know.</p> <p>6 MR. HANCOCK: -- object. That's</p> <p>7 exceeding the scope of discovery.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q You can still answer.</p> <p>10 A I would not know. I don't know.</p> <p>11 Q Okay. And how do you communicate with</p> <p>12 Ms. Diane Auer Jones?</p> <p>13 A How do I communicate with her?</p> <p>14 Q Uh-huh. Yes.</p> <p>15 A So for -- just in general, you mean,</p> <p>16 or --</p> <p>17 Q Yeah.</p> <p>18 A -- how do I -- how do I --</p> <p>19 Q For example, do you ever --</p> <p>20 A So when --</p> <p>21 Q Do you ever text with her?</p> <p>22 A No, ma'am, I don't text with very many</p> <p>23 people at all. I -- I pick up the phone and call</p> <p>24 her. I might have a meeting in person with her</p> <p>25 before we went into the Covid-19 situation. And</p>
<p style="text-align: right;">Page 59</p> <p>1 not.</p> <p>2 Q Do you read the agendas before you meet</p> <p>3 with her?</p> <p>4 A I know what topics I'm going to talk</p> <p>5 about, and I don't necessarily look at the</p> <p>6 physical agenda itself. The secretary -- the</p> <p>7 secretary or administrative help sends that, but I</p> <p>8 know what topics I'm going to discuss.</p> <p>9 Q Okay. And how do you know what topics</p> <p>10 you're going to discuss with her?</p> <p>11 A Because I decide them.</p> <p>12 Q Okay. And do you take notes during</p> <p>13 those meetings?</p> <p>14 A I -- I do not. Routinely, I do not.</p> <p>15 I'm not -- I'm not a great note taker.</p> <p>16 Q Okay. Does anyone else take notes</p> <p>17 during those meetings?</p> <p>18 A Not -- not to my knowledge.</p> <p>19 Q And when -- when did you first meet</p> <p>20 with Secretary DeVos?</p> <p>21 A I -- I don't -- I don't recall exactly</p> <p>22 the very first time I met with her, but in general</p> <p>23 since becoming the -- the chief operating officer,</p> <p>24 I have met with her about every two weeks, and so</p> <p>25 it was likely the -- toward the end of March when</p>	<p style="text-align: right;">Page 61</p> <p>1 since that time, it's been a virtual meeting or</p> <p>2 a -- or a phone call. I don't -- I don't text</p> <p>3 very much.</p> <p>4 Q Okay. And do you send any emails to</p> <p>5 each other?</p> <p>6 A We -- yes. Emails go back and forth</p> <p>7 around Federal Student Aid for various reasons,</p> <p>8 yeah.</p> <p>9 Q Okay. And earlier you said that when</p> <p>10 you started at Federal Student Aid, you weren't</p> <p>11 aware of any goals or priorities that FSA had?</p> <p>12 A No, ma'am. What I said was that -- if</p> <p>13 I understood your question right, you said what</p> <p>14 was presented to me as the goals of Federal</p> <p>15 Student Aid when I became the chief operating</p> <p>16 officer. I thought I understood that to be your</p> <p>17 question before.</p> <p>18 And what I -- what I said was nothing</p> <p>19 was presented to me, per se. I looked at the</p> <p>20 strategic plans and those kind of things to see</p> <p>21 over the years what had been the goals and</p> <p>22 objectives of Federal Student Aid.</p> <p>23 Q Okay. And what -- do you know when the</p> <p>24 strategic plan was developed?</p> <p>25 A So we have a legislative requirement to</p>

<p style="text-align: right;">Page 62</p> <p>1 develop a strategic plan every five years and to 2 update it every year, and when I took office, we 3 were developing the strategic plan that would be 4 done for the five years which is one reason why 5 objectives and goals were all being made as I -- 6 as I took the office. It was good timing. 7 And, so, the last one that we did was 8 completed a couple of months ago and represented, 9 you know, what we -- what we believed to be our 10 goals and objectives. 11 Q Okay. And what -- and what did you set 12 as the major goals and objectives? 13 A So there are over -- there are five 14 major objectives, I believe, but there's lots of 15 key performance indicators in there. And by that, 16 I mean lots, like, over 40 that support those 17 various -- various goals. And I would have to, 18 you know, have the plan before me to perfectly 19 recite them to you, but we have, like, five major 20 objectives in -- in broad categories with lots of 21 performance -- what you would find in any 22 strategic plan, with lots of performance 23 indicators and those kinds of things in it. 24 Q Okay. Are there any -- did you 25 formulate the performance objectives for FSA in</p>	<p style="text-align: right;">Page 64</p> <p>1 Yes, ma'am, I have it. 2 Q Okay. And do you see table 37 at the 3 top of the -- of the page? 4 A Yes. 5 Q Okay. And, so, I see here -- so there 6 are target metrics for the number of BD 7 applications adjudicated for fiscal year 2020. 8 A Uh-huh. 9 Q And who -- who set that target number? 10 A So, ma'am, you're looking at table 37, 11 and you're looking at the fiscal year 2020 12 category? 13 Q Yes. 14 A And you're looking at the target of 15 150,000 and the actual of 160,000? 16 Q Yeah. 17 And who set that target number? 18 A Like I was saying earlier, this -- this 19 annual plan is -- is essentially an output of the 20 strategic plan, and so when you see numbers and -- 21 and targets and goals, it's the collaborative 22 effort of the subject matter experts and their 23 view of what's achievable, what they have 24 resources for, so it's a deliberative process. 25 So if your answer is who, I could</p>
<p style="text-align: right;">Page 63</p> <p>1 that plan? 2 A So if I understand you right, are you 3 saying did I do it? It's a -- the way the 4 strategic plan is built is a significant effort. 5 It's a very large effort, so I don't do it, per 6 se, by -- I don't say, here, this will be our 7 objectives and these will be our goals. There's 8 employee input. There's public comment. There's 9 legislative requirements. There's staffing. 10 There's a public comment period that lasts 90 11 days. 12 And, so, all of these things culminate 13 in what we settle in on as the goals and the 14 objectives for Federal Student Aid because it's 15 not ours. It's the public's. 16 And, so, that's how -- that's how the 17 strategic plan is -- is formulated in -- in 18 general context. 19 Q Okay. Okay. Could you turn to 20 Exhibit 31 in your binder or in your printout? 21 MS. TORCHIANA: And for those on 22 electronic copies, it's 31 FSA 2020 Annual Report. 23 BY MS. TORCHIANA: 24 Q Could you turn to page 91? 25 A (Witness reviews document.)</p>	<p style="text-align: right;">Page 65</p> <p>1 not -- I could not give you a specific person. I 2 could only tell you the process that it comes out 3 of -- that comes out of it. That's how it's 4 derived. 5 Q Okay. Did you have to approve this 6 number? 7 A Not the specific number. I approve the 8 plan, and I take accountability for all of the 9 numbers that are -- that are in here because I -- 10 I'm responsible for the process itself that -- 11 that produces the numbers. 12 Q Okay. And do you know when this target 13 was set approximately? 14 A I do not because the strategic planning 15 process goes over the course of a -- of a year, so 16 when this specific target was set, I actually -- I 17 don't know. Because it is a fiscal year 2020 18 goal, I've got to believe it was sometime in that 19 fiscal year, but I can't tell you exactly when it 20 was set. 21 Q Okay. And do you know when -- when 22 discussions started about setting -- setting these 23 target numbers for fiscal year 2020? Do you 24 remember having discussions about that? 25 A I remember having discussions about the</p>

<p style="text-align: right;">Page 66</p> <p>1 strategic plan and making sure we had measurable</p> <p>2 objectives and those kinds of things, but because</p> <p>3 this is one part -- and I -- and I think as you</p> <p>4 can see, of an almost 300-page document, the --</p> <p>5 the actual targets for each particular group --</p> <p>6 and, remember, this group is at least two layers</p> <p>7 removed from me -- those -- those are derived up</p> <p>8 over time.</p> <p>9 So I could not tell you exactly when</p> <p>10 or, you know, exactly who because -- because</p> <p>11 that's how it works. It works as a -- as a</p> <p>12 collaborative -- collaborative document.</p> <p>13 Q Okay. And who do you think -- who do</p> <p>14 you think might have set those numbers? Who would</p> <p>15 you -- yeah.</p> <p>16 A Who do I think?</p> <p>17 Q Who do you think may have set those</p> <p>18 numbers -- those target numbers?</p> <p>19 A So I would -- I would just clarify that</p> <p>20 I don't know who set these numbers. The -- the</p> <p>21 borrower defense unit is inside of our partner</p> <p>22 participation and oversight organization, and the</p> <p>23 partner participation and oversight organization</p> <p>24 would be a part of that process. But the subject</p> <p>25 matter expertise, very much like I noted on how</p>	<p style="text-align: right;">Page 68</p> <p>1 that we need to have measurable results, we need</p> <p>2 to document them in a plan and we need to work</p> <p>3 toward them.</p> <p>4 So I'm assuming -- or I'm sure that</p> <p>5 this is one of what has been many performance</p> <p>6 measurements.</p> <p>7 Q Okay. And how did you express to the</p> <p>8 BDU that they needed to set these target numbers?</p> <p>9 How did you make that clear to them?</p> <p>10 A So we have performance metric meetings</p> <p>11 as a part of the -- the management and the</p> <p>12 governance of Federal Student Aid, and -- and one</p> <p>13 of the parts of that would be the borrower defense</p> <p>14 unit coming forward, briefing their metrics and</p> <p>15 briefing their updates. And for everybody that</p> <p>16 came before me, I asked them to have long-, mid-</p> <p>17 and short-term performance metric production</p> <p>18 goals.</p> <p>19 When I told -- when we had that</p> <p>20 particular meeting and when borrower defense got</p> <p>21 that message, I don't know, but I'm certain they</p> <p>22 got it from me because I -- I gave that message to</p> <p>23 the entire organization. And, so, the entire</p> <p>24 organization went about developing metrics and</p> <p>25 measurements and those kind of things for the</p>
<p style="text-align: right;">Page 67</p> <p>1 many lawyers I needed, the subject lawyer</p> <p>2 expertise on what production could be done</p> <p>3 probably starts within the borrower defense unit.</p> <p>4 Q Okay. So do you think someone within</p> <p>5 the borrower defense unit probably set those</p> <p>6 target numbers?</p> <p>7 MR. HANCOCK: Objection: asked and</p> <p>8 answered.</p> <p>9 BY MS. TORCHIANA:</p> <p>10 Q You can still answer.</p> <p>11 A Again, ma'am, I don't know. I really</p> <p>12 don't know.</p> <p>13 So, you know, again, I can repeat what</p> <p>14 I just said, is if you look at our organizational</p> <p>15 chart, this type of work is done inside of the</p> <p>16 borrower defense unit.</p> <p>17 Q Okay. And do you know when FSA came up</p> <p>18 with BDU adjudications as a performance metric?</p> <p>19 A So I require all -- all elements of</p> <p>20 Federal Student Aid -- in the March, April, May</p> <p>21 time frame, I required all elements of Federal</p> <p>22 Student Aid to be guided by metrics. So exactly</p> <p>23 when this particular one came up, I don't know,</p> <p>24 but it is likely a part of what has been my</p> <p>25 philosophy since -- since taking over, and that is</p>	<p style="text-align: right;">Page 69</p> <p>1 health of the organization and because I think</p> <p>2 that's what we were legislated to do.</p> <p>3 Q Okay. And when did the BDU start</p> <p>4 reporting those metrics?</p> <p>5 A So when you -- when you say that</p> <p>6 they -- when did they start -- you mean when did</p> <p>7 we have metric meetings as an organization?</p> <p>8 And -- and the -- the part of that is</p> <p>9 that --</p> <p>10 Q Well, you were saying --</p> <p>11 A -- the metrics they are reporting --</p> <p>12 Q You were saying that you set metrics</p> <p>13 that were set in, like, about -- annually and</p> <p>14 quarterly, et cetera.</p> <p>15 A Yes. Right.</p> <p>16 Q When did the BDU start reporting those</p> <p>17 metrics to FSA?</p> <p>18 A So I don't -- I don't know the</p> <p>19 precise -- I don't know the precise time, but</p> <p>20 within 90 days of my time there, we -- we began to</p> <p>21 have metric meetings, and BDU is a -- is a -- is a</p> <p>22 part and a reporter amongst those metric meetings.</p> <p>23 So the BDU metrics, much like all the</p> <p>24 other accounts in our metrics that we have, are</p> <p>25 reported through those processes. And while I</p>

<p style="text-align: right;">Page 70</p> <p>1 don't know the exact time, I believe it was within 2 three or four months of my arrival there as the 3 chief operating officer.</p> <p>4 Q Okay. And when you first started 5 reviewing -- when you first started receiving the 6 metrics from the BDU, what -- what were those 7 numbers like? Do you remember?</p> <p>8 A I guess I need to understand your -- 9 what were the numbers like? Do you mean what were 10 they? What were they?</p> <p>11 Q Yeah, yeah.</p> <p>12 A So, unfortunately, I can't tell you 13 exactly what they -- what they were, but I can 14 tell you categorically we looked at how many 15 borrower defense cases there were and how many had 16 been adjudicated.</p> <p>17 So at my level, at the chief operating 18 officer's level, I look at input and output, and I 19 look at the time it goes from input to output and 20 quality. That's what I do as a -- as a chief 21 operating officer.</p> <p>22 So while I don't remember the precise 23 numbers then because it has been some time ago, I 24 do know that those are the general categories that 25 we routinely look at.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q Okay. And if you go down to the bottom 2 of page 91, it says, This production data is 3 reported in weekly performance metrics evaluated 4 by FSA and department senior leadership.</p> <p>5 So when -- when did you start receiving 6 those -- or when did that production data start 7 being reported weekly? Do you know?</p> <p>8 A No, no.</p> <p>9 Q Okay. Do you -- did you review those 10 weekly performance metrics?</p> <p>11 A Yes.</p> <p>12 Q And do you remember roughly when you 13 started reviewing them?</p> <p>14 A No, I -- I don't remember. And -- and 15 I -- I don't -- I don't remember exactly when, but 16 I certainly remember that I -- that I have been 17 doing it.</p> <p>18 MS. TORCHIANA: Okay. And just to ask, 19 would DOJ be able to produce those weekly 20 performance metrics?</p> <p>21 I'm asking counsel that.</p> <p>22 MR. HANCOCK: I mean, we've had 23 discussions regarding the production. There's a 24 lot of details involved there. And I'm not going 25 to commit right here to any specific document that</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Okay. And when you first started 2 reviewing performance metrics from the BDU, did 3 you have any concerns?</p> <p>4 A As I said earlier, I had some 5 understanding that they were in need of two things 6 in order to do well. And those were more 7 attorneys and an investment in their systems. 8 Those were the two internal FSA things that they 9 needed to do well.</p> <p>10 And while I wouldn't necessarily 11 categorize that as a concern, those were 12 objectives that I was working toward to assist the 13 borrower defense unit to be successful.</p> <p>14 Q Okay. And here it says fiscal year 15 2020, actual 160,000. Do you know when that 16 number was reached?</p> <p>17 A (Witness reviews document.)</p> <p>18 I -- I don't know the exact -- I don't 19 know the exact time. We -- we look at the 20 progress. I do know that borrower defense unit 21 has made significant progress since getting the 22 resources, and so I'm certain that they either 23 reached that number or came very close to it 24 because they made significant progress since 25 receiving the resources necessary.</p>	<p style="text-align: right;">Page 73</p> <p>1 I haven't seen or aware of. So we're happy to 2 have that conversation, but . . .</p> <p>3 BY MS. TORCHIANA:</p> <p>4 Q Okay. So -- so you mentioned -- well, 5 let's see here. Okay. We'll get back to this 6 later.</p> <p>7 I'd now like you to turn to Exhibit 3. 8 (Exhibit 3 referred to.)</p> <p>9 THE WITNESS: Exhibit 3. It says 10 Exhibit 19. Is that --</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q Yeah, that's fine. That's fine. Yeah. 13 And would you look -- look over this 14 document?</p> <p>15 A (Witness reviews document.)</p> <p>16 Q Are you familiar with this document? 17 Have you seen it before?</p> <p>18 A (Witness reviews document.)</p> <p>19 I believe this document is an inspector 20 general's report, the Office of the Inspector 21 General. But I have not seen this entire -- this 22 entire report. This is a -- I think this is a 23 2017 report, so it is two chief operating officers 24 ago, and I was not at the Department of Education 25 at that time.</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q Okay. Had you seen it before today?</p> <p>2 A No, ma'am. I don't believe I've seen</p> <p>3 this entire report before today.</p> <p>4 Q Have you seen parts of it before today?</p> <p>5 A I -- I believe I've had -- I've been --</p> <p>6 I've heard references to the OIG report, and</p> <p>7 that's what I meant in my statement. I've heard</p> <p>8 references to according to the OIG report. I've</p> <p>9 seen it in things according to the OIG report.</p> <p>10 And, so, the physical report itself, I</p> <p>11 don't believe that I have seen it. I don't recall</p> <p>12 seeing it. I only recall hearing references to</p> <p>13 the OIG report --</p> <p>14 Q All right.</p> <p>15 A -- and I think that's based on the</p> <p>16 date.</p> <p>17 Q Okay. And based on that, what do you</p> <p>18 understand were the conclusions of the OIG report?</p> <p>19 MR. HANCOCK: Objection to this line of</p> <p>20 questioning as exceeding the scope of the</p> <p>21 court-ordered discovery.</p> <p>22 BY MS. TORCHIANA:</p> <p>23 Q You can still answer.</p> <p>24 A Unfortunately, ma'am, I have no -- I</p> <p>25 have no full understanding of this because it</p>	<p style="text-align: right;">Page 76</p> <p>1 Q Okay. And if you see at the top of the</p> <p>2 page, it says, FSA established seven categories of</p> <p>3 borrower defense claims that supported a cause of</p> <p>4 action under applicable state law and thus</p> <p>5 qualified a borrower for a loan discharge.</p> <p>6 So -- and there are, you know, seven</p> <p>7 listed there.</p> <p>8 So is it -- is it accurate that as of</p> <p>9 January 2017, the BDU had developed seven</p> <p>10 categories of claims that were subject to</p> <p>11 approval?</p> <p>12 MR. HANCOCK: Objection: Exceeding the</p> <p>13 scope of the court's ordered discovery.</p> <p>14 BY MS. TORCHIANA:</p> <p>15 Q You can still answer.</p> <p>16 A Yeah, regrettably, ma'am, I don't</p> <p>17 know -- in 2017, I was -- I was not a part of the</p> <p>18 Department of Education.</p> <p>19 Q Okay. And do you know -- so these are</p> <p>20 seven approval categories. So have you ever heard</p> <p>21 of BDU's approval protocols?</p> <p>22 A Approval criticals?</p> <p>23 Q Approval protocols.</p> <p>24 A Protocols, oh.</p> <p>25 I am aware that there are categories</p>
<p style="text-align: right;">Page 75</p> <p>1 is -- it is so dated. And, so, it simply would</p> <p>2 not have been relevant for what I was going after</p> <p>3 in March of 2019 forward.</p> <p>4 Q Okay. So would you say that the</p> <p>5 conclusions in the report were not relevant to</p> <p>6 your work going forward?</p> <p>7 A I have not read the report.</p> <p>8 Q Okay. Okay. And did you hear any of</p> <p>9 your coworkers' opinions of it?</p> <p>10 A I did not. I -- I only know of the</p> <p>11 report because it's referenced in -- you know,</p> <p>12 when we -- when we look at some of my education in</p> <p>13 March, it was referenced that there was an OIG</p> <p>14 report.</p> <p>15 Q Okay.</p> <p>16 A I can't -- I don't have an opinion of</p> <p>17 it one way or the other.</p> <p>18 Q Okay. Did you ever discuss it with any</p> <p>19 coworkers or anyone at your office?</p> <p>20 A I do not recall discussing this report</p> <p>21 with anyone.</p> <p>22 Q So if you turn to page -- it's 509 at</p> <p>23 the bottom in the -- in the small -- small footer.</p> <p>24 It's page 193 of 270 in the stamp?</p> <p>25 A I have the page.</p>	<p style="text-align: right;">Page 77</p> <p>1 of -- of claims. I -- I don't know that I could</p> <p>2 say that there were -- that there were seven and</p> <p>3 that there still are seven, but I -- I am aware</p> <p>4 that there are categories of -- of claims.</p> <p>5 Q Okay. And do you know -- do you know</p> <p>6 if since you've started there were any more</p> <p>7 categories of claims that were developed for</p> <p>8 approval outside of these seven?</p> <p>9 A I do not.</p> <p>10 Q Okay. And, so, if you go down in the</p> <p>11 middle of the page, could you read that paragraph</p> <p>12 in the middle that starts, From January 20th,</p> <p>13 2017?</p> <p>14 A From -- from January 20th, 2017,</p> <p>15 through July 31st, 2017, BDU did not complete or</p> <p>16 begin preparing any legal memoranda establishing</p> <p>17 whether additional categories of borrower defense</p> <p>18 claims qualified for discharge. According to the</p> <p>19 director of BDU, the BDU staff has been instructed</p> <p>20 not to continue developing memoranda on whether</p> <p>21 additional categories of claims qualify for</p> <p>22 discharge because the borrower defense policies</p> <p>23 are being reviewed with the change in</p> <p>24 administrations.</p> <p>25 Q Okay. And do you know who -- had you</p>

<p style="text-align: right;">Page 78</p> <p>1 heard of who instructed BDU to stop developing</p> <p>2 these memoranda?</p> <p>3 MR. HANCOCK: Objection: calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: I don't know, ma'am.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q Okay. And did you ever hear of this</p> <p>8 decision or learn of it?</p> <p>9 A So in -- I -- I would not -- ma'am, I</p> <p>10 would not be able to tell you what -- you know,</p> <p>11 what was -- what was told in 2017. I -- I was not</p> <p>12 a part of the Department of Education in 2017.</p> <p>13 Q Okay. Okay. We can move on, then.</p> <p>14 If you could turn to Exhibit 7 in your</p> <p>15 hard copies.</p> <p>16 (Exhibit 7 referred to.)</p> <p>17 THE WITNESS: It says it's -- yes,</p> <p>18 Exhibit 7.</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q And are you familiar with this</p> <p>21 document?</p> <p>22 A (Witness reviews document.)</p> <p>23 I'm not familiar with the front part of</p> <p>24 this memorandum at -- at all, the letter. But I</p> <p>25 am aware of the secretary's signature on the back</p>	<p style="text-align: right;">Page 80</p> <p>1 A Not -- not to me, no. I -- I have</p> <p>2 the -- no, I can't think of anything that would be</p> <p>3 considered displeasure or -- if that's your</p> <p>4 question.</p> <p>5 Q Okay. Okay. And, you know, to get</p> <p>6 back to some general questions not about this</p> <p>7 document specifically -- we'll get back to it</p> <p>8 after.</p> <p>9 But before -- just turning back to</p> <p>10 something you've said, before you mentioned --</p> <p>11 when we were talking about performance metrics for</p> <p>12 the BDU, do you remember a couple of moments ago,</p> <p>13 how -- how do you assess -- you said you -- you</p> <p>14 installed performance metrics and, you know,</p> <p>15 you -- you were trying to install metrics at the</p> <p>16 department.</p> <p>17 How do you measure the output of the</p> <p>18 BDU unit?</p> <p>19 MR. HANCOCK: Objection: misstates</p> <p>20 testimony.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Okay. How do you -- do you assess the</p> <p>23 output of the BDU unit?</p> <p>24 A So with -- with all of Federal Student</p> <p>25 Aid metrics, they normally are production</p>
<p style="text-align: right;">Page 79</p> <p>1 that says "with extreme displeasure" because it</p> <p>2 was a -- it was a matter of a media article that I</p> <p>3 read.</p> <p>4 So that's my knowledge of this</p> <p>5 document.</p> <p>6 Q Okay. And what do you take that to</p> <p>7 mean, her -- her comment?</p> <p>8 MR. HANCOCK: Objection: exceeds the</p> <p>9 scope of the court-ordered discovery.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q You can still answer.</p> <p>12 A I don't -- I don't know other than -- I</p> <p>13 read it in a media article. I don't know -- I</p> <p>14 don't know that -- I don't know.</p> <p>15 Q Okay. Do you know what -- what caused</p> <p>16 her extreme displeasure?</p> <p>17 A So I -- I think this was signed in</p> <p>18 2017, and -- and I was not a part of the</p> <p>19 Department of Education then, so, no, ma'am, I</p> <p>20 wasn't a part of this. I don't know.</p> <p>21 Q Okay. And when you -- since you've</p> <p>22 started, has the secretary expressed any</p> <p>23 displeasure with any aspects of the BDU's work?</p> <p>24 A With any aspects of the BDU work?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 oriented. How many have -- so we are a</p> <p>2 performance-based organization, so we're a</p> <p>3 production organization.</p> <p>4 And, so, we routinely look at input,</p> <p>5 output and quality, and that would be the same for</p> <p>6 the BDU -- the BDU unit.</p> <p>7 Q Okay. And how do you assess the input</p> <p>8 and the output and the quality of the BDU unit's</p> <p>9 work?</p> <p>10 A So keeping in mind that -- I can just</p> <p>11 tell you generically, I'm not a borrower defense</p> <p>12 unit expert. What I can -- what I can tell you is</p> <p>13 that we look at how many claims that we have in</p> <p>14 and how many claims we have adjudicated either</p> <p>15 positively or -- or negatively or approved or</p> <p>16 disapproved, and at -- and how we're doing at the</p> <p>17 overall process of -- of getting those answers</p> <p>18 to -- to the students.</p> <p>19 So all of those elements of it would --</p> <p>20 would be at the macro level how the BDU unit is</p> <p>21 doing.</p> <p>22 Q Okay. And, so, when you came up with</p> <p>23 the fiscal year 2020 -- not you, but when the</p> <p>24 performance metric was set, did you have to</p> <p>25 approve it or sign off on it?</p>

<p style="text-align: right;">Page 82</p> <p>1 A I signed off on all of the -- all of</p> <p>2 the metrics that go into the strategic plan and</p> <p>3 the annual plan, one of which is the metric. And</p> <p>4 in signing, I denote my confidence in the process</p> <p>5 of the development of those things.</p> <p>6 Q Okay. So would you ever agree to a</p> <p>7 performance metric that wasn't reasonable or that</p> <p>8 you think wasn't attainable?</p> <p>9 A So when I look at a performance metric</p> <p>10 in general, I look to see if we provided the</p> <p>11 resources necessary to achieve it. And if we</p> <p>12 provided the resources necessary to achieve it,</p> <p>13 then, you know, I would feel comfortable that it</p> <p>14 was reasonable.</p> <p>15 But you asked me if I would ever sign</p> <p>16 off on a performance metric that is not</p> <p>17 reasonable; am I -- am I correct?</p> <p>18 Q Yes.</p> <p>19 A I would not knowingly do so; however, I</p> <p>20 am not beyond flaw and -- and we have a large</p> <p>21 organization, and as I've said, they all have</p> <p>22 metrics. I have to build and trust the process</p> <p>23 that it would not bring me an unachievable metric,</p> <p>24 and so -- but it is not without flaw.</p> <p>25 So there -- there could be one that</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Okay. And, so, when BDU came up with</p> <p>2 its performance metric, what deliberations did you</p> <p>3 have with the BDU? Did you meet with them about</p> <p>4 the performance metrics?</p> <p>5 MR. HANCOCK: Objection: calls for</p> <p>6 deliberative privileged information. I instruct</p> <p>7 the witness not to answer.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. And how -- when you signed off</p> <p>10 on the performance metrics, how did you come to</p> <p>11 understand that that was an achievable goal? What</p> <p>12 told you that?</p> <p>13 A So what -- so if -- what told me that</p> <p>14 the goals were achievable?</p> <p>15 Q Uh-huh. Yes.</p> <p>16 A From my level -- and I have to explain</p> <p>17 this a little bit, though -- but from my level,</p> <p>18 I'm more concerned that the process is in place</p> <p>19 for the voices to be heard and the development to</p> <p>20 occur. And, so, I am spending my time on the</p> <p>21 process; in other words, are they from the ground</p> <p>22 up. Do subject matter experts have an opportunity</p> <p>23 to say something; are we, you know, not listening</p> <p>24 to any voices; or how do they look on a historical</p> <p>25 basis.</p>
<p style="text-align: right;">Page 83</p> <p>1 would have to be changed or adjusted if it were</p> <p>2 not -- if it were found to be, I think as you</p> <p>3 said, unrealistic.</p> <p>4 Q Okay. And how did you inform yourself</p> <p>5 that the BDU -- BDU unit's metrics were achievable</p> <p>6 or attainable?</p> <p>7 MR. HANCOCK: Objection: vague; and</p> <p>8 potentially calls for deliberative information.</p> <p>9 BY MS. TORCHIANA:</p> <p>10 Q You can still answer.</p> <p>11 A So we have metrics updates as I was --</p> <p>12 as I was saying, and -- and -- and a process by</p> <p>13 which they are developed. So the way I inform</p> <p>14 myself in general is by listening and having</p> <p>15 dialogue and asking questions that I think are</p> <p>16 challenging that would make those who develop and</p> <p>17 think deeply about them and looking at, you know,</p> <p>18 their responses and the history and seeing if</p> <p>19 together we can agree that this is something that</p> <p>20 can be done. And then ultimately they are</p> <p>21 established that way.</p> <p>22 So I -- I know that's not a one, two,</p> <p>23 three answer, but neither is the process. It is a</p> <p>24 very deliberative back-and-forth process that</p> <p>25 leads to what you are calling the metrics.</p>	<p style="text-align: right;">Page 85</p> <p>1 Those kinds of questions when you</p> <p>2 manage a large organization, you have to become</p> <p>3 confident that those will help bring out the best</p> <p>4 in those you manage.</p> <p>5 And, so, the way -- the reason I'm</p> <p>6 confident is because I spend an intense amount of</p> <p>7 time on the process to make sure the process is in</p> <p>8 place to deliver that. I don't -- I'm not a</p> <p>9 borrower defense attorney. I don't -- I can't</p> <p>10 tell you perhaps the intricacies that you're</p> <p>11 looking for in terms of all of those things that</p> <p>12 happen inside of the borrower defense unit, but I</p> <p>13 can tell you what process I had used.</p> <p>14 Q And who told you about the processes at</p> <p>15 the BDU?</p> <p>16 A Who told me about how borrower defense</p> <p>17 unit processes the work? Is that your question,</p> <p>18 ma'am?</p> <p>19 Q Sure.</p> <p>20 Well, you said you were listening to --</p> <p>21 when you set the performance metrics you were</p> <p>22 listening to different voices and it's a</p> <p>23 deliberative process.</p> <p>24 Who were you deliberating with to set</p> <p>25 those numbers?</p>

<p style="text-align: right;">Page 86</p> <p>1 A So in the case of the borrower defense</p> <p>2 unit, I have a deputy chief operating officer for</p> <p>3 partner participation and oversight, and my</p> <p>4 conversations would begin with them. They, then,</p> <p>5 would have conversations with the BD unit -- BDU</p> <p>6 unit who would have conversations internal to the</p> <p>7 unit, and if we're -- if we're doing it right, all</p> <p>8 of those voices will be heard at every -- at</p> <p>9 every -- at every level.</p> <p>10 So when you ask who am I listening to</p> <p>11 or who told me, the people that work for me.</p> <p>12 Q Okay. And would that have been Robin</p> <p>13 Mittner?</p> <p>14 A So I believe you mean Robin Minor?</p> <p>15 Q Minor, sorry.</p> <p>16 A She is the first in the management</p> <p>17 chain. She is the first in the management chain</p> <p>18 of BDU between me and the BDU unit. And, yes, I</p> <p>19 would have had conversations with Robin Minor, but</p> <p>20 they would have not been isolated to that. She</p> <p>21 would have had conversations with others as well.</p> <p>22 The -- so that's, in general, how</p> <p>23 information flows, if that's your question.</p> <p>24 Q Okay. And -- and when these</p> <p>25 performance metrics were set, do you know if</p>	<p style="text-align: right;">Page 88</p> <p>1 I -- I would not use the term "concern"</p> <p>2 about that because I think it -- that's how you do</p> <p>3 it. I mean, that's how -- that's how it happens</p> <p>4 across the entire organization. In the case of</p> <p>5 the BDU unit, it's resources. It's, you know,</p> <p>6 people.</p> <p>7 Q And, so, what resources were those?</p> <p>8 A Attorneys.</p> <p>9 Q So you're saying -- what were the</p> <p>10 resources that were --</p> <p>11 A Attorneys.</p> <p>12 Q What resources did the BDU think would</p> <p>13 help them reach their target for the 2020 fiscal</p> <p>14 year?</p> <p>15 A So, again, there were two -- there were</p> <p>16 two points that had to be addressed. A number of</p> <p>17 attorneys, hire to a certain level of attorneys.</p> <p>18 And then there were also resources to invest in</p> <p>19 the IT system, the platform that was, in fact, the</p> <p>20 case management system.</p> <p>21 And, so, when I say resources and I say</p> <p>22 attorneys and money, that's what I'm talking</p> <p>23 about. We had to collectively achieve those</p> <p>24 things to achieve the goal.</p> <p>25 Q Okay. So would you say primarily that</p>
<p style="text-align: right;">Page 87</p> <p>1 anyone expressed concern about not being able to</p> <p>2 attain them?</p> <p>3 A I -- I don't -- I don't know. I can't</p> <p>4 recall any specific concern. You know, I don't --</p> <p>5 I'm trying to think here if I can recall it, and I</p> <p>6 do not. I don't recall any specific concern about</p> <p>7 attaining BDU goals.</p> <p>8 Q Okay. So there was no concern about</p> <p>9 adjudicating 150,000 applications within fiscal</p> <p>10 year 2020?</p> <p>11 A There was concern that I would get the</p> <p>12 resources necessary to the BDU team, and our -- I</p> <p>13 think what you may be reading into that is</p> <p>14 immediately 150,000 claims.</p> <p>15 Is that a -- is that a concern?</p> <p>16 There's always -- if you can hire the appropriate</p> <p>17 number of resources, then we can achieve this</p> <p>18 goal. If you aren't allowed or failed to or we</p> <p>19 can't find them or can't hire them or whatever,</p> <p>20 then the goal is not achievable.</p> <p>21 And, so, what I think you may be</p> <p>22 calling concern, I'm calling the dialogue that</p> <p>23 goes into the building of metrics. And so some is</p> <p>24 on me to go do, right, and some is on the workers</p> <p>25 to go do.</p>	<p style="text-align: right;">Page 89</p> <p>1 IT resources and attorneys were the two resources</p> <p>2 that BDU needed to meet its target?</p> <p>3 A I -- I did say that. I said that in</p> <p>4 order for -- in order for the borrower defense</p> <p>5 unit to be successful.</p> <p>6 Now, remember, I'm talking about this</p> <p>7 at my level, the macro level. You know, I guess</p> <p>8 like with anything, if you were three levels down,</p> <p>9 they may -- they may have concerns of other things</p> <p>10 that I would not have at my level, but at my -- at</p> <p>11 my level, my challenges were to have -- have</p> <p>12 enough attorneys to adjudicate cases and to have</p> <p>13 the -- to get the money necessary to upgrade the</p> <p>14 systems, the case management systems that would be</p> <p>15 needed for the volume of cases we were talking</p> <p>16 about.</p> <p>17 Q And -- and, so, what did you do to get</p> <p>18 more attorneys in the BDU unit?</p> <p>19 A We hired people. We had hiring fairs.</p> <p>20 We went nontraditional terms, like --</p> <p>21 nontraditional for government like Indeed and</p> <p>22 LinkedIn and we visited law schools with</p> <p>23 graduating attorneys, and we made offers to -- to</p> <p>24 get at this situation.</p> <p>25 That's -- that's what we did, so I</p>

<p style="text-align: right;">Page 90</p> <p>1 guess you would put it in a broad -- broad</p> <p>2 category of recruiting and -- and hiring. That's</p> <p>3 what we went about doing in a very aggressive way.</p> <p>4 Q Okay. And when did that start or when</p> <p>5 did you start doing that?</p> <p>6 A Again, I don't know when the very first</p> <p>7 hiring fair was and when the very first -- I -- I</p> <p>8 didn't -- I don't conduct the hiring fair myself.</p> <p>9 I don't physically go. I tell our experts to do</p> <p>10 that and I know that they had them. I don't</p> <p>11 actually go to the law school and visit and try</p> <p>12 and -- you know, we send -- we send people who are</p> <p>13 attorneys who know the business to go do that.</p> <p>14 I can tell you that shortly after my</p> <p>15 arrival, we began to try and buildup the number of</p> <p>16 attorneys after we were -- were given the approval</p> <p>17 to do so as I said earlier, and then all of those</p> <p>18 actions began to take place. It wasn't an</p> <p>19 overnight thing. It was -- as you would expect,</p> <p>20 you get ten, you get five more, you get seven</p> <p>21 more, you know, until you build up your personnel.</p> <p>22 Q And would you say before you joined,</p> <p>23 were there enough attorneys in the BDU unit?</p> <p>24 A So while I would not talk about --</p> <p>25 because I don't know because enough is -- enough</p>	<p style="text-align: right;">Page 92</p> <p>1 been issued since June 2018?</p> <p>2 MR. HANCOCK: Objection: asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I think --</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q You can answer.</p> <p>7 A Yeah, I think as I said before, I</p> <p>8 believe there was confusion, and so it -- my -- my</p> <p>9 understanding was that there was confusion.</p> <p>10 That's -- that's how I would classify it.</p> <p>11 Q Confusion about what?</p> <p>12 A The borrower defense unit believed that</p> <p>13 they had guidance to -- to not do so, policy</p> <p>14 guidance not -- not to do so, and had not done so</p> <p>15 after the Manriquez case, and I'm not certain that</p> <p>16 the -- at the time that the -- the department was</p> <p>17 under the understanding that they had provided</p> <p>18 that guidance.</p> <p>19 So if you're asking about that time</p> <p>20 frame when I initially took over in -- in March, I</p> <p>21 would classify it as confusion.</p> <p>22 Q Okay. So just looking at Exhibit 10,</p> <p>23 are you familiar with this testimony by Diane Auer</p> <p>24 Jones?</p> <p>25 A I am not familiar with this particular</p>
<p style="text-align: right;">Page 91</p> <p>1 would have to do with how many cases you had at</p> <p>2 the time, so I can't talk to you, ma'am, about</p> <p>3 anything prior to March 2019. I really don't know</p> <p>4 what -- I can tell you that, as I have said</p> <p>5 earlier, there were around 10 or 12 when I started</p> <p>6 in March of 2019. And that was not enough for the</p> <p>7 number of cases we had to get adjudicated and</p> <p>8 worked, and therefore we did all those things that</p> <p>9 I was just going through earlier.</p> <p>10 Q Okay. And did you -- did you have any</p> <p>11 sense of whether there were any requests to hire</p> <p>12 more attorneys before you joined?</p> <p>13 A As I said earlier, I -- I really don't</p> <p>14 know. I don't know.</p> <p>15 Q Okay. Okay. All right.</p> <p>16 We'll talk about the IT platform more</p> <p>17 later. I'd now like you to go to Exhibit 10.</p> <p>18 (Exhibit 10 referred to.)</p> <p>19 THE WITNESS: Yes, ma'am.</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q Okay. And just before we get into</p> <p>22 that, so when you started in March 2019, it sounds</p> <p>23 to me like that you made your issues -- or --</p> <p>24 or -- I guess when you started in March 2019, what</p> <p>25 was your understanding of why no decisions had</p>	<p style="text-align: right;">Page 93</p> <p>1 testimony. I know that Ms. Jones provided</p> <p>2 testimony, but I have not read this document that</p> <p>3 is -- that you have here as Exhibit 10.</p> <p>4 Q So it was in -- on May 22nd, 2019, so</p> <p>5 after you joined. Have you ever read through her</p> <p>6 testimony or looked at it?</p> <p>7 A I -- I don't believe so. At least I</p> <p>8 don't recall reading through this one.</p> <p>9 Q Okay. And at the top, could you turn</p> <p>10 to page 50?</p> <p>11 A Uh-huh.</p> <p>12 Q Okay. And at the top, could you read</p> <p>13 the testimony that starts -- so Ms. Jones says,</p> <p>14 There is not a policy. Could you read that</p> <p>15 sentence?</p> <p>16 A There is not a policy that prevents the</p> <p>17 review of claims. However, we are not able to</p> <p>18 determine the level of harm or the level of relief</p> <p>19 that a borrower should get because the methodology</p> <p>20 we use is now being challenged by the California</p> <p>21 courts. So we continue to process.</p> <p>22 Q Okay. And could you tell me what you</p> <p>23 think this means or explain that statement?</p> <p>24 MR. HANCOCK: Objection: Speculative.</p> <p>25 BY MS. TORCHIANA:</p>

<p style="text-align: right;">Page 94</p> <p>1 Q You can still answer.</p> <p>2 A Actually, I can only tell you what I</p> <p>3 just -- you know, what I just read. But in terms</p> <p>4 of what she means by that, I'm not sure I</p> <p>5 understand your question, ma'am.</p> <p>6 What would you like me to do with what</p> <p>7 I just read? It's --</p> <p>8 Q How -- okay. That sentence, how do you</p> <p>9 understand it? What is she saying?</p> <p>10 MR. HANCOCK: Objection: Speculative.</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q For example, when she says, We are not</p> <p>13 able to determine the level of harm or the level</p> <p>14 of relief because the methodology we use is being</p> <p>15 challenged by the California courts.</p> <p>16 So with -- do you know which</p> <p>17 methodology she's referring to?</p> <p>18 A So I am only familiar with -- since</p> <p>19 I've been the chief operating officer, there's</p> <p>20 only one methodology that the borrower defense</p> <p>21 unit has used. And, so, I would only assume here</p> <p>22 that it's something before that.</p> <p>23 I have not spent any time on what might</p> <p>24 have been used in 2017 or '18 or -- or that. I'm</p> <p>25 only familiar with it -- meaning, that we have a</p>	<p style="text-align: right;">Page 96</p> <p>1 borrower defense process.</p> <p>2 Q So that case is called Calvillo. What</p> <p>3 was your understanding of the Calvillo injunction,</p> <p>4 what it did, what it said?</p> <p>5 A So my understanding from my team was</p> <p>6 that it prevented us from issuing -- determining</p> <p>7 percentages of relief based on an income source</p> <p>8 that the courts had disagreed with. And,</p> <p>9 therefore, the borrower defense team was unable to</p> <p>10 do that because they weren't allowed to use that</p> <p>11 methodology according to the courts.</p> <p>12 Q Okay. And do you know who -- who that</p> <p>13 applied to?</p> <p>14 When you say that they couldn't use the</p> <p>15 methodology, who couldn't they use the</p> <p>16 methodology -- what applications could they not</p> <p>17 use the methodology with?</p> <p>18 A So -- so I know that there was a --</p> <p>19 there is a -- a set of claims that would be</p> <p>20 covered under the Manriquez case; that would be</p> <p>21 the claims for which you could not go forward on</p> <p>22 and use a methodology.</p> <p>23 Now, if you're asking me do I know</p> <p>24 which ones and exactly how many and all of that, I</p> <p>25 would not be able to give you that level of</p>
<p style="text-align: right;">Page 95</p> <p>1 methodology that we use now.</p> <p>2 But -- but I do think it's important</p> <p>3 that I clarify that the chief operating officer is</p> <p>4 not the policy element of this process, and</p> <p>5 methodology -- the determination of methodology</p> <p>6 would be a question more appropriate for those who</p> <p>7 make the policy.</p> <p>8 Q Okay. And when she refers to a case in</p> <p>9 the California courts, do you know what case that</p> <p>10 was?</p> <p>11 A Well, regrettably we have more than --</p> <p>12 more than one or two cases in the California</p> <p>13 courts, so -- so I wouldn't want to speculate</p> <p>14 on -- on which one of our multiple lawsuits this</p> <p>15 might be or which -- I don't know what -- since</p> <p>16 this doesn't say anything other than what you just</p> <p>17 told me to read, I don't know, ma'am. I don't</p> <p>18 know.</p> <p>19 Q Okay. And when you started, did you</p> <p>20 know that the department had been enjoined from</p> <p>21 using their 2017 methodology?</p> <p>22 A I did. I did know that the Manriquez</p> <p>23 case; that one I did know because it was part of</p> <p>24 my educational process that started in March. And</p> <p>25 I mentioned earlier that I was learning about the</p>	<p style="text-align: right;">Page 97</p> <p>1 detail, but I do know that there's a class of</p> <p>2 claims -- I would call them a class, and that</p> <p>3 those would fall under the Manriquez case.</p> <p>4 Q Okay. And who explained to you that</p> <p>5 the Calvillo injunction prevented relief for</p> <p>6 some -- you know, those people that you just</p> <p>7 mentioned?</p> <p>8 How did -- how did you understand that?</p> <p>9 Did you read the case? Or did someone tell you?</p> <p>10 MR. HANCOCK: Objection: ambiguous and</p> <p>11 compound.</p> <p>12 MS. TORCHIANA: Okay. I'll ask again.</p> <p>13 BY MS. TORCHIANA:</p> <p>14 Q Who told you that the injunction did</p> <p>15 what we just said it did?</p> <p>16 A So in my educational process in March</p> <p>17 of how BDU worked and what the status of things</p> <p>18 were, it was part -- I never used the term the</p> <p>19 Calvillo case that you just used, but if you mean</p> <p>20 the Manriquez case, because that's the only term</p> <p>21 that's ever been brought to me in terms of our</p> <p>22 discussion of this, if we're talking about the</p> <p>23 same thing, then that was a part of my instruction</p> <p>24 from the borrower defense team as I was going in</p> <p>25 learning about what they -- what they do and what</p>

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1 their challenges were and those kinds of things.

2 Q And when you were learning and getting

3 instructions about the borrower defense team, who

4 was providing those instructions to you?

5 A So there were a number of people, but

6 the leader of that team is the same leader that we

7 have now of the borrower defense unit, and that

8 was Colleen Nevin.

9 Q Okay. And did she explain the

10 Manriquez case to you?

11 A She explained to me the impact of it on

12 the borrower defense processes.

13 Q Okay.

14 A But of the entirety of the case, my

15 interests were limited to what impact it had on

16 our ability to do operations.

17 Q Okay. And how did she explain the

18 impact that it had on the BD process?

19 A We could not determine the amount of

20 relief because we were unable to use the

21 methodology because the court did not allow us to

22 use it. And if you don't know the amount of

23 relief, you can't complete those cases that are

24 found to be valid, and so that contributed to the

25 cases that had not moved. That's the explanation.

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1 So as I'm exploring BDU and what's

2 going on and why are there cases and those kinds

3 of things, that's where that explanation would

4 come into play.

5 Q Okay. Okay. If you go down the page a

6 little bit, sort of in the bottom, it --

7 Ms. Pressley asks -- and could you read this out

8 to me? She says, The court case does not apply to

9 all borrowers.

10 Could you read that and then Ms. Jones'

11 answer?

12 A Are you still on page 50, ma'am?

13 Q Yes.

14 A Okay. Ms. Pressley: The court case

15 does not apply to all borrowers. What about the

16 others? Are you going to process any of them?

17 Q Are you not going to process any of

18 them. But, yeah, go on.

19 A Are you not going to process any of

20 them?

21 We are processing claims. We continue

22 to process. What we can't do is determine the

23 level of harm or the level of relief.

24 Q Okay. And, so, could you explain when

25 she says, "continue to process," what did that

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Page

1 mean in your understanding?

2 A It -- it actually -- I believe this

3 term "processing" may not be used by everyone the

4 same way. So I can tell you what I -- I believe

5 it to mean.

6 So I believe it to mean that you can go

7 through the stage of an attorney adjudicating a

8 case and determining if it's eligible or

9 ineligible for relief, and that claim has been

10 processed.

11 Others may believe that that processing

12 isn't complete until you apply an approved

13 methodology and determine what level of relief

14 that particular claim has under whatever

15 methodology has been established.

16 Depending on who's using the term, some

17 people stop at that first part. Others don't stop

18 until a letter goes out to a borrower with the

19 final answer.

20 So what I just gave you was my very

21 limited one-person's definition of how I would use

22 the term "process."

23 Q And have you ever heard of that being

24 distinguished as Step 1 versus Step 2? Is that

25 terminology that's familiar to you?

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Page

1 A I have heard of the Step 1 and Step 2

2 categorizing the borrower defense overall process.

3 Q Okay. And could you explain to me

4 how -- how that works or how you understand those

5 terms?

6 A Yes, ma'am. Actually, I can explain to

7 you how I understand it. The way that I

8 understand it is if a claim comes in and it goes

9 to an attorney and an attorney adjudicates that

10 claim and determines one thing or the other that

11 it has either met whatever the borrower defense

12 laws or rules are and therefore it is eligible for

13 the methodology to be applied, in other words,

14 they're eligible, then that attorney has completed

15 process -- Step 1 in the process, but not Step 2.

16 Step 2 would start when the methodology

17 is applied, some percent of relief is determined

18 based on the mathematical equation in the

19 methodology, and the borrower is notified of what

20 that answer is.

21 Q Okay. So when Ms. Jones says, We

22 continue to process, what does that mean in those

23 terms?

24 A So I don't know again what Ms. Jones --

25 I can't tell you, ma'am, what -- exactly how

<p style="text-align: right;">Page 102 Page</p> <p>1 Ms. Jones was using the term because, as I said</p> <p>2 earlier, how someone uses the term, I think,</p> <p>3 differs.</p> <p>4 So I -- I can't tell you how Ms. Jones</p> <p>5 was using the term.</p> <p>6 Q Okay. And when you joined the</p> <p>7 department and, you know, no decisions had been</p> <p>8 made since June 2018, did you understand whether</p> <p>9 either Step 1 eligibility determinations -- were</p> <p>10 any of those proceeding?</p> <p>11 A Could you -- would you mind repeating</p> <p>12 the -- the last part of that question?</p> <p>13 Q When you started in March 2019 and</p> <p>14 going forward, did -- no decisions had been issued</p> <p>15 since June 2018, did you understand whether any</p> <p>16 Step 1 decisions were continuing, so as you</p> <p>17 described it, eligibility?</p> <p>18 A Step 1, to my knowledge, never stopped.</p> <p>19 Q Okay.</p> <p>20 A Those -- that part which we now call</p> <p>21 Step 1, we're talking about it as Step 1, to my</p> <p>22 knowledge that had never stopped.</p> <p>23 Q Okay. And -- and how -- was that being</p> <p>24 reported to you?</p> <p>25 A So the metrics and the measurements and</p>	<p style="text-align: right;">Page 104 Page</p> <p>1 claims. However, we -- we're not able to</p> <p>2 adjudicate as many as we would like because we</p> <p>3 don't have enough resources.</p> <p>4 And, so, when you say how do I know it</p> <p>5 was continuing, they -- they told me that they</p> <p>6 were continuing to adjudicate claims. That didn't</p> <p>7 automatically get boiled down to a metric that I</p> <p>8 was getting automatic weekly updates on. It took</p> <p>9 a while, some time for that to come about. And I</p> <p>10 don't know exactly when that came about, but it</p> <p>11 didn't happen immediately.</p> <p>12 But that's -- that's how I knew that</p> <p>13 that's what we were doing.</p> <p>14 Q Okay. And as part of your performance</p> <p>15 metrics, so you -- do you know how many claims</p> <p>16 have gone through Step 1 eligibility or have been</p> <p>17 processed at Step 1?</p> <p>18 Was that ever reported?</p> <p>19 A Today you mean or --</p> <p>20 Q At any point.</p> <p>21 A So, yes, at some -- at some point</p> <p>22 across during the process of metric building and</p> <p>23 measurements, I would have an indication of how</p> <p>24 many claims had been processed and adjudicated and</p> <p>25 if we were at a point where notifications were</p>
<p style="text-align: right;">Page 103 Page</p> <p>1 all the things that we've been talking about</p> <p>2 didn't exist on day one in March to my knowledge,</p> <p>3 and -- and nothing was being reported to me other</p> <p>4 than I was aware that we only had 10 to 12</p> <p>5 attorneys, as I said before, and the numbers were</p> <p>6 not that large of the number of claims we were</p> <p>7 able to even get through Step 1 because BD claims</p> <p>8 were growing, and as I've said earlier, we simply</p> <p>9 did not have enough of those two things I</p> <p>10 mentioned, attorneys and the resources against the</p> <p>11 systems necessary.</p> <p>12 Q Okay. And so how did you know that</p> <p>13 Step 1 was continuing?</p> <p>14 A So in March I started an education --</p> <p>15 Q Not just in March, but, you know, when</p> <p>16 you started and moving forward.</p> <p>17 How about from March when you started</p> <p>18 until December of 2019?</p> <p>19 A How did I -- how did I know that Step 1</p> <p>20 was continuing?</p> <p>21 Q Uh-huh. Yes.</p> <p>22 A So -- and I know -- I believe I</p> <p>23 mentioned that when I first started in March, the</p> <p>24 BD team immersed me into what they were doing.</p> <p>25 And, so, part of that is we are adjudicating</p>	<p style="text-align: right;">Page 105 Page</p> <p>1 going out, how many notifications had been sent.</p> <p>2 That would be a part of the metric.</p> <p>3 Q Okay.</p> <p>4 A Could I ask, ma'am, for a -- a</p> <p>5 five-minute break?</p> <p>6 Q Sure.</p> <p>7 MR. HANCOCK: And, Claire, this might</p> <p>8 be a good time to just talk generally about lunch</p> <p>9 break. It's now 12:43 here on the East Coast,</p> <p>10 so --</p> <p>11 THE VIDEOGRAPHER: Do you want to have</p> <p>12 this conversation off the record?</p> <p>13 MR. HANCOCK: Oh, sure.</p> <p>14 THE VIDEOGRAPHER: We're now off the</p> <p>15 record. The time is 17:43 UTC time.</p> <p>16 (Lunch recess -- 12:43 p.m.)</p> <p>17 (After lunch recess -- 1:18 p.m.)</p> <p>18 THE VIDEOGRAPHER: Okay. We're now</p> <p>19 back on the record. The time is 18:18 UTC.</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q Okay. So, Mr. Brown, we were just</p> <p>22 talking about the Calvillo or the Manriquez</p> <p>23 injunction and what you understood the effect of</p> <p>24 it to be. You mentioned that there was confusion</p> <p>25 within the BDU unit and the BDU unit believed that</p>

Page 106 Page	<p>1 it -- that they couldn't issue any decisions.</p> <p>2 Do you know -- where would you say --</p> <p>3 all right. Let me rephrase it.</p> <p>4 How did you seek clarification about</p> <p>5 this confusion?</p> <p>6 A So I -- I wouldn't say -- and I</p> <p>7 don't -- I don't believe I said that there was</p> <p>8 confusion within the BD unit. I think what I said</p> <p>9 was that there was confusion, meaning the BD unit</p> <p>10 believed they had guidance or policy not to go</p> <p>11 further with decisions, meaning to send them out.</p> <p>12 When I asked the department if, in</p> <p>13 fact, that was the case, the answer I got back was</p> <p>14 that they didn't believe they had told the BD unit</p> <p>15 that.</p> <p>16 That, it's those two positions early on</p> <p>17 in my time, that I define as confusion.</p> <p>18 Q Okay. So who did you ask from the</p> <p>19 Department of Education about -- about this</p> <p>20 confusion? Who did you talk to?</p> <p>21 A I -- I spoke with Under Secretary Jones</p> <p>22 to get clarification on what the -- you know, what</p> <p>23 had been told to the BD unit.</p> <p>24 Q Okay. And what did she tell you?</p> <p>25 A She responded at the time. This is in</p>	Page 108 Page	<p>1 couldn't issue decisions?</p> <p>2 A No. No, no, I -- maybe I don't</p> <p>3 understand -- understand you. Ms. -- I asked the</p> <p>4 BD unit as we were going through that educational</p> <p>5 process, you know, what we were doing, why were</p> <p>6 decisions not going out.</p> <p>7 The BD unit believed that after the</p> <p>8 Manriquez case decision that they were only to</p> <p>9 adjudicate cases; they were not to send out any --</p> <p>10 any answers. They believed that was the guidance</p> <p>11 that they had.</p> <p>12 I asked --</p> <p>13 Q Did you seek clarify -- did you seek</p> <p>14 clarification about why they believed that was the</p> <p>15 guidance that had been issued?</p> <p>16 A Yes. I -- I asked the under secretary</p> <p>17 why was the BD unit not sending out decisions.</p> <p>18 The initial answer or response, if you go back,</p> <p>19 was I didn't know that the BD unit was not sending</p> <p>20 out decisions. That was the initial answer when I</p> <p>21 first -- when I first started in March/April time</p> <p>22 frame looking into this.</p> <p>23 Q Okay. And did you ask anyone in the</p> <p>24 BDU why they thought they'd received that</p> <p>25 guidance?</p>
Page 107 Page	<p>1 the March/April time frame. I didn't know that</p> <p>2 the BD unit was not sending out -- or I'm not sure</p> <p>3 why the BD unit is not sending out decisions.</p> <p>4 That was the initial response, and this was a</p> <p>5 verbal conversation. I don't have this in -- in</p> <p>6 any form of documentation.</p> <p>7 Q So she -- she was the one who said to</p> <p>8 you she wasn't sure why the BDU -- the BDU unit</p> <p>9 wasn't issuing decisions?</p> <p>10 A Initially.</p> <p>11 Q Okay. And did you seek any</p> <p>12 clarification?</p> <p>13 A I -- I did. At some point, and I -- I</p> <p>14 cannot specify for you the exact point because I</p> <p>15 don't recall the exact point, but at some point it</p> <p>16 moves to the point of a new methodology was being</p> <p>17 developed, and once that new methodology was</p> <p>18 developed, it would allow for the issuance of</p> <p>19 both -- on -- of decisions, meaning both approval</p> <p>20 and denials.</p> <p>21 Q Okay. That wasn't quite my question in</p> <p>22 terms of -- so Ms. Diane Auer Jones told you the</p> <p>23 BDU unit told you they couldn't issue decisions.</p> <p>24 Did you seek clarification within the</p> <p>25 BDU unit asking why they thought that they</p>	Page 109 Page	<p>1 MR. HANCOCK: Objection: asked and</p> <p>2 answered.</p> <p>3 BY MS. TORCHIANA:</p> <p>4 Q I think he mentioned -- or you can go</p> <p>5 ahead and answer.</p> <p>6 A No, it's -- as I had previously stated,</p> <p>7 the BD unit believed, which I believe gets to your</p> <p>8 why, that after the Manriquez case decision that</p> <p>9 they were not to send out any notifications. They</p> <p>10 were simply to continue adjudicating cases.</p> <p>11 Q And did you talk to anyone in the BDU</p> <p>12 unit about that belief?</p> <p>13 A I -- no, I don't believe that I -- I</p> <p>14 didn't go any further into -- any further in the</p> <p>15 history of it because it was answer right -- the</p> <p>16 answer is they weren't sending any out because</p> <p>17 they believed they weren't supposed to at the</p> <p>18 time.</p> <p>19 Q And, so, did you do anything to clarify</p> <p>20 that confusion?</p> <p>21 A Yes. I stated earlier I asked the</p> <p>22 under secretary, and the initial reply I got back</p> <p>23 was I didn't -- I didn't know the BD unit was not</p> <p>24 sending out, but that was only the initial reply</p> <p>25 that I got back.</p>

<p style="text-align: right;">Page 110 Page</p> <p>1 Later on -- and I can't give you the 2 exact time of this -- it was decided that we would 3 continue that same posture while the new 4 methodology was being developed, and that once the 5 new methodology would be developed, we would be 6 going forward with all types, you know, both the 7 adjudications and the notifications. 8 Q Okay. When did you decide -- when you 9 say you decided to continue that posture, what do 10 you mean? 11 A Not that I decided; that the department 12 at that point decided that we would continue the 13 same posture that we were in and not issue 14 notifications but continue to do adjudications 15 until the point at which the methodology was 16 completed, and then that -- and then we would 17 begin doing both. 18 Q Okay. And who made that decision? 19 A I don't know exactly. I can tell you 20 that that was a decision communicated to me 21 through the under secretary. I don't know that I 22 could tell you, you know, if that was her sole 23 decision or if there was some other parties 24 involved. 25 I would not know that.</p>	<p style="text-align: right;">Page 112 Page</p> <p>1 was developed, I don't -- I don't know. Only I 2 can relate to you what was communicated to me. 3 Q Okay. If you can turn back to your 4 declaration which is -- it should be behind 5 Exhibit 25 -- behind tab 25, sorry. 6 A I have it. 7 Q Okay. And we'll start at -- we'll get 8 back to paragraph 5. So, you know, you say, On 9 December 10th, 2019, the department issued a 10 policy statement setting forth a tiered relief 11 methodology. 12 So who -- who came up with this tiered 13 relief methodology? 14 A Who came up with it? 15 Q Yes. 16 A So what I would -- what I would say is 17 that the -- the methodology itself is determined 18 by the department. In terms of the building of 19 it, if that answers your who that came up with it, 20 I'm sure like most other things, it was collective 21 effort of providing information to help decision 22 makers, but the methodology is a statement of 23 policy of the secretary's, and so it would not be 24 inside of Federal Student Aid. 25 Q Okay. So who would you say was the</p>
<p style="text-align: right;">Page 111 Page</p> <p>1 Q Okay. And how was that communicated to 2 you? 3 When you say the under secretary 4 communicated that to you, how was that 5 communicated? Was it -- in what form? 6 A Yeah, to -- to my knowledge it was 7 verbal. I don't -- I don't know that there's a 8 document that says effective this date. My 9 recollection of that is just that it was given to 10 me verbally. 11 Q Okay. So would you say there was a 12 policy not to issue any decisions until a new 13 relief methodology was in place? 14 A I don't know if I would go as far as to 15 define it as policy, but I would certainly go far 16 enough to call it a set path going forward. 17 Q Okay. And that guidance was coming 18 from the Office of the Under Secretary? 19 MR. HANCOCK: Objection: asked and 20 answered. 21 BY MS. TORCHIANA: 22 Q Okay. You can still answer it. 23 A Yeah -- yes, ma'am, as I just -- as I 24 just stated. That's who it was communicated to me 25 from. Exactly where it was coming from and how it</p>	<p style="text-align: right;">Page 113 Page</p> <p>1 main decision maker then in coming up with the 2 tiered relief methodology? 3 A I -- I wouldn't say that because I -- 4 you know, I don't know how to -- I don't know how 5 to measure what you mean by who was the main 6 decision maker. The methodology is a statement of 7 policy, so it comes from the department. And then 8 our job is to execute that -- that policy. Who -- 9 who weighed in the most or the least, I -- or 10 made, to use your term, I -- I don't know that 11 name. 12 Q Okay. And when was it decided to 13 develop on this tiered relief methodology? 14 A I don't know exactly when it was 15 decided. I know that we started using that. I 16 can tell you that. But exactly when it was 17 decided, I -- I don't know. 18 Q Okay. And when you -- let's say in 19 March 2019 when you joined the department, had 20 you -- was there any development of this 21 alternative methodology? 22 MR. HANCOCK: Objection: misstates 23 testimony. 24 THE WITNESS: I don't know if I 25 understand that question. I'm not sure I</p>

Page 114 Page	<p>1 understand your question.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q My question was when did this tiered</p> <p>4 methodology start being developed, and you say you</p> <p>5 don't remember. So, you know, in the spring of</p> <p>6 2019 when you started, do you remember any</p> <p>7 discussions about this new tiered relief</p> <p>8 methodology?</p> <p>9 A I don't.</p> <p>10 Q Okay. And when do discussions about</p> <p>11 this tiered relief methodology begin?</p> <p>12 A I don't know when the -- again, I don't</p> <p>13 know when the discussions or the decisions, the</p> <p>14 inner workings of what would be the policy making,</p> <p>15 I can't tell you exactly when that began.</p> <p>16 What I can -- what I can tell you is</p> <p>17 that in -- in March, I wasn't aware of it if</p> <p>18 that's your -- if that's your question.</p> <p>19 Q Okay. What about later on, let's</p> <p>20 say -- when did you become aware that a tiered</p> <p>21 methodology was being developed?</p> <p>22 A So what -- what I know is that as we</p> <p>23 got into the April/May time frame -- and I don't</p> <p>24 remember precisely that time frame, but somewhere</p> <p>25 within there -- the answer to our question of</p>	Page 116 Page	<p>1 because it was key to us moving forward in the</p> <p>2 borrower defense.</p> <p>3 Q Okay. And what was your involvement in</p> <p>4 developing this tiered relief methodology?</p> <p>5 A So my personal involvement would have</p> <p>6 been very limited. If you mean "my", the</p> <p>7 organization of Federal Student Aid, I would have</p> <p>8 a slightly different answer.</p> <p>9 Q When you say it was very limited, what</p> <p>10 did you do as part of developing this tiered</p> <p>11 relief methodology?</p> <p>12 A Little -- little to nothing. When I</p> <p>13 say very limited, I am -- I'm referring to the</p> <p>14 fact that I'm the chief operating officer at</p> <p>15 Federal Student Aid, so anything that Federal</p> <p>16 Student Aid might provide data for or those kind</p> <p>17 of things, I can't totally detach myself from it</p> <p>18 because they are -- that is my organization.</p> <p>19 But in terms of my personal</p> <p>20 involvement, that -- that's not what I do. I</p> <p>21 would not have personally been sitting with</p> <p>22 someone developing methodology.</p> <p>23 Q Okay. And who within FSA was working</p> <p>24 on it?</p> <p>25 A So while I can't -- I wouldn't be able</p>
Page 115 Page	<p>1 moving forward with notification was related to</p> <p>2 the fact that a methodology was being developed.</p> <p>3 But I'm not telling you that it started</p> <p>4 then or it started before then or later because I</p> <p>5 don't know other than at that point I became aware</p> <p>6 that it was being developed. I can't give you</p> <p>7 the -- I can't give you the parameters of when it</p> <p>8 started or when it ended or anything like that</p> <p>9 other than I -- other than I know it was being</p> <p>10 developed.</p> <p>11 Q Okay. And did you ever discuss the</p> <p>12 development of the tiered relief methodology with</p> <p>13 Diane Auer Jones?</p> <p>14 A Did I ever discuss that we were -- that</p> <p>15 she was -- that she and the department</p> <p>16 collectively were working on this methodology?</p> <p>17 Q Yes.</p> <p>18 A Yes, I -- I knew that they were working</p> <p>19 on it. I -- I did know that. After that time</p> <p>20 frame, after that discussion, I -- I knew that.</p> <p>21 Q Okay. And how was that communicated to</p> <p>22 you? How -- how -- what form did those</p> <p>23 discussions take?</p> <p>24 A Just that, discussions in meetings, and</p> <p>25 the reason it was -- would have been discussed is</p>	Page 117 Page	<p>1 to give you the details of who, I can tell you</p> <p>2 that we have a policy -- the liaison office and we</p> <p>3 have data people who pull data out of systems and</p> <p>4 run algorithms and those kind of things. They</p> <p>5 provide the decision support to the policy makers</p> <p>6 to help them understand kind of the -- the numbers</p> <p>7 and the data and those kind of things that they're</p> <p>8 trying to make decisions on.</p> <p>9 So I could tell you organizationally we</p> <p>10 have sections that do that. We have data</p> <p>11 analytics; we have data scientists, if you will,</p> <p>12 that do those kinds of things, and policy liaisons</p> <p>13 which do that. And they would have been involved</p> <p>14 with running various programs and pulling data to</p> <p>15 be supportive of that effort.</p> <p>16 Q Okay. And how many staff within FSA</p> <p>17 would you say were working on developing this</p> <p>18 partial relief methodology?</p> <p>19 A I would not know. This is a dynamic --</p> <p>20 dynamic kind of thing. You know, today I need one</p> <p>21 person; tomorrow I need two; I need a couple of</p> <p>22 hours on the phone.</p> <p>23 It's just -- it's very dynamic, and I</p> <p>24 could not associate it with a particular number of</p> <p>25 persons or times, nor do I believe we accounted</p>

Page 118 Page	<p>1 for it in any kind of way.</p> <p>2 So I would not want to speculate. I</p> <p>3 don't know, ma'am.</p> <p>4 Q Okay. Was it time-consuming for FSA to</p> <p>5 developed this tiered relief methodology?</p> <p>6 A So by "time-consuming," do you mean</p> <p>7 that we had to put some time into it, or do you</p> <p>8 mean that it took an inordinate amount of time?</p> <p>9 Can you help me understand what you</p> <p>10 mean by that?</p> <p>11 Q Did it take a lot of time for staff</p> <p>12 members at FSA to develop this tiered relief</p> <p>13 methodology? Was it something that -- how much</p> <p>14 time would you say staff spent on developing this?</p> <p>15 MR. HANCOCK: Objection: misstates</p> <p>16 testimony.</p> <p>17 MS. TORCHIANA: You can still answer.</p> <p>18 THE WITNESS: Yeah, I wouldn't want to</p> <p>19 give you a specific amount of time. I don't know.</p> <p>20 I could look back and see if we had written that</p> <p>21 down somewhere, but, you know, I couldn't -- I</p> <p>22 couldn't tell you exactly how much time was spent</p> <p>23 on it, not -- not off the top of my head.</p> <p>24 BY MS. TORCHIANA:</p> <p>25 Q Okay. And did you have a sense that it</p>	Page 120 Page	<p>1 relief methodology?</p> <p>2 MR. HANCOCK: Objection: misstates</p> <p>3 testimony.</p> <p>4 THE WITNESS: Could you say it again,</p> <p>5 ma'am? I'm sorry. I didn't understand.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q I said, what resources were required to</p> <p>8 develop this methodology within FSA?</p> <p>9 So you mentioned staff . . .</p> <p>10 A So we have people that pull out data,</p> <p>11 do data analytics and metrics. We have people</p> <p>12 who -- who I would call policy liaison folks who</p> <p>13 help -- help understand what -- what the policy</p> <p>14 (audio distortion) locations of them are. So</p> <p>15 within their job jar would be to support this kind</p> <p>16 of effort.</p> <p>17 But if you're asking for me to quantify</p> <p>18 it -- or are you asking for me just to give you</p> <p>19 those organizational elements within FSA?</p> <p>20 Q What were the organizational elements</p> <p>21 within FSA that were needed?</p> <p>22 A Data analytics and policy liaison.</p> <p>23 Q Okay. Could you explain to me how this</p> <p>24 partial relief methodology -- how it works?</p> <p>25 MR. HANCOCK: Objection: exceeds the</p>
Page 119 Page	<p>1 was taking a lot of time for FSA to -- to develop</p> <p>2 this partial relief methodology?</p> <p>3 MR. HANCOCK: Objection: misstates</p> <p>4 testimony.</p> <p>5 THE WITNESS: So the methodology is</p> <p>6 developed by the department. The methodology is a</p> <p>7 statement of policy, and so the -- the role of</p> <p>8 FSA, and -- and by association my role, is to</p> <p>9 provide data and analytics for the decision</p> <p>10 makers. But we don't develop that policy document</p> <p>11 which -- which you referred to as a methodology.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q So within FSA, what staff was working</p> <p>14 on developing this methodology?</p> <p>15 A So, again, I cannot give you names. I</p> <p>16 don't know all of the names. I can tell you we</p> <p>17 have a policy liaison office and that only has a</p> <p>18 couple of people in it. And we have data</p> <p>19 analytics, people who pull data. That could have</p> <p>20 been one or -- you know, one or two people that</p> <p>21 got that request and worked that particular</p> <p>22 request, but it would have been a combination of</p> <p>23 those kind of folks.</p> <p>24 Q Okay. And -- and what resources would</p> <p>25 you say were required to develop this partial</p>	Page 121 Page	<p>1 scope of the court-ordered discovery.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q Okay. Okay. And then -- what is your</p> <p>4 understanding of why loan relief tied to earnings</p> <p>5 is a relevant measure, if relevant?</p> <p>6 A So I would -- would tell you that</p> <p>7 that's not something I would have a deep</p> <p>8 understanding of. It is -- that's essentially, I</p> <p>9 think, the policy that you're reading from of how</p> <p>10 the methodology works, and -- and while we do have</p> <p>11 technicians that compute it, the how or -- or why</p> <p>12 of the policy would not be within my -- kind of my</p> <p>13 statement of work.</p> <p>14 Q Okay. Okay. And then if we could go</p> <p>15 to paragraph 6, could you just read the -- the</p> <p>16 first sentence for me?</p> <p>17 A After adoption of the tiered relief</p> <p>18 methodology discussed in the policy statement, FSA</p> <p>19 resumed issuing decisions on pending borrower</p> <p>20 defense claims. If FSA determined that a borrower</p> <p>21 had submitted an application which met the</p> <p>22 requirements for a borrower defense discharge, FSA</p> <p>23 used the methodology described in the policy</p> <p>24 statement to determine the amount of relief that</p> <p>25 would be provided to the borrower.</p>

Page 122 Page	<p>1 Q Yeah, that's fine. Thank you.</p> <p>2 So FSA resumed issuing decisions. When</p> <p>3 did FSA cease making decisions on borrower defense</p> <p>4 applications?</p> <p>5 MR. HANCOCK: Objection: vague.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q You can still answer.</p> <p>8 A So I'm -- I'm trying to understand. Do</p> <p>9 you mean after this point in time when did we</p> <p>10 cease?</p> <p>11 Q So it says FSA resumed, so resumed is</p> <p>12 starting again. So when did FSA stop issuing</p> <p>13 decisions?</p> <p>14 A Oh, I -- I -- okay. Yeah, I</p> <p>15 understand. I think I understand your -- your</p> <p>16 question.</p> <p>17 If you mean prior to this time when</p> <p>18 were we making decisions and when did we stop, I</p> <p>19 believe we stopped based on my review of the facts</p> <p>20 and as I was told -- because during my time coming</p> <p>21 in in March, I looked into this and it was part of</p> <p>22 my education on borrower defense, that after the</p> <p>23 Manriquez case decision, that there were no more</p> <p>24 decisions being issued out of borrower defense.</p> <p>25 And, so, I don't know the exact time of</p>	Page 124 Page	<p>1 schools that you named, if they had cases that</p> <p>2 were sitting there ready to go out.</p> <p>3 Q Okay. But the injunction was still in</p> <p>4 place at that time?</p> <p>5 A So the cases for which -- the cases for</p> <p>6 which the injunction did not cover.</p> <p>7 Q Okay. And when you say resumed, does</p> <p>8 that include -- we spoke about this a bit before.</p> <p>9 Let me rephrase.</p> <p>10 Had both decisions on eligibility as to</p> <p>11 Step 1 as we talked about it, and relief, Step 2</p> <p>12 as we talked about it, ceased?</p> <p>13 MR. HANCOCK: Objection: vague.</p> <p>14 THE WITNESS: I --</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q You can still answer.</p> <p>17 A So had -- had decisions -- had</p> <p>18 decisions for borrower defense cases ceased until</p> <p>19 the point in this statement when I said resumed?</p> <p>20 Is that the question? I'm trying to</p> <p>21 make sure I understand your question.</p> <p>22 Q Yeah.</p> <p>23 So when you say -- so we established</p> <p>24 that decisions had stopped, had ceased, and --</p> <p>25 before this new methodology came out. And was it</p>
Page 123 Page	<p>1 that, but whatever the timing of that court order</p> <p>2 was is -- is my understanding of when borrower</p> <p>3 defense stopped.</p> <p>4 And, so, that was already in process</p> <p>5 when I took my position in March of 2019.</p> <p>6 Q Okay. And, so, did the decision stop</p> <p>7 on both Corinthian students' applications and</p> <p>8 non-Corinthian students' applications?</p> <p>9 A So I'm now talking about my</p> <p>10 understanding of it. I was not there when the</p> <p>11 original Manriquez case decision was made, but no</p> <p>12 decisions were going out to my knowledge in March</p> <p>13 of 2019.</p> <p>14 So that would have been, you know,</p> <p>15 whatever is -- no decisions were going out.</p> <p>16 Q Okay. When you say FSA resumed issuing</p> <p>17 decisions, was that decisions on all pending</p> <p>18 borrower defense applications including both</p> <p>19 Corinthian and non-Corinthian?</p> <p>20 A What -- what I mean in that statement</p> <p>21 is that all decisions, depending on which ones</p> <p>22 were -- were right for -- for being made, right,</p> <p>23 those that had been -- cases that had been</p> <p>24 adjudicated and decisions were ready to go out,</p> <p>25 and there was a methodology to use in all of those</p>	Page 125 Page	<p>1 both decisions as related -- determinations on</p> <p>2 eligibility, so whether someone was eligible for</p> <p>3 borrower defense, and also how much relief they</p> <p>4 were owed?</p> <p>5 A Right. So, ma'am, again, Step 1</p> <p>6 involves a case coming in being adjudicated by a</p> <p>7 borrower defense attorney, and then through that</p> <p>8 process determining if a claimant is eligible or</p> <p>9 ineligible for borrower defense, a defense for</p> <p>10 relief.</p> <p>11 That first part, that Step 1 part,</p> <p>12 which I think you are describing in this question,</p> <p>13 again has never stopped. And, so, it never</p> <p>14 stopped.</p> <p>15 And, so, when I said resumed, I'm</p> <p>16 talking about completing the process through Step</p> <p>17 2 as I'm defining it, which means the ability to</p> <p>18 issue a determination to a borrower because now</p> <p>19 you have a relief methodology.</p> <p>20 So it goes back to our discussion</p> <p>21 earlier about Step 1 and Step 2.</p> <p>22 Q Okay. And do you know -- did you know</p> <p>23 how many Step 1 decisions were being made during</p> <p>24 that time from June 2018 to December 2019?</p> <p>25 A I can't -- I can't recall. You mean,</p>

<p style="text-align: right;">Page 126 Page</p> <p>1 what was their level of activity, how many they 2 were getting through? 3 Q Uh-huh. Yeah. 4 A I don't -- I don't recall all of the 5 numbers because the focus was on getting in enough 6 attorneys to do significantly more. I can't -- I 7 can't recall exactly how many, the 10 to 12 8 attorneys and those folks, were getting through a 9 week. But I'm sure it wasn't enough which is why 10 we needed more people. 11 Q And were those numbers being reported 12 to you? 13 A I don't recall having those numbers 14 reported to me. At the time, my interest was on 15 building up the resources because I thought that 16 had to come first before the numbers would be 17 significant. 18 Q Okay. So how did you know Step 1 19 decisions were still being made? 20 A As I -- as I said earlier, when I came 21 in in March, I went through an educational process 22 with the borrower defense unit in which they 23 explained to me how borrower defense worked. And 24 part of it was that what you're describing as Step 25 1 which is borrower defense cases coming in, being</p>	<p style="text-align: right;">Page 128 Page</p> <p>1 memorandum signed by DeVos issued in mid November 2 which instructs department officials to resume 3 issuing decisions on some roughly 227,000 pending 4 applications. 5 Are you familiar with this memorandum? 6 A Can I just ask what you -- so I'm 7 looking at the article, and I'm trying to figure 8 out where you're -- where you're looking at. 9 Q I'm sorry. Yeah, so on the second page 10 at the bottom of the page, it says, The memo, 11 comma, which was signed? 12 A (Witness reviews document.) 13 So the article that I have is entitled, 14 Trump Administration Hires McKinsey to Evaluate 15 Student-Loan Portfolio. 16 Is that the one you're referencing? 17 Q No. No, that's not. 18 A So what, six is what got out of section 19 16? 20 Q Seventeen. 21 A POLITICO article? 22 Q Yes, that's right. 23 A I think we may have had them -- I got 24 you. So this is entitled, POLITICO: DeVos Orders 25 Partial Loan Relief for Many Duped Student</p>
<p style="text-align: right;">Page 127 Page</p> <p>1 adjudicated by lawyers, how far they can go before 2 they have to sit because they don't have the step 3 two things in place was a part of our discussions 4 in learning there. And some of my folks told me 5 that they were continuing to adjudicate cases, but 6 that those cases could not go out. And that had 7 something to do with the numbers that I was 8 seeing. 9 Q Okay. 10 A Okay. 11 Q And when you say folks, who was that? 12 A I use the term "folks" to describe any 13 of the 1,453 people that were in Federal Student 14 Aid. I consider them all my folks, my team that 15 does work. So when I use that term, I'm talking 16 about partner participation and oversight and 17 their subordinate unit, the borrower defense team. 18 Q Okay. Could we turn to Exhibit 17. 19 (Exhibit 17 referred to.) 20 THE WITNESS: I have a newspaper 21 article. 22 BY MS. TORCHIANA: 23 Q Yes, that's right. 24 Could you turn to the second page? At 25 the bottom of the page the article describes a</p>	<p style="text-align: right;">Page 129 Page</p> <p>1 Borrowers? 2 Q Yes, that's right. 3 So if you turn to the second page, so 4 after the cover, at the bottom of the second page? 5 A Right. The memo, which was signed by 6 DeVos in mid-November and hasn't been reported 7 previously, instructs department officials to 8 resume issuing decisions on some of the 227,000 9 pending applications filed by borrowers seeking 10 debt relief. That process has been stalled for 11 the past 18 months. 12 Q Yes. 13 Are you familiar with this memorandum? 14 A So I think this is an art- -- this is 15 an article that Politico writes and I can't -- I'm 16 not sure what Mr. Stafford is referring to. 17 We have -- we did have guidance so 18 maybe that's -- maybe he's referring to something 19 I'm not familiar with. I'm not saying it doesn't 20 exist, but I don't know what Mr. Stafford is 21 referring to. I don't believe we're sourced in 22 this article. I think we -- at least from what I 23 can tell. 24 Q Okay. So was there some kind of 25 memorandum signed by DeVos that instructed the</p>

Page 130 Page	<p>1 borrower officials to start issuing decisions</p> <p>2 again that was signed in mid-November?</p> <p>3 Does that ring a bell or --</p> <p>4 A I believe that we had -- we had</p> <p>5 guidance to begin processing claims and -- and --</p> <p>6 but I -- I don't know if I can -- you know, I</p> <p>7 could not recall an exact memo or take you to an</p> <p>8 exact memo, but I'm certain we had guidance, and</p> <p>9 we began in December of 2019.</p> <p>10 Q Okay. And how did you receive that</p> <p>11 guidance?</p> <p>12 A That is what I can't remember</p> <p>13 specifically, but I'm certain that we -- that we</p> <p>14 had it. I'm sure that I knew from my</p> <p>15 conversations with the under secretary, and so I'm</p> <p>16 sure that we had guidance because as I look at our</p> <p>17 numbers, we began December of 2019 to process</p> <p>18 claims as I said in my earlier statement.</p> <p>19 Q Okay. And just to be clear, this is --</p> <p>20 this is Exhibit 17 which is already marked. So --</p> <p>21 can you turn to the fifth page?</p> <p>22 A Okay.</p> <p>23 Q And it starts with, The ten-page memo.</p> <p>24 A Right.</p> <p>25 Q And could you just read that sentence</p>	Page 132 Page	<p>1 But I would -- at least as it's written</p> <p>2 here by Mr. Stratford, it says that I came up with</p> <p>3 the -- that I wrote the policy. I don't do that.</p> <p>4 I wouldn't be allowed to do that.</p> <p>5 Q Okay. So after instructions were given</p> <p>6 to resume on issuing decisions, what happened in</p> <p>7 the BDU? Did those decisions start going out</p> <p>8 right away or how long did it take for those</p> <p>9 decisions to start going out?</p> <p>10 MR. HANCOCK: Objection: compound.</p> <p>11 THE WITNESS: So if I understand you,</p> <p>12 once we had a policy in place in December, did the</p> <p>13 BD unit immediately go to work; is that your</p> <p>14 question?</p> <p>15 Are you saying how soon?</p> <p>16 BY MS. TORCHIANA:</p> <p>17 Q What happened after these instructions</p> <p>18 were issued to resume decisions?</p> <p>19 A Well, once the --</p> <p>20 Q You can go chronologically.</p> <p>21 A So I can't talk specifically to the</p> <p>22 instructions that are noted in this -- this</p> <p>23 letter, so I'm not -- I'm not totally familiar</p> <p>24 with exactly what Mr. Stafford is talking about.</p> <p>25 But if -- but if you mean when a relief</p>
Page 131 Page	<p>1 for me?</p> <p>2 A It says, The ten-page memo was prepared</p> <p>3 by Diane Auer Jones, a top advisor on higher</p> <p>4 education issues, and Mark Brown, who leads the</p> <p>5 department's Office of Federal Student Aid. The</p> <p>6 new policy, they wrote, will allow the education</p> <p>7 department to resolve claims in an efficient, fair</p> <p>8 and predictable manner that doles out federal loan</p> <p>9 forgiveness in line with the financial harm that</p> <p>10 borrowers are estimated to have suffered.</p> <p>11 Q Okay. And do you remember what you</p> <p>12 wrote in that memo or what the contents of that</p> <p>13 memo are?</p> <p>14 A So I'm not prepared to say that the</p> <p>15 premise of this statement is correct.</p> <p>16 Q Okay. What is incorrect about it?</p> <p>17 A I don't write policy memos.</p> <p>18 Q Okay. And do you -- so did you ever</p> <p>19 prepare a memo with Diane Auer Jones?</p> <p>20 A We may have -- if you mean -- if you</p> <p>21 mean did I -- did I sign off on the data that we</p> <p>22 would provide or something like that, that --</p> <p>23 that's very possible because we would provide the</p> <p>24 data that would have input to the -- to the</p> <p>25 policy.</p>	Page 133 Page	<p>1 methodology was determined, which is December, the</p> <p>2 borrower defense unit began to release cases,</p> <p>3 notify borrowers. They were not at full capacity</p> <p>4 yet in terms of numbers of people, but they did</p> <p>5 their work. They went to work to continue to</p> <p>6 adjudicate cases, but to also do notifications</p> <p>7 when appropriate.</p> <p>8 Q Okay. And then if you -- I'm sorry.</p> <p>9 I'm just reading this.</p> <p>10 So if you turn the page and go to</p> <p>11 page 6, it says -- could you read the beginning of</p> <p>12 the last paragraph?</p> <p>13 MR. HANCOCK: I'm sorry. Can we just</p> <p>14 clarify which page? There are page numbers that I</p> <p>15 can see, and so I just want to make sure we're</p> <p>16 looking at the same.</p> <p>17 MS. TORCHIANA: Yeah. On the</p> <p>18 electronic copy, let's see -- it would be the</p> <p>19 sixth page of the PDF.</p> <p>20 MR. HANCOCK: Okay. Thank you.</p> <p>21 THE WITNESS: Is the paragraph that</p> <p>22 you're referring to, does it start with, The</p> <p>23 department believes?</p> <p>24 BY MS. TORCHIANA:</p> <p>25 Q Yes.</p>

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<p>1 A The department believes that if it</p> <p>2 issued denials in advance of issuing approvals,</p> <p>3 borrowers could be confused and believe that the</p> <p>4 department would not be approving any claims,</p> <p>5 which is not the case, Jones wrote. Therefore, in</p> <p>6 order to prevent confusion or distress to</p> <p>7 borrowers who are eligible for relief, the</p> <p>8 department decided that it should not issue</p> <p>9 denials until it has a methodology in place that</p> <p>10 will allow it to issue approvals and relief.</p> <p>11 Q Okay. And do you agree with this</p> <p>12 statement?</p> <p>13 A I -- I agree that we were not issuing</p> <p>14 denials until we had a methodology so that we</p> <p>15 could do all at the same time, both approvals and</p> <p>16 denials. And if that is what is communicating</p> <p>17 here in -- in this quotation of Ms. Jones, then I</p> <p>18 agree with that.</p> <p>19 Q Okay. And do you think -- was there --</p> <p>20 was there any concern about causing any confusion</p> <p>21 or distress to borrowers who are not eligible for</p> <p>22 relief as far as you know?</p> <p>23 A I really could -- I mean, I don't -- I</p> <p>24 don't know. You mean was I concerned or --</p> <p>25 Q Sure.</p>	<p>1 policy eliminated anxiety or stopped any of the</p> <p>2 things that you noted because I could never say</p> <p>3 it. In total, I would have no way of knowing.</p> <p>4 MS. TORCHIANA: Can we take a short</p> <p>5 break and then get back on the record?</p> <p>6 MR. HANCOCK: Certainly. That would be</p> <p>7 fine. How long?</p> <p>8 THE VIDEOGRAPHER: We're now going off</p> <p>9 the record. The time is 19:05 UTC time.</p> <p>10 (Recess -- 2:05 p.m.)</p> <p>11 (After recess -- 2:20 p.m.)</p> <p>12 THE VIDEOGRAPHER: We're now back on</p> <p>13 the record. The time is 19:20 UTC time.</p> <p>14 MS. TORCHIANA: And before I get</p> <p>15 started, could I ask that we mark as Exhibit 27</p> <p>16 the FSA 2020 annual report which is bracketed 31?</p> <p>17 (Deposition Exhibit 27 was marked for</p> <p>18 identification and attached to the transcript.)</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q So if you could turn to -- back to your</p> <p>21 declaration which is behind tab 25, so Exhibit 25?</p> <p>22 A I have Exhibit 25.</p> <p>23 Q Okay. And in paragraph 7 you note that</p> <p>24 on December 11th, 2019, FSA issued a total of</p> <p>25 16,045 decisions on borrower defense claims and</p>
Page 135 Page	Page 137 Page
<p>1 Was your under- -- was the Department</p> <p>2 of Education concerned, was that a concern?</p> <p>3 MR. HANCOCK: Objection. Potentially</p> <p>4 calls for privileged, deliberative information.</p> <p>5 THE WITNESS: I -- I don't know, ma'am.</p> <p>6 I couldn't tell you how people are feeling. I</p> <p>7 couldn't -- I just -- I'm sorry. I don't know</p> <p>8 that.</p> <p>9 BY MS. TORCHIANA:</p> <p>10 Q And do you think generally since the</p> <p>11 department started issuing decisions again that</p> <p>12 confusion and distress has been avoided?</p> <p>13 A Do I -- do I think that confusion and</p> <p>14 distress has been avoided?</p> <p>15 Q Yes.</p> <p>16 A Because we were issuing borrower</p> <p>17 defense claims?</p> <p>18 Q Since you restarted issuing borrower</p> <p>19 defense claims?</p> <p>20 A I don't know. I would say I don't</p> <p>21 know, and I would just add that we've got</p> <p>22 43 million customers. And while I -- I do</p> <p>23 provide -- or I do listen to customers through our</p> <p>24 ombudsman and feedback and different sources, I</p> <p>25 would never make a statement that any particular</p>	<p>1 that 789 met the conditions for discharge.</p> <p>2 Do you know how many of those 789 that</p> <p>3 were approved were from either Corinthian or ITT?</p> <p>4 A I -- I don't know. I -- no, ma'am, I</p> <p>5 would not know off of the top of my head what the</p> <p>6 breakout of the 789 borrowers were in terms of</p> <p>7 schools they attended.</p> <p>8 Q Okay. And do you know if any -- since</p> <p>9 you've started, do you know if any approvals have</p> <p>10 gone out for schools other than ITT or Corinthian</p> <p>11 or for borrowers who attended schools other than</p> <p>12 ITT or Corinthian?</p> <p>13 A I would have to look at the data to</p> <p>14 be -- for -- and, so, I would not want to</p> <p>15 speculate, but we -- we do make public this --</p> <p>16 this kind of data, I think, at the macro level.</p> <p>17 But I wouldn't want to speculate on -- on exactly</p> <p>18 what schools have had approvals and disapprovals.</p> <p>19 I don't have those numbers memorized.</p> <p>20 Q Okay. And where -- if you wanted to</p> <p>21 check that data, where -- where would you get it</p> <p>22 from?</p> <p>23 A At the -- at the macro level we produce</p> <p>24 data for the public I think every month, and we</p> <p>25 publish it on our -- on our Web site, on our</p>

<p style="text-align: right;">Page 138 Page</p> <p>1 portal site, and we produce those reports that 2 talk about approvals and disapprovals and how many 3 borrower defense cases are there. 4 Q Okay. So it's public data how many 5 approvals there have been for each school group? 6 A Well, I'm not sure, and again I would 7 have to actually look at a borrower defense report 8 to tell you the details of it. But that isn't 9 anything that I think that we keep insulated into 10 the organization. We -- I think we publish 11 borrower defense (audio distortion) reports. 12 THE COURT REPORTER: I'm sorry. You 13 said, "I think we publish borrower defense," and 14 then you cut out on me. 15 THE WITNESS: Reports. We publish 16 borrower defense reports. 17 BY MS. TORCHIANA: 18 Q If you go to paragraph 8, it says, FSA 19 in the process of issuing an additional 1,000 20 decisions and anticipates issuing thousands more 21 in the next several weeks on a rolling basis. 22 So how -- how are these numbers set? 23 MR. HANCOCK: Objection: vague. 24 BY MS. TORCHIANA: 25 Q How does the number of 1,000 additional</p>	<p style="text-align: right;">Page 140 Page</p> <p>1 December 2019 -- we were looking at just that. 2 Q Okay. And, so, who -- okay. And did 3 you set performance metrics for how many decisions 4 were going to go out in -- in the weeks following 5 December 2019? 6 A So as I -- as I said earlier, we -- we 7 have -- we had metrics performance for every part 8 of the -- the performance-based organization. 9 That's -- that's what we -- that's what we do. 10 But I think what you just said in your 11 question was did I set a metric for how many would 12 go out in December of 2019. 13 Q No, after -- after December 2019. 14 A If -- if I were to set a metric, it 15 wouldn't be for a month, right. I mean, if you 16 mean did we have goals to meet. I'm trying to 17 understand your question, ma'am. 18 Q I don't just mean in a month. I mean 19 going forward after December 2019 -- 20 A I don't know -- I don't know if we had 21 the metrics established that early. I don't know. 22 I'd have to go back and look. So to answer your 23 question, I can't tell you that there was a metric 24 in December 2019 of how many we would do each 25 month for the remainder of the year. I don't know</p>
<p style="text-align: right;">Page 139 Page</p> <p>1 decisions set and the anticipation -- or -- let's 2 just start with that? 3 A When you say "set," you mean why would 4 we use that number? 5 Q Yeah. 6 A So we know how many claims that we 7 have. We know how many are pending decisions. We 8 know how many have been adjudicated thus far, and 9 I think what you see here in this statement in 10 paragraph 8 is our anticipation that when a 11 certain number will be at the next stage of the 12 process. 13 So if an attorney had completed 14 adjudication and it was in the band and ready to 15 go, it would be -- you know, we would be able to 16 look at that and say that fairly soon we will 17 have, you know, more decisions on these thousand 18 and then, you know, could look at how many more 19 you have coming and how many attorneys you have, 20 and you can tell it at about what rate you'll be 21 able to go at that point in time with the amount 22 of resources that you have at that point in time. 23 I believe when I made this statement in 24 this particular declaration, which is at the very 25 beginning of the reissuance -- it's in</p>	<p style="text-align: right;">Page 141 Page</p> <p>1 that we were mature enough in the process at that 2 point to have done that. 3 Somewhere along that road, though, we 4 did establish metrics and measurements for the 5 borrower defense team to work toward. 6 Q Okay. Could you turn to tab 32 in your 7 hard copies? And that's document 145. 8 MS. TORCHIANA: And could we mark that 9 as Exhibit 28? 10 (Deposition Exhibit 28 was marked for 11 identification and attached to the transcript.) 12 THE WITNESS: Yes, I have it. 13 BY MS. TORCHIANA: 14 Q Okay. And do you recognize this 15 document? 16 A (Witness reviews document.) 17 This is a declaration that I signed. 18 Q And did you write it? 19 A As I -- as I said earlier, I don't 20 actually write all the declarations. These are 21 done in conjunction with counsel. 22 Q Okay. And that's your signature on 23 page 3? 24 A That is my signature. 25 Q I'm sorry. I turned to the -- I turned</p>

Page 142 Page	<p>1 to the wrong one. I meant -- we'll get back to</p> <p>2 that one later. I meant to go to tab 27.</p> <p>3 MS. TORCHIANA: And if we can mark that</p> <p>4 as Exhibit 29.</p> <p>5 (Deposition Exhibit 29 was marked for</p> <p>6 identification and attached to the transcript.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. And do you recognize this</p> <p>10 document?</p> <p>11 A (Witness reviews document.)</p> <p>12 I believe this is my -- this is my</p> <p>13 declaration.</p> <p>14 Q Okay. And did you write it?</p> <p>15 A As I stated earlier, the -- I do these</p> <p>16 in consultation with counsel.</p> <p>17 Q Okay. Okay. If you turn to</p> <p>18 paragraph 6 -- that's on page 4 --</p> <p>19 A So I -- paragraph 6; right? Yeah. On</p> <p>20 page -- oh, I think we have different page numbers</p> <p>21 on the top and the bottom, so you read the number</p> <p>22 that are on the top of the page?</p> <p>23 Q Uh-huh.</p> <p>24 A I have paragraph 6. You're good.</p> <p>25 Q And this describes the hiring that</p>	Page 144 Page	<p>1 there --</p> <p>2 A I believe it is two years.</p> <p>3 Q Okay. And have you hired any new</p> <p>4 attorneys since -- since you wrote this?</p> <p>5 A So there -- there may have been a few</p> <p>6 more attorneys hired since this -- since this</p> <p>7 date. I can't say exactly, but we may have -- we</p> <p>8 may have brought a few more on because I believe</p> <p>9 this has a number, like, 452. We may be at 54 if</p> <p>10 a couple were not on board yet when this was</p> <p>11 written.</p> <p>12 Q When you said -- you said we made the</p> <p>13 decision to hire more attorneys, who do you mean</p> <p>14 by "we"?</p> <p>15 A No, ma'am. I said I made the decision</p> <p>16 to hire more attorneys. I asked the -- I said I</p> <p>17 asked the Department of Education. They said yes.</p> <p>18 Q And who did -- who did you ask at the</p> <p>19 Department of Education?</p> <p>20 MR. HANCOCK: Objection: asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: So as I -- as I said</p> <p>23 earlier, I asked more than one person as I</p> <p>24 explained where we were in borrower defense. That</p> <p>25 included the under secretary; that included the</p>
Page 143 Page	<p>1 you -- that the BDU did in September of 2019. So</p> <p>2 we talked about this a little bit before, but when</p> <p>3 was the decision to hire more new term attorneys</p> <p>4 made?</p> <p>5 A So I don't know the exact time, but</p> <p>6 somewhere soon after I was in office in March of</p> <p>7 2019, somewhere in the next couple of months, we</p> <p>8 made the decision to -- we had approval to hire</p> <p>9 new attorneys, and we went through the process of</p> <p>10 recruiting and doing all the things that I</p> <p>11 mentioned earlier to bring them on board.</p> <p>12 Q Okay. And who made the decision to</p> <p>13 hire more attorneys?</p> <p>14 A I made the decision to hire more</p> <p>15 attorneys once I had approval from the -- from the</p> <p>16 department.</p> <p>17 Q Okay.</p> <p>18 A As I -- as I stated earlier, I made a</p> <p>19 request to the department and they said yes.</p> <p>20 Q Okay. And are these employees</p> <p>21 full-time?</p> <p>22 A The term "term," they work full-time,</p> <p>23 but it doesn't mean forever. They are for a</p> <p>24 specific term.</p> <p>25 Q Okay. And what is the term? Is</p>	Page 145 Page	<p>1 secretary and the human resources folks who deal</p> <p>2 with these kinds of things.</p> <p>3 BY MS. TORCHIANA:</p> <p>4 Q Okay. And what was their response?</p> <p>5 A As I said earlier, they said yes.</p> <p>6 Q Okay. And do you know -- had there</p> <p>7 been any requests before you made the request to</p> <p>8 hire more attorneys?</p> <p>9 MR. HANCOCK: Objection: asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: As I said earlier -- as I</p> <p>12 said earlier, I'm not -- I'm not aware of any --</p> <p>13 any specific things that may have occurred like</p> <p>14 that before I -- before I got here.</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q Okay. And was the -- what were some of</p> <p>17 the priorities that were represented to these new</p> <p>18 hires, these new staff attorneys?</p> <p>19 MR. HANCOCK: Objection: vague.</p> <p>20 THE WITNESS: I -- I don't know if I</p> <p>21 under- -- I don't know if I understand your</p> <p>22 question. You mean when we brought on new term</p> <p>23 attorneys, you're asking what we told them or what</p> <p>24 we --</p> <p>25 BY MS. TORCHIANA:</p>

Page 146 Page	1 Q Yeah. 2 A -- told them our plans were? 3 Q Yes. 4 A So, ma'am, the way we're organized is 5 I'm the chief operating officer, and I have a 6 deputy chief of partner participation and 7 oversight, and the borrower defense unit works for 8 the partner participation and oversight, and we 9 have a borrower defense team lead and then there 10 are other supervisors in borrower defense. 11 So a line attorney, a brand new 12 attorney, I would not sit down and give them 13 priorities. So I wasn't in a conversation where I 14 sat down with new attorneys and said these are 15 your priorities. If that's the question you're 16 asking, that would not have been something that I 17 would have done. 18 Q Okay. And do you know if reducing the 19 backlog was represented as a priority to these new 20 employees? 21 A I don't know. I -- again, that's just 22 not something that I would have -- I would have -- 23 I would have done. 24 Q Okay. Why did you want to hire more 25 attorneys?	Page 148 Page	1 system to -- to generate the letter that would go 2 out to the individual, and then that has to 3 correlate with the loan servicer somewhere in the 4 country, and that has to correlate to a loan 5 number, and that loan number has a promissory 6 note, and the promissory note has to be reduced by 7 the amount if the loan has been forgiven, and then 8 that has to all be reconciled. 9 So this -- what we're calling in 10 general this administrative process is -- is a 11 very long and convoluted process that you have to 12 assign people to to manage it as well as 13 contractors and other folks because -- because 14 there are so many -- there are so many of these 15 that it doesn't work on autopilot and you have to 16 do those kind of things to manage it. 17 Q Okay. And how many -- 18 A Hundreds of these. 19 Q So you say you hired three employees. 20 How many attorneys work on the -- on the 21 administrative processing end of distributing 22 those letters? 23 A So we hire attorneys to adjudicate 24 cases. These three people are not attorneys. 25 Q Okay. How many employees work on
Page 147 Page	1 A So we wanted to hire more attorneys 2 because we needed more based on the -- the amount 3 of work that was inside of borrower defense, the 4 number of cases. 5 Q Okay. And in the next paragraph, you 6 say that FSA hired three employees to focus on the 7 administrative process end of distributing the 8 decision letters. 9 What does that mean? What do you mean 10 by "the administrative process end"? 11 A So once a -- once a decision has been 12 made on a -- on a borrower defense case, and by 13 that, I mean we've gone through what we have 14 described earlier as Step 1 and we have gone 15 through what we called earlier Step 2, the second 16 part of Step 2 is that the borrower must be 17 notified of the decision. And -- and if we took 18 the scenario where the loan was forgiven or -- or 19 reduced by a certain percentage, there is a -- a 20 long administrative tail to that. 21 There is a -- you know, if you read 22 this on the face, it sounds like we're typing up a 23 letter or writing a letter and that's it, but when 24 you're talking about mass numbers like what we 25 have here, we have to have this loaded into a	Page 149 Page	1 distributing the letters? 2 A I don't know that exact number. It's 3 more than three. That's three additional people. 4 And, ma'am, to understand -- to understand this, 5 we have -- we have contractors; we have contract 6 support; and we have call centers. It's a large 7 operation. 8 So when I say three people, I don't 9 mean three people and those three people are going 10 to put out all of the letters and notifications. 11 That's -- that's not what that means. That means 12 those three people are going to orchestrate a 13 very, very large process and there are a lot of 14 people in a lot of different places that make it 15 actually -- that actually make it happen. 16 So how many people are involved in the 17 administrative process? You know, I would -- I 18 would have to go back and it would be a range 19 of -- you know, it would be a range of folks, and 20 depending on how you wanted to count them. If you 21 want to count the contractors or government 22 employees, it would just depend, to include loan 23 servicers who ultimately take the action against 24 the loan. 25 Q Okay. Okay. And then in paragraph 8

Page 150 Page	<p>1 you explain that the increase of personnel within</p> <p>2 the BDU has enabled FSA to substantially increase</p> <p>3 the volume of borrower defense decisions it has</p> <p>4 issued.</p> <p>5 And, so, if that's the case, why didn't</p> <p>6 FSA increase its staffing earlier?</p> <p>7 A I would not be able -- when you say</p> <p>8 "earlier," do you mean before March of 2019 when I</p> <p>9 became the chief operating officer?</p> <p>10 Q Before -- before the increased</p> <p>11 personnel happened.</p> <p>12 A So for me, the period that I can talk</p> <p>13 about, we did it immediately -- started increasing</p> <p>14 personnel immediately, but it took time to build</p> <p>15 them up.</p> <p>16 So, in other words, if you tell me in</p> <p>17 April or May -- or April that I have approval to</p> <p>18 hire attorneys and I go out and hire them, I don't</p> <p>19 know if you're familiar with government hiring,</p> <p>20 but you have to have a security clearance, and --</p> <p>21 and you have to go through our process. You have</p> <p>22 to fill out an application to -- there are a</p> <p>23 number of things you have to do that are very</p> <p>24 bureaucratic. We simply don't pick a person, hire</p> <p>25 them and they come to work the next day.</p>	Page 152 Page	<p>1 throughout FSA for what would -- I would call the</p> <p>2 whole picture here of the process by which</p> <p>3 there's -- the ones I referenced in this statement</p> <p>4 when I said three additional people came on, they</p> <p>5 aren't counted in the attorney numbers.</p> <p>6 So the attorneys came on and -- and</p> <p>7 they helped in the first part what you're calling</p> <p>8 Step 1 of the process, and -- and there were</p> <p>9 others with different specialties that helped with</p> <p>10 Step 2 of the process to help get this done.</p> <p>11 Q Okay. And -- and do any of these</p> <p>12 attorneys make any Step 2 determinations?</p> <p>13 A So I don't -- I can't speak to all of</p> <p>14 the internal workings of the borrower defense</p> <p>15 team, not with any specificity.</p> <p>16 I can -- I can tell you that in general</p> <p>17 that there are two different types of things going</p> <p>18 on, and in Step 1 is purely attorneys for the most</p> <p>19 part, right, that are adjudicating cases because</p> <p>20 you have to have an attorney do that. But letter</p> <p>21 preparation, the computation of relief using the</p> <p>22 methodology, the administrative process of getting</p> <p>23 a letter prepared to go through our digital</p> <p>24 platform and loading them up on our systems, and</p> <p>25 then the oversight of those who do that contract</p>
Page 151 Page	<p>1 So I think it is -- it was done in what</p> <p>2 I would consider immediately in the period of time</p> <p>3 that I can talk about, which is beginning in March</p> <p>4 of 2019. That's the period of time I can speak to</p> <p>5 directly. It was done immediately. It doesn't</p> <p>6 mean they arrived immediately.</p> <p>7 Q Okay. And you mentioned that, as I</p> <p>8 understand it, Step 1 -- before you -- you</p> <p>9 increased this hiring, Step 1 adjudications were</p> <p>10 still continuing; is that right?</p> <p>11 A Yes, as I -- as I said earlier, the</p> <p>12 Step 1 process, which is the claim coming in,</p> <p>13 being adjudicated, has never stopped to my</p> <p>14 knowledge.</p> <p>15 Q Okay. And, so, were all -- when you</p> <p>16 hired all these new attorneys, were they still</p> <p>17 working on Step 1 or was it -- I guess were you</p> <p>18 increasing capacity both for Step 1 and Step 2?</p> <p>19 A So we -- we are -- you are asking about</p> <p>20 what the attorneys were hired for?</p> <p>21 Q Yeah.</p> <p>22 A They were -- they were hired to</p> <p>23 adjudicate cases. And in this particular document</p> <p>24 in your statement, the conversation is limited to</p> <p>25 the attorneys, but we increased personnel</p>	Page 153 Page	<p>1 work are not attorneys.</p> <p>2 So if you -- if you attribute the</p> <p>3 increase to -- to something it would -- and you're</p> <p>4 dividing this into steps, it's Step 1 that</p> <p>5 increased (audio distortion) attorneys for (audio</p> <p>6 distortion.)</p> <p>7 Q Okay. So just to be clear, do</p> <p>8 attorneys make any Step 2 adjudication decisions?</p> <p>9 A So I want to define Step 2 to make sure</p> <p>10 you and I are saying the same thing.</p> <p>11 Q Do attorneys make any determination</p> <p>12 about the percentage of relief that a borrower --</p> <p>13 that a borrower will get?</p> <p>14 A So I would -- I would not call Step 2</p> <p>15 determination. I -- I would call Step 2</p> <p>16 computation because they are not determining --</p> <p>17 they're not picking winners and losers or</p> <p>18 percentages. They're computing a methodology that</p> <p>19 was given to them as a policy document from the</p> <p>20 department. Whatever the number comes out to be,</p> <p>21 as long as they're compliant with the methodology,</p> <p>22 that's it. They're not -- they're not making</p> <p>23 determinations in that sense.</p> <p>24 Q Okay.</p> <p>25 A They're technicians performing</p>

Page 154 Page	<p>1 computations, and I think there's a difference.</p> <p>2 Q So who -- who performs those</p> <p>3 computations?</p> <p>4 A Policy liaison and technicians that</p> <p>5 work within the policy liaison teams, the data</p> <p>6 people.</p> <p>7 Q Okay. And -- and, so -- well, I</p> <p>8 suppose if -- if you're saying what all the</p> <p>9 attorneys do is adjudication and Step 1 had been</p> <p>10 continuing -- had never stopped, why -- why did</p> <p>11 the BDU need more attorneys?</p> <p>12 MR. HANCOCK: Objection: misstates</p> <p>13 testimony.</p> <p>14 THE WITNESS: So is your question why</p> <p>15 does BDU need more attorneys?</p> <p>16 BY MS. TORCHIANA:</p> <p>17 Q Yes.</p> <p>18 Why did the BDU need more attorneys?</p> <p>19 A Because the volume of claims coming in</p> <p>20 exceeded the capacity of 10 to 12 attorneys within</p> <p>21 any reasonable workday. So if you're receiving</p> <p>22 2,000-plus claims a week -- and sometimes it was</p> <p>23 more than that -- and you have 12 attorneys -- 10</p> <p>24 to 12 attorneys, they can't move that volume.</p> <p>25 They were not built for that many cases; that</p>	Page 156 Page	<p>1 schedule.</p> <p>2 And in the case of the BD attorneys,</p> <p>3 you saw decisions and then buildup based on all</p> <p>4 those required processes. So as I said earlier,</p> <p>5 we did begin immediately, and what you see in the</p> <p>6 numbers is just that, but the process bringing</p> <p>7 these attorneys on as -- as time would -- would</p> <p>8 enable it to, given the requirements of working</p> <p>9 for the federal government.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q Okay. And would you say before this</p> <p>12 increase of personnel within the BDU, were there</p> <p>13 not enough attorneys to adjudicate the number of</p> <p>14 claims coming in?</p> <p>15 MR. HANCOCK: Objection: asked and</p> <p>16 answered. We've covered this ground a few times</p> <p>17 now.</p> <p>18 THE WITNESS: Yeah, again I'd just say</p> <p>19 yes. I don't know what happened before March of</p> <p>20 2019, ma'am.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Okay. If you turn to the next</p> <p>23 paragraph, paragraph 9, you say that the</p> <p>24 department has issued significantly more decisions</p> <p>25 finding BD applications ineligible than finding</p>
Page 155 Page	<p>1 number was not appropriate for that many cases.</p> <p>2 So why was there a need for more</p> <p>3 attorneys? Like with any organization, we were</p> <p>4 sizing the workforce to the volume of the work.</p> <p>5 Q Okay. So why did FSA wait until, you</p> <p>6 know, about September 2019 or so to hire more</p> <p>7 attorneys?</p> <p>8 MR. HANCOCK: Objection: misstates the</p> <p>9 testimony and asked and answered.</p> <p>10 THE WITNESS: So if you decide in March</p> <p>11 or April and you have approval to hire employees,</p> <p>12 you start then. They may not physically be on</p> <p>13 board until September because government hiring</p> <p>14 just simply is not as quick as you may think. It</p> <p>15 takes several months. For you to work for Federal</p> <p>16 Student Aid, you have to pass a security</p> <p>17 background check which covers your whole life from</p> <p>18 the time that you were 18 until you get done. You</p> <p>19 have to tell them every address that you worked</p> <p>20 at. It's a -- it's a full background check.</p> <p>21 And -- and then assuming that process</p> <p>22 is successful, we then can make an offer to you</p> <p>23 and establish a date. That process alone can be a</p> <p>24 three- or four-month process. So I can hire you</p> <p>25 in March, and if you arrive in July, I'm on</p>	Page 157 Page	<p>1 them eligible. This is the result of the</p> <p>2 department's strategy to prioritize adjudicating</p> <p>3 and issuing decisions on applications with little</p> <p>4 or no relevant evidence.</p> <p>5 So how would you determine what is an</p> <p>6 application with little or no relevant evidence?</p> <p>7 A As the chief operating officer of</p> <p>8 Federal Student Aid, I don't adjudicate borrower</p> <p>9 defense claims. So what we mean by that statement</p> <p>10 is not how I would determine that. I would not.</p> <p>11 I don't adjudicate borrower defense claims.</p> <p>12 I would -- that is an appropriate</p> <p>13 question, I think, for one of the borrower defense</p> <p>14 attorneys who -- whose job is to review the</p> <p>15 available evidence and in what we have been</p> <p>16 calling to date to determine if -- if there is</p> <p>17 evidence sufficient enough to use.</p> <p>18 Q Okay. And would you say from your</p> <p>19 understanding did the 15,256 denials that were</p> <p>20 issued in December 2019 -- were those all from</p> <p>21 applications with little or no relevant evidence?</p> <p>22 A I don't know that they all had little</p> <p>23 or no relevant evidence. I just know at the time</p> <p>24 of this report they had been determined to be</p> <p>25 ineligible. In -- in the report, I don't -- I</p>

<p style="text-align: right;">Page 158 Page</p> <p>1 can't tell you if each one of those cases had -- 2 certainly I couldn't tell you if all of them had 3 little to no evidence. I -- I simply don't know. 4 I could only tell you that they were 5 accounted for as ineligible in our system which 6 is -- which is how I would have been able to write 7 or -- or sign and agree to this -- that number in 8 this report. 9 Q Okay. And do you know what the 10 reasoning was to not issue decisions -- denials on 11 applications with little or no relevant evidence 12 until December 2019? 13 A Could I just ask you to say that one 14 again? I lost some of it, I think. 15 Q Yeah. 16 What was the reasoning on not issuing 17 decisions until December 2019 on applications with 18 little or no relevant evidence? 19 A For -- for all -- for all applications, 20 as I stated earlier, the decision was to wait 21 until we had a methodology developed and to issue 22 decisions, both eligible and ineligible, once that 23 methodology had been produced. And that 24 methodology was produced, as you said earlier, in 25 around that time frame when we started reissuing</p>	<p style="text-align: right;">Page 160 Page</p> <p>1 answer your question which is -- which is who made 2 it and when they made it and that kind of thing. 3 Q Okay. In paragraph 11, you say, The 4 department may find a claim ineligible when it is 5 not supported by sufficient evidence. 6 And, so, could you tell me what -- what 7 FSA considers sufficient evidence? 8 A So I -- I would not want to, you know, 9 speak on behalf of the attorneys. I'm not -- I'm 10 not an attorney. And, so, the -- the measurement 11 of evidence that qualifies and doesn't qualify 12 those kind of things are within the internal 13 workings of borrower defense. I wouldn't be in a 14 position to tell you, ma'am. 15 Q And do you know -- have you heard of a 16 policy within FSA that a signed declaration with a 17 firsthand account is not considered sufficient 18 evidence on its own? 19 A Can you say that again, ma'am? A 20 signed what? 21 Q A signed -- a signed declaration by a 22 borrower is not considered sufficient evidence on 23 its own? 24 A Right. I -- I couldn't -- I'm sorry. 25 I couldn't talk to you about that. I -- I</p>
<p style="text-align: right;">Page 159 Page</p> <p>1 decisions in December of 2019. 2 Q Okay. And you said -- whose decision 3 did you say that was? 4 MR. HANCOCK: Objection: asked and 5 answered. 6 THE WITNESS: You're asking me whose 7 decision was it to begin issuing decisions? 8 BY MS. TORCHIANA: 9 Q To not issue any decisions? 10 A To not issue any decisions. That was 11 the department's decision to wait until the 12 methodology was -- was developed. 13 Q Yes, but -- but whose decision in the 14 department was it to wait until the methodology 15 was developed? 16 MR. HANCOCK: Objection: asked and 17 answered. This question has been asked and 18 answered at least three times at this point. 19 BY MS. TORCHIANA: 20 Q You can still answer. 21 A Yeah, the -- I don't -- I don't know 22 all the inner workings and the conversations of 23 various department officials. I can say that the 24 under secretary relays those decisions to Federal 25 Student Aid, but I can't tell you -- I can't</p>	<p style="text-align: right;">Page 161 Page</p> <p>1 wouldn't know. I couldn't opine even on -- on all 2 of the -- what I would call the legal decisions of 3 adjudicating the claim and determining what 4 evidence rises to the right level to be included, 5 but that would be an appropriate question, I 6 think, for our -- for the internal workings of our 7 borrower defense team. 8 Q And would you think that something -- 9 that if a borrower signs something under penalty 10 of perjury that that should count as evidence? 11 A I -- I wouldn't have an opinion on that 12 one way or the other. I would -- I would allow 13 those trained in the legal aspects of what -- what 14 counts, what doesn't count, what's permissible, 15 what's not permissible, what rises to the right 16 level, all those variety of questions would be a 17 part of what the trained attorney would do in -- 18 during their adjudication. They would determine 19 that along with experienced attorneys that are 20 running the borrower defense unit. 21 So, again, I think it's an appropriate 22 question for the attorneys doing the work. 23 Q Okay. Okay. And if you could turn to 24 paragraph 14. You write, The department's 25 evaluation of, and decision on, any given borrower</p>

Page 162 Page	<p>1 defense application is an individual process.</p> <p>2 What do you mean by an individual</p> <p>3 process?</p> <p>4 A Can I have a second to reread this,</p> <p>5 ma'am?</p> <p>6 Q Yes.</p> <p>7 A (Witness reviews document.)</p> <p>8 Yes, ma'am. I -- what I mean in</p> <p>9 paragraph 14 is that each case on its individual</p> <p>10 merits and in its own adjudication, so cases are</p> <p>11 not the same. And, so, every case deserves to be</p> <p>12 adjudicated on its own merits by a qualified</p> <p>13 attorney, and that's why we needed to hire more</p> <p>14 attorneys because they -- they needed to do that,</p> <p>15 and that's what I was alluding to in paragraph 14.</p> <p>16 Q Would FSA ever do a -- a group</p> <p>17 discharge for a group of borrower defense</p> <p>18 applicants who all attended the same school during</p> <p>19 the same time periods?</p> <p>20 MR. HANCOCK: Objection: exceeds the</p> <p>21 scope of the court-ordered discovery.</p> <p>22 BY MS. TORCHIANA:</p> <p>23 Q You can still answer.</p> <p>24 A So I think you said would we ever --</p> <p>25 would we ever do it. I -- I wouldn't have an</p>	Page 164 Page	<p>1 applies to a particular case. So where are they</p> <p>2 at? I don't think they would ever stop that part</p> <p>3 because the process itself doesn't -- doesn't</p> <p>4 stop.</p> <p>5 Q Okay. So do you know if there are any</p> <p>6 approval protocols that have -- that have been</p> <p>7 developed for schools other than ITT and</p> <p>8 Corinthian?</p> <p>9 A Approval protocols?</p> <p>10 Q Yes.</p> <p>11 A I -- I'm certain that the director of</p> <p>12 borrower defense has procedures and processes.</p> <p>13 I -- I would not be able to enumerate all of them</p> <p>14 to you, but I'm certain that they -- that the</p> <p>15 leader of borrower defense -- I'm confident that</p> <p>16 the leader of borrower defense has procedures and</p> <p>17 processes in place for multiple different types of</p> <p>18 claims that come in.</p> <p>19 Q Okay. And as part of setting the</p> <p>20 metrics of how many borrower defense applications</p> <p>21 you want to be adjudicated, do you consider how</p> <p>22 many approval protocols have been developed?</p> <p>23 A I -- I do this in collaboration with</p> <p>24 the subject matter experts, and I take their</p> <p>25 recommendations, have dialogue on them. And there</p>
Page 163 Page	<p>1 answer to an absolute like that. Would we ever do</p> <p>2 it? I don't know if there would be a set of</p> <p>3 circumstances. I don't know off the top of my</p> <p>4 head of a set of circumstances. But I couldn't</p> <p>5 tell you if we would ever do it. I -- I don't</p> <p>6 know.</p> <p>7 Q Okay. And in paragraph 16, you</p> <p>8 mentioned that the BDU is continuing its review of</p> <p>9 common evidence related to several additional</p> <p>10 schools other than those for which it has so far</p> <p>11 approved claims, so other than Corinthian and ITT.</p> <p>12 It has completed a sufficient preliminary review</p> <p>13 of the common evidence to determine its scope</p> <p>14 including time periods and particular acts.</p> <p>15 So do you know where this process is</p> <p>16 at?</p> <p>17 A So borrower defense is an ongoing</p> <p>18 process. And by that, I mean, even today I'm sure</p> <p>19 more cases came in, and so cases come in each</p> <p>20 week.</p> <p>21 And part of what we're alluding to</p> <p>22 there is that as there is evidence on cases and</p> <p>23 evidence discovered on cases that's unique that</p> <p>24 borrower defense will continue to review that</p> <p>25 common evidence and apply it as appropriate if it</p>	Page 165 Page	<p>1 are a number of things that they consider, some of</p> <p>2 which I don't know all the things that they</p> <p>3 consider. It may -- those -- those capabilities</p> <p>4 may or may not include approval protocols because</p> <p>5 that particular term, I'm -- I'm not certain how</p> <p>6 the borrower defense unit uses that term.</p> <p>7 So when they -- when the borrower</p> <p>8 defense unit tells me that, you know, we can get</p> <p>9 to so many cases per week and if we have these</p> <p>10 kinds of resources, that's part of the dialogue.</p> <p>11 There are many things behind there.</p> <p>12 Approval protocols may be one of them. I can't</p> <p>13 say for certain.</p> <p>14 Q Okay. So in paragraph 17, you write,</p> <p>15 As BDU completes its analysis of common evidence,</p> <p>16 the department anticipates there may be an</p> <p>17 increased number of approvals over time.</p> <p>18 And, so, could you tell me -- do you</p> <p>19 know how many schools there are -- or how many</p> <p>20 categories of schools there are where borrowers'</p> <p>21 applications have been granted so far?</p> <p>22 A How many schools -- I just want to</p> <p>23 repeat and make sure I understand. How many</p> <p>24 schools --</p> <p>25 Q How many school groups so far are there</p>

Page 166 Page	<p>1 where there have been approvals?</p> <p>2 A I -- I don't know that exact number,</p> <p>3 ma'am. I -- I -- I don't -- I don't know.</p> <p>4 Q Okay. And then if we could go forward</p> <p>5 to -- so we don't have to read through them, but</p> <p>6 in paragraph 23 and 24, you describe some -- some</p> <p>7 mistaken -- some errors. So paragraph 23</p> <p>8 describes mistaken denial letter that went out to</p> <p>9 a borrower.</p> <p>10 Have you spotted any other mistaken</p> <p>11 approval letters that went out?</p> <p>12 A (Witness reviews document.)</p> <p>13 So, ma'am, you mean in paragraph 23</p> <p>14 when we talk about the letter of ineligibility</p> <p>15 when it should have been eligibility?</p> <p>16 Q Yeah. Sorry.</p> <p>17 Has FSA spotted any other mistaken</p> <p>18 denial letters going out?</p> <p>19 A So I -- I don't -- I don't know if</p> <p>20 we've had any of recent, but it's possible. It's</p> <p>21 possible that there could be an error</p> <p>22 occasionally.</p> <p>23 I would say that I know that there is</p> <p>24 not a systemic error or I would know about that,</p> <p>25 right, because the numbers or the percentages</p>	Page 168 Page	<p>1 If there were large numbers and if</p> <p>2 there was a systemic problem, that is more likely</p> <p>3 going to be briefed to me.</p> <p>4 So -- so knowing that about our process</p> <p>5 and the scale of it, I could never tell you that</p> <p>6 there has never been another letter since the one</p> <p>7 that's referenced in this declaration.</p> <p>8 Q Okay. But you haven't received any</p> <p>9 reports of any mistaken denial letters?</p> <p>10 A Not that I can recall at this moment.</p> <p>11 Q Okay. And have you received any</p> <p>12 reports of mistaken eligibility letters that went</p> <p>13 out?</p> <p>14 A Not -- not that I can recall at this</p> <p>15 moment.</p> <p>16 Q And have there been reports of any</p> <p>17 other mistakes by the BDU?</p> <p>18 MR. HANCOCK: Objection: overbroad.</p> <p>19 THE WITNESS: I -- I don't -- so I</p> <p>20 don't know if you're asking me -- are you asking</p> <p>21 me for March 2019 to date have there been any</p> <p>22 other mistakes by the BDU unit; is that what</p> <p>23 you're talking about?</p> <p>24 BY MS. TORCHIANA:</p> <p>25 Q Yes, while you've been COO.</p>
Page 167 Page	<p>1 would be such that it would rise to a level of</p> <p>2 discussion. We have processes in place for that.</p> <p>3 But if it's an isolated error and we</p> <p>4 correct it, I may not necessarily know that.</p> <p>5 Q So are -- so are any -- would mistaken</p> <p>6 denial letter, would that error be reported to</p> <p>7 you, or is there a way to --</p> <p>8 A Not necessarily. You know, again,</p> <p>9 just -- just so that we have full understanding</p> <p>10 here, we have -- and I'll give you an example. We</p> <p>11 have attorneys in Chicago, and -- and they have</p> <p>12 supervisors there, and then supervisors within the</p> <p>13 borrower defense unit within Washington, and they</p> <p>14 have supervisors that lead up to the borrower</p> <p>15 defense leader. Then we have a whole another</p> <p>16 process for Step 2.</p> <p>17 There could be -- there could be an</p> <p>18 error lodged with this customer here, with</p> <p>19 Ms. Yvette Colon. There could be an area where we</p> <p>20 find through our own systems that someone received</p> <p>21 letter A and should have received another type of</p> <p>22 error or got our decisions wrong, and we go out</p> <p>23 and correct it, and that's not necessarily</p> <p>24 something that would get -- that will get briefed</p> <p>25 to me.</p>	Page 169 Page	<p>1 A Yes, like every other part of our</p> <p>2 organization -- well, I could never list them to</p> <p>3 you now -- there are mistakes somewhere within the</p> <p>4 organization. How impactful they are, it just</p> <p>5 depends. Some are not impactful at all and some</p> <p>6 may be impactful, but I cannot cite for you any</p> <p>7 that were of such a significant impact at borrower</p> <p>8 defense that I would know them right off the top</p> <p>9 of my head as it relates to what is in question</p> <p>10 here today.</p> <p>11 Q Okay. Then in paragraph 24 similarly</p> <p>12 you write, The department will reach out to Sean</p> <p>13 Doe, who was incorrectly advised that he should</p> <p>14 file a FOIA request to obtain his records.</p> <p>15 Do you know if FSA has provided any</p> <p>16 records to borrowers who have requested them</p> <p>17 since?</p> <p>18 A So if we provided any records to</p> <p>19 borrowers who have requested them, I would -- I</p> <p>20 would rather have my folks answer that question</p> <p>21 because you said "any," and as I said, there --</p> <p>22 there are a number of cases, and it's -- and it's</p> <p>23 possible. I would not want to give you a</p> <p>24 definitive answer on that. But I do believe that</p> <p>25 it's not a matter of a FOIA request as described</p>

Page 170 Page	<p>1 here.</p> <p>2 Q Okay. We're going to switch tacks a</p> <p>3 little bit and talk about something you mentioned</p> <p>4 earlier in this declaration. Sorry to keep going</p> <p>5 back and forth, but if you go to paragraph 18, you</p> <p>6 mention that since December 2019, borrower defense</p> <p>7 applicants whose applications are found ineligible</p> <p>8 receive one of four form ineligibility letters.</p> <p>9 Do you know who drafted these form</p> <p>10 ineligibility letters?</p> <p>11 A So the ineligibility letters are -- are</p> <p>12 drafted. Do you mean -- and, again, if I can just</p> <p>13 make sure that I -- that we're using the words the</p> <p>14 same way. So the traditional draft, who is the</p> <p>15 first person that -- that puts the words on a page</p> <p>16 and -- and asks everyone else what they think</p> <p>17 about it.</p> <p>18 That -- drafts would begin in Federal</p> <p>19 Student Aid inside of our borrower defense unit</p> <p>20 and of our folks, drafts would begin there. I'm</p> <p>21 sure they were created there.</p> <p>22 Q Okay. And who would have drafted them?</p> <p>23 A It would have come from our policy</p> <p>24 liaison and borrower defense units.</p> <p>25 Q And who is your policy liaison?</p>	Page 172 Page	<p>1 if they have a question and they go ask somebody</p> <p>2 that question, it could be anybody in the</p> <p>3 organization, right. They may have to ask is this</p> <p>4 the appropriate line for this or that, and they</p> <p>5 may want to talk to someone on the loan servicing</p> <p>6 side or one on the technical writing side.</p> <p>7 They -- they're working, so they are -- they are</p> <p>8 bringing their files together to produce a draft.</p> <p>9 I couldn't tell you everybody they</p> <p>10 talked to. I'm just saying that it's possible.</p> <p>11 Q And were you involved at all in</p> <p>12 drafting these form ineligibility letters?</p> <p>13 A So when you say "involved," you mean</p> <p>14 that I knew what was going on? That I saw the</p> <p>15 staffing process? Or do you mean that I was</p> <p>16 helping to draft it?</p> <p>17 Q Any and all of those things.</p> <p>18 How were you involved in drafting these</p> <p>19 letters?</p> <p>20 A I was not helping to draft the letter.</p> <p>21 I was not helping to write what words would go on</p> <p>22 the letter. I would not be the right person to do</p> <p>23 that.</p> <p>24 What I -- what I was doing was making</p> <p>25 sure that we had an appropriate staffing process</p>
Page 171 Page	<p>1 A So it's a team of folks. The -- the</p> <p>2 leader on the -- in the policy liaison area is a</p> <p>3 Mr. Ian Foss, and the leader on the borrower</p> <p>4 defense team I believe is Colleen Nevin.</p> <p>5 And, so, something like preparing what</p> <p>6 words should go on a form, which is preparing a</p> <p>7 draft, would be done collectively between those</p> <p>8 two parts of the organization.</p> <p>9 Q Okay. So would you say Ian Foss helped</p> <p>10 draft these form letters?</p> <p>11 A Yes, that's what I'm saying. These</p> <p>12 letters have been done collaboratively between</p> <p>13 those two units, one providing --</p> <p>14 Q Anybody else?</p> <p>15 A Inside of FSA? I can't say that</p> <p>16 there's no one else, but from an organizational</p> <p>17 perspective, it would be those two parts of the</p> <p>18 organization. It could be several other people</p> <p>19 that are involved that have questions or those</p> <p>20 kind of things, but those two parts of the</p> <p>21 organization would be involved.</p> <p>22 Q Okay. When you say could be several</p> <p>23 other people, who do you think those several other</p> <p>24 people are?</p> <p>25 A So what I'm trying to allude to here is</p>	Page 173 Page	<p>1 and that the controls were in place to make sure</p> <p>2 the right people saw the letter -- letters before</p> <p>3 they go final.</p> <p>4 I was very well aware of that.</p> <p>5 Q Okay. And who would you say were the</p> <p>6 right people to review those letters before they</p> <p>7 went out?</p> <p>8 A The letters are a statement of policy,</p> <p>9 and -- and so the final letters would have to be</p> <p>10 gone through the policy outline of the Department</p> <p>11 of Education and -- and that might be a general</p> <p>12 counsel review and an ultimate approval through</p> <p>13 the under secretary.</p> <p>14 Q Okay. So could you -- so would that be</p> <p>15 Diane Auer Jones would have reviewed them before</p> <p>16 they went out?</p> <p>17 A Yes, if it was a poll- -- it's the</p> <p>18 policy letter, she or -- now, I don't work inside</p> <p>19 of her office, so she may have protocols</p> <p>20 established where someone else in the office sees</p> <p>21 it. So I could not say it was absolutely her that</p> <p>22 saw every letter.</p> <p>23 I could tell you the Office of the</p> <p>24 Under Secretary would be a part of the staffing</p> <p>25 process.</p>

Page 174 Page	<p>1 Q Okay. And what was the process for</p> <p>2 drafting these letters?</p> <p>3 A Inside of Federal Student Aid?</p> <p>4 Q Yeah.</p> <p>5 A I can -- I can tell you that -- I can</p> <p>6 tell you the offices that worked to put</p> <p>7 together -- put together these statements and then</p> <p>8 put together a staff -- what I would call a staff</p> <p>9 summary sheet for it to be seen by the relevant</p> <p>10 parties and sent outside Federal Student Aid.</p> <p>11 That's -- that's essentially the process.</p> <p>12 So the borrower defense unit, knowing</p> <p>13 what the law requires in order for a person to</p> <p>14 come out and come back in with a -- with a claim</p> <p>15 and then a policy team working to get that on</p> <p>16 paper and get it approved.</p> <p>17 Q Do you know when that process</p> <p>18 started -- when the process started for drafting</p> <p>19 these letters?</p> <p>20 A No, I don't, and I don't believe it's a</p> <p>21 specific time because there are four letters, and</p> <p>22 they don't all begin or end at the same time. I</p> <p>23 think they evolved into -- into having four</p> <p>24 letters.</p> <p>25 So to answer your questions, no, I</p>	Page 176 Page	<p>1 of these letters were produced?</p> <p>2 A I do not.</p> <p>3 Q Okay. So if you could turn to</p> <p>4 Exhibit 13, which has already been marked as</p> <p>5 Exhibit 13.</p> <p>6 (Exhibit 13 referred to.)</p> <p>7 BY MS. TORCHIANA:</p> <p>8 Q It will be behind tab 13. If you could</p> <p>9 turn to the exhibits, the first one is Exhibit A.</p> <p>10 There's a cover page that says Exhibit A?</p> <p>11 A Okay.</p> <p>12 Q So this letter, I can represent to you,</p> <p>13 is for Corinthian borrowers who assert job</p> <p>14 placement reclaims that do not meet the</p> <p>15 eligibility criteria for such a claim.</p> <p>16 So do you know who prepared this</p> <p>17 particular letter?</p> <p>18 A I do not.</p> <p>19 Q Okay. And do you know --</p> <p>20 A Regarding an individual. When you say</p> <p>21 "who," you're meaning an individual; correct?</p> <p>22 Q Or multiple individuals. Which people?</p> <p>23 A So what I -- what I would say, just to</p> <p>24 be clear, on none of the letters will I be able to</p> <p>25 tell you what individual put pen to paper and</p>
Page 175 Page	<p>1 don't believe I could tell you exactly when the</p> <p>2 process began.</p> <p>3 Q Okay. We'll -- we'll go through each</p> <p>4 one and you can tell me when you think the</p> <p>5 drafting of that specific letter began.</p> <p>6 And -- and do you know how -- how long</p> <p>7 it took to develop these letters?</p> <p>8 A I do not.</p> <p>9 Q Okay. And in terms of who approved</p> <p>10 them, it sounds like that was Diane Auer Jones?</p> <p>11 A The process --</p> <p>12 Q Is that right?</p> <p>13 A Yeah, what I would -- what I would say,</p> <p>14 ma'am, is the approval process involves the policy</p> <p>15 element, people that could review -- could require</p> <p>16 review from the Office of General Counsel, and for</p> <p>17 it to go through the Office of the Under</p> <p>18 Secretary.</p> <p>19 As I stated earlier, I can't tell you</p> <p>20 their internal protocols, if the under secretary,</p> <p>21 Diane Jones, approved each particular letter. But</p> <p>22 I could tell you that the Office of the Under</p> <p>23 Secretary would have been involved in the approval</p> <p>24 of those letters.</p> <p>25 Q Do you have a sense of how many drafts</p>	Page 177 Page	<p>1 drafted the letter, but I can tell you from an</p> <p>2 organizational perspective where those kinds of</p> <p>3 things happen and where -- and where they come</p> <p>4 from.</p> <p>5 So if -- if that's the answer to who,</p> <p>6 you know, that's -- that's what I know about --</p> <p>7 about the letters and drafting them.</p> <p>8 Q Okay. Sure. So --</p> <p>9 A So if you ask me that question about</p> <p>10 this particular letter, I would say it is most</p> <p>11 likely the borrower defense unit and the policy</p> <p>12 liaison working together collaboratively to</p> <p>13 bring -- to come together with the draft and then</p> <p>14 putting it through the staffing process to be seen</p> <p>15 by the policy element of the Department of</p> <p>16 Education.</p> <p>17 Q Okay. And do you know if this form is</p> <p>18 still being used?</p> <p>19 A (Witness reviews document.)</p> <p>20 I don't know if this paper form is</p> <p>21 still being used, but there is likely a version of</p> <p>22 this form still being used.</p> <p>23 So if you mean this exact form produced</p> <p>24 in this exact way, I don't think so. I think that</p> <p>25 hopefully it's been digitized with the other forms</p>

Page 178 Page	<p>1 and being used in that manner.</p> <p>2 Q But is it still going out -- is this</p> <p>3 format of the letter still going out to borrowers?</p> <p>4 Obviously filled in with relevant information for</p> <p>5 the borrower specifically.</p> <p>6 A I -- I believe in general that is true,</p> <p>7 but there -- there may be -- you said format, so</p> <p>8 it doesn't mean it's the exact same letter. But</p> <p>9 if you mean the general format is still continuing</p> <p>10 on today, I don't believe we're sending out</p> <p>11 notifications.</p> <p>12 But if we were sending out</p> <p>13 notifications, if that's your question, would this</p> <p>14 form be in presence. I believe in some form, it</p> <p>15 would be.</p> <p>16 Q Okay. Now could we turn to Exhibit B,</p> <p>17 which is a couple of pages down.</p> <p>18 A Okay.</p> <p>19 Q And this is for current payment</p> <p>20 borrowers who assert the claim other than job</p> <p>21 placement rights -- or other than job placement</p> <p>22 reclaim.</p> <p>23 And if you turn to -- let's see.</p> <p>24 Sorry. If you turn to the bottom of page 2, it</p> <p>25 says, In order to have a successful borrower</p>	Page 180 Page	<p>1 that common evidence is just that; it is things</p> <p>2 that have been determined, like a program review,</p> <p>3 where a finding was found against the school and</p> <p>4 determined to be validated.</p> <p>5 And, so, it's available for the</p> <p>6 attorney doing the adjudication to use as a source</p> <p>7 of evidence. That could also be Attorney General</p> <p>8 determinations or other determinations made</p> <p>9 against a school where -- where if even if the</p> <p>10 borrower doesn't submit it themselves, it's</p> <p>11 common -- commonly known and available to be</p> <p>12 utilized.</p> <p>13 That's what I believe we -- we mean</p> <p>14 when we use the term.</p> <p>15 Q Okay. And do you know if --</p> <p>16 A I just want to clarify that -- that</p> <p>17 last -- what I just -- what I just said, I'm</p> <p>18 giving you my understanding of it as a lay -- from</p> <p>19 a layman's perspective. That's not something I</p> <p>20 practice against a borrower defense claim because</p> <p>21 I don't do it. So I'm just telling you from a</p> <p>22 layman's perspective and management of borrower</p> <p>23 defense, the team, that's how the attorneys have</p> <p>24 generally explained it.</p> <p>25 Q Right.</p>
Page 179 Page	<p>1 defense claim based on ED's CCI findings, you must</p> <p>2 have enrolled in one of the covered programs</p> <p>3 during a listed time period.</p> <p>4 So do you -- do you know if it's</p> <p>5 possible for a borrower defense claimant to have a</p> <p>6 successful claim if he enrolled in CCI outside of</p> <p>7 the listed time period?</p> <p>8 A There may be some other form of --</p> <p>9 of -- of damage or concern for the borrower, so</p> <p>10 I -- I wouldn't want to make a blanket statement</p> <p>11 that said there is nothing. I -- I would say it</p> <p>12 just depends on how that attorney would adjudicate</p> <p>13 the claim. I don't -- it depends on the</p> <p>14 circumstances.</p> <p>15 Q Okay. And then if you could turn to</p> <p>16 Exhibit C, and this form is for non-Corinthian</p> <p>17 borrowers who attended a school for which the</p> <p>18 department does not have any common evidence in</p> <p>19 its possession.</p> <p>20 And so do you -- what do you understand</p> <p>21 as -- what is common evidence?</p> <p>22 A As I understand it, and I just want to</p> <p>23 provide the context that I -- I don't adjudicate</p> <p>24 borrower defense cases, so I'm not an attorney.</p> <p>25 But my general understanding of this is</p>	Page 181 Page	<p>1 And if there's no common evidence, can</p> <p>2 a borrower's claim be granted?</p> <p>3 A So in -- in general and for</p> <p>4 generalities, can it be? I would say every --</p> <p>5 every claim is adjudicated on its own merit as</p> <p>6 stated earlier, and it just depends on what other</p> <p>7 things there are and what other things have been</p> <p>8 brought forth.</p> <p>9 And, so, I would never say it</p> <p>10 absolutely could not be or absolutely could be. I</p> <p>11 could say that every -- every claim is adjudicated</p> <p>12 based on its own merit.</p> <p>13 Q Okay. And do you know whether since</p> <p>14 you've started has any claim been granted for a</p> <p>15 borrower who attended a school for which there is</p> <p>16 no common evidence?</p> <p>17 A I don't know.</p> <p>18 Q Okay. And if we could turn to the last</p> <p>19 form, form D, this form is for non-Corinthian</p> <p>20 borrowers who attended a school for which the</p> <p>21 department does have common evidence.</p> <p>22 Could you tell me when form D was</p> <p>23 developed?</p> <p>24 A I -- I could not tell you exactly when</p> <p>25 it was developed.</p>

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<p>1 Q Do you know roughly when it was</p> <p>2 developed?</p> <p>3 A I -- I do not. I think it evolved over</p> <p>4 time in the -- in the BD unit and possibly liaison</p> <p>5 as circumstances dictated that an additional type</p> <p>6 of form would be needed.</p> <p>7 Q Okay. And what circumstances dictated</p> <p>8 that an additional form would be needed?</p> <p>9 A I don't know exactly other -- other</p> <p>10 than these -- these forms are created based on</p> <p>11 what is seen in the claims that are being</p> <p>12 adjusted.</p> <p>13 So if you see a circumstance occur</p> <p>14 enough and you believe that claimants need to be</p> <p>15 able to have certain information in order to file</p> <p>16 a particular claim, you might adjust or make sure</p> <p>17 you design a form with that in mind.</p> <p>18 Q Okay. And, again, for this form D, who</p> <p>19 designed the form?</p> <p>20 A So, again, I would say -- I don't know</p> <p>21 exactly who, other than forms are a collaboration</p> <p>22 between our liaison office and our borrower</p> <p>23 defense office. That's how forms are drafted and</p> <p>24 then approved through our policy element at the</p> <p>25 Department of Education.</p>	<p>1 which an application was decided would be if it</p> <p>2 was decided under the 1995 regs?</p> <p>3 A If the appropriate state law?</p> <p>4 Q Yes.</p> <p>5 If -- if a borrower's application was</p> <p>6 decided according to state law, do you think that</p> <p>7 law would be stated under the applicable law</p> <p>8 section?</p> <p>9 A Yeah, that would -- exactly where to</p> <p>10 put something on the form would not be something</p> <p>11 I'd be prepared to opine on. Exactly where to put</p> <p>12 it on the form, I don't know. I would leave it to</p> <p>13 those in charge with that to -- to tell me --</p> <p>14 Q Okay.</p> <p>15 A -- the laws.</p> <p>16 Q Do you think it would be somewhere on</p> <p>17 the form?</p> <p>18 A I don't know. I would -- I would look</p> <p>19 to my attorneys to tell me if state law needed to</p> <p>20 be on the form or not. And if -- and if they</p> <p>21 believe that it would be, it would need to then be</p> <p>22 put through that staffing process I described</p> <p>23 earlier to make sure those in charge of the forms</p> <p>24 and policy elements came to an agreement that, in</p> <p>25 fact, it should be.</p>
Page 183 Page	Page 185 Page
<p>1 Q Okay. And did you have to approve this</p> <p>2 form before it started being used?</p> <p>3 A I don't necessarily approve each form.</p> <p>4 They go -- they go through the staffing process.</p> <p>5 The approval of a form is the -- is -- is the</p> <p>6 policy element of what we do because the forms</p> <p>7 represent an extension of policy.</p> <p>8 Q Okay. So would you say the denial</p> <p>9 forms are -- they're under policy?</p> <p>10 MR. HANCOCK: Objection: asked and</p> <p>11 answered.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q Okay. Are the denial forms part of</p> <p>14 operations?</p> <p>15 A So what I -- what I would say is the</p> <p>16 drafting of policy forms like the ones that we</p> <p>17 just went through, A through -- through D, begins</p> <p>18 inside of Federal Student Aid.</p> <p>19 So it -- it begins as part of</p> <p>20 operations, but the final form and the decision on</p> <p>21 what the form -- that the form is appropriate is a</p> <p>22 policy decision.</p> <p>23 Q Okay. So if you look at form D, it</p> <p>24 says, applicable law, and is this somewhere where</p> <p>25 you would expect the state law standard under</p>	<p>1 Q Okay. And if you -- if you go to the</p> <p>2 next page, the section it says, What if I do not</p> <p>3 agree with this decision?</p> <p>4 A Yeah.</p> <p>5 Q And then it says, number three is,</p> <p>6 Identify and provide any evidence that</p> <p>7 demonstrates why ED should approve your borrower</p> <p>8 defense repayment claim.</p> <p>9 And, you know, you noted actually</p> <p>10 earlier in your declaration -- and we can turn</p> <p>11 back to it if you want to see that, but you say</p> <p>12 that FSA will consider any evidence under</p> <p>13 reconsideration which includes both new evidence</p> <p>14 and evidence already submitted.</p> <p>15 When was the choice made to consider</p> <p>16 any evidence as opposed to new evidence?</p> <p>17 A So I don't -- I don't know the exact</p> <p>18 point -- point in time when that became a matter</p> <p>19 of policy and certainly a matter of our forms. I</p> <p>20 know that it is today, but exactly how -- how long</p> <p>21 ago that was determined, I -- I don't know.</p> <p>22 Q Okay. And would you say that was a</p> <p>23 policy decision?</p> <p>24 A I'm -- I would -- I would say that</p> <p>25 those kind of elements on a form, like, time</p>

<p style="text-align: right;">Page 186 Page</p> <p>1 periods and what's allowed are policy decisions.</p> <p>2 Q Okay. And if a borrower received a</p> <p>3 letter, for instance, where the only reason for</p> <p>4 denial under each allegation was insufficient</p> <p>5 evidence, how would you expect them to reply?</p> <p>6 MR. HANCOCK: Objection: calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: I'm not -- I'm not</p> <p>9 certain, ma'am, on how they would reply. So for</p> <p>10 an individual, how they would react to that; is</p> <p>11 that what you're asking me?</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q If they were to submit a request for</p> <p>14 reconsideration but the only thing that their</p> <p>15 denial letter said was insufficient evidence, what</p> <p>16 would you expect them to submit?</p> <p>17 MR. HANCOCK: Objection: calls for</p> <p>18 speculation.</p> <p>19 THE WITNESS: So I don't -- I don't</p> <p>20 believe I'm understanding your question. Are you</p> <p>21 asking me to kind of assume what -- what a</p> <p>22 borrower should do if they get that letter? What</p> <p>23 does a borrower do if they have a question; is</p> <p>24 that -- or -- they don't --</p> <p>25 BY MS. TORCHIANA:</p>	<p style="text-align: right;">Page 188 Page</p> <p>1 don't know -- I can't tell you if any have been</p> <p>2 granted or where those that have come in stand</p> <p>3 right now today.</p> <p>4 Q Okay. And how many have come in</p> <p>5 approximately?</p> <p>6 A I don't know. It's a dynamic process</p> <p>7 where, you know, things come in each day and</p> <p>8 they're sorted out, and at some point when we do</p> <p>9 our next update, if some new have come in, I</p> <p>10 probably would see it visible through our metrics</p> <p>11 or be told, but right now today I couldn't</p> <p>12 speculate on how many would come in.</p> <p>13 Q Okay. When was the last update -- when</p> <p>14 did you receive the last update that had those</p> <p>15 numbers?</p> <p>16 A I believe it was at end-of-November</p> <p>17 time frame.</p> <p>18 Q Okay. And at the end of November, do</p> <p>19 you remember roughly how many requests for</p> <p>20 reconsideration had been received?</p> <p>21 A I do not believe it was that many in</p> <p>22 relative terms, meaning given the number of claims</p> <p>23 that we do. But I don't remember exactly how</p> <p>24 many.</p> <p>25 Q And again, these are -- these are the</p>
<p style="text-align: right;">Page 187 Page</p> <p>1 Q No.</p> <p>2 A -- know what to do or --</p> <p>3 Q We'll get into this more -- we'll get</p> <p>4 into a specific letter later, but -- but here you</p> <p>5 say, Identify and provide any evidence that</p> <p>6 demonstrates why ED should approve your borrower</p> <p>7 defense to repayment claim. And let's say that</p> <p>8 the reason someone got the denial was just</p> <p>9 insufficient evidence.</p> <p>10 How do you think -- what would they put</p> <p>11 in their request for reconsideration?</p> <p>12 MR. HANCOCK: Objection: calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: I -- I don't know. I</p> <p>15 don't think I can answer your -- I don't think I</p> <p>16 can answer your question.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q Okay. Okay. And do you know -- have</p> <p>19 any requests for reconsideration been granted that</p> <p>20 you know of?</p> <p>21 A One second, please.</p> <p>22 (Witness reviews document.)</p> <p>23 I don't know if any have been -- have</p> <p>24 been granted. I only know that some have -- have</p> <p>25 come in through -- through the process. I -- I</p>	<p style="text-align: right;">Page 189 Page</p> <p>1 weekly performance metrics we discussed before,</p> <p>2 correct, that have these numbers?</p> <p>3 A They -- they are the metrics for</p> <p>4 borrower defense, correct.</p> <p>5 MS. TORCHIANA: Okay. And I think I've</p> <p>6 already asked, but I think we will be asking for</p> <p>7 those to be produced.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. Do you know if any requests for</p> <p>10 reconsideration have been denied?</p> <p>11 A As I said earlier, I -- either way, I</p> <p>12 don't know in the process if we have gotten around</p> <p>13 to decisions one way or the other on those yet.</p> <p>14 Q Okay.</p> <p>15 MS. TORCHIANA: Okay. Why don't we</p> <p>16 take a ten-minute break if that's okay with</p> <p>17 everyone.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. HANCOCK: That's fine.</p> <p>20 THE VIDEOGRAPHER: Okay. We are now</p> <p>21 going off the record. The time is 20:41 UTC time.</p> <p>22 (Recess -- 3:41 p.m.)</p> <p>23 (After recess -- 3:55 p.m.)</p> <p>24 THE VIDEOGRAPHER: We're now back on</p> <p>25 the record. The time is 20:55 UTC time.</p>

Page 190 Page	<p>1 BY MS. TORCHIANA:</p> <p>2 Q Mr. Brown, could you turn to tab 15, so</p> <p>3 that's Exhibit 15 in the electronic folder.</p> <p>4 (Exhibit 15 referred to.)</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q And could you turn to -- it's page 24</p> <p>7 of 56, and that's in the upper right-hand corner.</p> <p>8 A Okay. I have it.</p> <p>9 Q Okay. And this is the affidavit of</p> <p>10 Theresa Sweet, the named plaintiff in this case.</p> <p>11 And as you can see, she -- if you go to</p> <p>12 paragraph 3, she submitted her application in the</p> <p>13 fall of 2016. And if you go to paragraph 4, she</p> <p>14 received her decision on July 8th, 2020.</p> <p>15 Q So how many -- how many years is that</p> <p>16 just to be clear?</p> <p>17 A How many years is it from the fall of</p> <p>18 2016 to July 8th, 2020; is that -- is that what</p> <p>19 you're asking me?</p> <p>20 Q Yes.</p> <p>21 A I believe that is just shy of four</p> <p>22 years.</p> <p>23 Q Okay. Okay. And just so we're clear,</p> <p>24 previously you've said -- what are the -- what are</p> <p>25 the main reasons you would give for why there was</p>	Page 192 Page	<p>1 Corporation?</p> <p>2 A I -- I wouldn't know. I have to look</p> <p>3 on the sheets of paper or sheets that tell you</p> <p>4 who -- who owns what school. I haven't committed</p> <p>5 that to memory, so I don't know. I don't know.</p> <p>6 Q And on that subject, when you</p> <p>7 communicate with Ms. Diane Auer Jones, do you</p> <p>8 redact or remove any information related to CEC</p> <p>9 that you know of?</p> <p>10 MR. HANCOCK: Objection: exceeds the</p> <p>11 scope of the court-ordered discovery.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q You can still answer.</p> <p>14 A Do I -- do I redact anything as it</p> <p>15 relates to this particular school?</p> <p>16 Q This school group, yes, or remove it or</p> <p>17 anything like that.</p> <p>18 A So I cannot -- I don't know all of</p> <p>19 the -- I don't know all of the schools, as I said</p> <p>20 earlier, and the subschools that go -- go under</p> <p>21 them. I can tell you that if a -- if a senior</p> <p>22 official has a conflict of interest because of</p> <p>23 prior employment or something like that, we would</p> <p>24 do a redaction. And in order to say that this</p> <p>25 particular school and that was required, I can't</p>
Page 191 Page	<p>1 a delay in -- in her receiving her answer?</p> <p>2 A So just to be clear, I can't give you</p> <p>3 any information about fall of 2016, '17, '18, up</p> <p>4 until March 2019.</p> <p>5 But I can tell you that as of March of</p> <p>6 2019, the reason that she received, probably,</p> <p>7 notification is because we addressed the two</p> <p>8 issues that I brought up. Those two issues are</p> <p>9 having enough attorneys to adjudicate a</p> <p>10 significant workload and investigating in the</p> <p>11 systems and IT technology required to do this job.</p> <p>12 Q Okay. So would you say the reason she</p> <p>13 had to wait four years was because there weren't</p> <p>14 enough attorneys and the IT system needed to be</p> <p>15 updated?</p> <p>16 A I -- I wouldn't because I couldn't talk</p> <p>17 to you about '16, '17, '18 and some parts of '19.</p> <p>18 I can only talk to you about March of 2019</p> <p>19 forward, and I can't even say that this particular</p> <p>20 case I could tell you that, in general, those are</p> <p>21 the two reasons that borrower defense wasn't able</p> <p>22 to move at the speed that they would have liked to</p> <p>23 have moved.</p> <p>24 Q And she attended Brooks Institute, and</p> <p>25 that is a CEC school, right, the Career Education</p>	Page 193 Page	<p>1 tell you that today. I would have to go check.</p> <p>2 Q Okay. So when you've exchanged any</p> <p>3 documents or memos or anything with Diane Auer</p> <p>4 Jones, have you ever -- do you recall ever seeing</p> <p>5 CEC removed or redacted or anything like that?</p> <p>6 MR. HANCOCK: Objection: exceeds the</p> <p>7 scope.</p> <p>8 What category is this relevant to?</p> <p>9 MS. TORCHIANA: I would say it's</p> <p>10 relevant to two and three.</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q You can still answer unless counsel</p> <p>13 instructs you not to.</p> <p>14 A I -- I don't know the answer, ma'am.</p> <p>15 I -- I -- again -- I also don't -- I'm not the</p> <p>16 redactor, and I don't -- I don't redact documents</p> <p>17 myself, and if it's redacted on a document that I</p> <p>18 get en route to someone, I don't know what has</p> <p>19 been redacted.</p> <p>20 And, so, I'm not in a position to</p> <p>21 answer your question.</p> <p>22 Q Okay. If you turn to page 28, that's</p> <p>23 the beginning of Ms. Sweet's application.</p> <p>24 Have you ever seen an application like</p> <p>25 this?</p>

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<p>1 A (Witness reviews document.)</p> <p>2 I -- I believe so. I've seen one with</p> <p>3 similar categories on it.</p> <p>4 Q Okay. Could you turn to page 30?</p> <p>5 A Yes.</p> <p>6 Q And here Ms. Brooks [sic] quotes some</p> <p>7 admissions counselors, so here she says, Admission</p> <p>8 counselors told her, quote, right out of school,</p> <p>9 quote -- end of quote that 88 to 90 percent of</p> <p>10 graduates were employed.</p> <p>11 There's some quotes in the other</p> <p>12 paragraphs, et cetera.</p> <p>13 And then if you could turn to page 44,</p> <p>14 could you just confirm that this application is</p> <p>15 signed under penalty of perjury?</p> <p>16 A (Witness reviews document.)</p> <p>17 Do you mean -- do you mean page 45?</p> <p>18 Q Yeah. Sorry. Page 44 and 45.</p> <p>19 A And you're asking me is it signed under</p> <p>20 penalty of perjury?</p> <p>21 Q Yes.</p> <p>22 And that starts under -- if you start</p> <p>23 at page 44 at Section 6 and just read through.</p> <p>24 A (Witness reviews document.)</p> <p>25 Q So is that signed under penalty of</p>	<p>1 following reasons, failure to state a legal claim.</p> <p>2 And do you know how -- how would she</p> <p>3 have written this to state a legal claim?</p> <p>4 MR. HANCOCK: Objection: calls for</p> <p>5 speculation.</p> <p>6 THE WITNESS: So, again, I'll just say</p> <p>7 that I don't adjudicate claims, and I'll leave the</p> <p>8 adjudication of the actual claims to the borrower</p> <p>9 defense attorneys that we have. And beyond that,</p> <p>10 I could not tell you what to add or delete to a</p> <p>11 particular claim to make it something different.</p> <p>12 I -- that's -- that's not my expertise.</p> <p>13 BY MS. TORCHIANA:</p> <p>14 Q On the next page, 53, it says, What</p> <p>15 evidence was considered in determining my</p> <p>16 application's ineligibility, and there's a list</p> <p>17 here.</p> <p>18 As far as you know, what does it mean</p> <p>19 to have consulted this evidence?</p> <p>20 A So you -- you said consulted this</p> <p>21 evidence. Is that term here? Do we say that</p> <p>22 here?</p> <p>23 Q Considered. Sure.</p> <p>24 A I -- I know the generic meaning of the</p> <p>25 term "considered." It means it was included in</p>
Page 195 Page	Page 197 Page
<p>1 perjury?</p> <p>2 A I'm almost done reading it.</p> <p>3 Q Okay.</p> <p>4 A (Witness continues to review document.)</p> <p>5 Yes. Yes, ma'am. It says in the</p> <p>6 second paragraph under Section 6 under penalty of</p> <p>7 perjury which subsequently she signs on</p> <p>8 November 4th --</p> <p>9 Q Okay.</p> <p>10 A -- 2016.</p> <p>11 Q Okay. And so is -- is a firsthand</p> <p>12 account by a borrower signed like this under</p> <p>13 penalty of perjury, is that considered evidence?</p> <p>14 A I don't know, ma'am. I would not want</p> <p>15 to speculate on what our attorneys view as</p> <p>16 acceptable or unacceptable evidence. I -- I</p> <p>17 believe that's -- I would leave that to their --</p> <p>18 to their decisions space and their expertise.</p> <p>19 Q And if you could turn to page 52. It's</p> <p>20 a bit -- it's kind of hard to see. It's a little</p> <p>21 blacked out. It's on the top -- top right-hand</p> <p>22 side.</p> <p>23 A I see it.</p> <p>24 Q Okay. And here the -- under allegation</p> <p>25 number one, it says, This allegation fails for the</p>	<p>1 their process; that it was part of the process of</p> <p>2 things that was looked at.</p> <p>3 Q And are there memos or, for example,</p> <p>4 directives that relate to this evidence as it</p> <p>5 relates to Brooks as a school?</p> <p>6 MR. HANCOCK: Objection: vague.</p> <p>7 THE WITNESS: I'm not sure if I</p> <p>8 understand your question. Do you mean is there --</p> <p>9 are there memos within borrower defense or --</p> <p>10 or --</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q Yeah.</p> <p>13 A -- is there memos --</p> <p>14 Q Yes.</p> <p>15 A -- that relate to --</p> <p>16 Q That relate to this evidence and how</p> <p>17 it's connected to borrower defense claims from</p> <p>18 Brooks, for example?</p> <p>19 A I believe that -- I believe this is</p> <p>20 what we consider common evidence, and so whatever</p> <p>21 it is -- whatever evidence it is is inside of</p> <p>22 borrower defense. I don't know if that's</p> <p>23 answering your question. I don't know if it comes</p> <p>24 with a memorandum or if we're just talking</p> <p>25 documents; I don't know that.</p>

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1 Level of specificity, just that the	1 MR. HANCOCK: I'm sorry. Can I just
2 evidence was reviewed and therefore was probably	2 clarify what document we're looking at? Is it the
3 on hand somewhere within borrower defense.	3 Exhibit A in -- in Exhibit 19?
4 Q Okay. We'll -- we'll move on.	4 MS. TORCHIANA: No, it's 19, and it's
5 Could you turn to Exhibit 19 which is	5 Attachment 1, which is behind Exhibit A. You see
6 behind tab 19?	6 the stamp is page --
7 (Exhibit 19 referred to.)	7 MR. HANCOCK: 145-2.
8 THE WITNESS: I have it here.	8 MS. TORCHIANA: Yeah, 145-2, page 1 of
9 BY MS. TORCHIANA:	9 15.
10 Q Okay. And -- and just before we --	10 MR. HANCOCK: Okay. Thank you.
11 just before we get into that, I wanted to ask a	11 THE WITNESS: (Reviews document.)
12 follow-up question about something we were talking	12 This is a -- this is my declaration at
13 about before.	13 Attachment 1, attachment -- or Exhibit A.
14 Have you seen any documents with	14 BY MS. TORCHIANA:
15 redactions -- with, you know, redactions of school	15 Q Okay. And when you turn to
16 groups that are related to borrower defense?	16 Attachment 1, have you seen this chart before?
17 A Have I -- have I seen any documents	17 A I -- I have.
18 that were redacted related --	18 Q Okay. Do you know who put this chart
19 Q Not in --	19 together?
20 A -- to borrower defense.	20 A I -- I don't know specifically who, but
21 Q Have you seen any documents where the	21 I believe it is most likely our borrower defense
22 school group -- where any information about a	22 group and the folks that were in that area.
23 school group is redacted?	23 Q Okay. And who do you think it would
24 MR. HANCOCK: Objection.	24 have been in the borrower defense group?
25 THE WITNESS: I have.	25 A I would never be able -- I don't know,
Page 199 Page	Page 201 Page
1 MR. HANCOCK: Exceeds the scope of	1 ma'am. You mean who within all of the borrower
2 court-ordered discovery.	2 defense group that actually did this chart?
3 THE WITNESS: So I have seen documents	3 Q Yeah, who -- who do you think --
4 where words are redacted out.	4 A I don't know.
5 BY MS. TORCHIANA:	5 Q -- compiled it?
6 Q About -- were those words related to	6 A I don't know.
7 specific school groups?	7 Q Okay. If you had questions about this
8 A I don't recall what they were related	8 chart, about the contents of it, who would you
9 to, but if you're -- the first part of your	9 ask?
10 question, have I seen documents in the -- in the	10 A So the way we're organized, I would --
11 staffing process and the ruling process where	11 I would go to the deputy chief operating officer
12 there are -- where there are redactions, I have.	12 for partner participation and oversight, and I
13 I've seen documents where words were redacted out.	13 would --
14 Q I don't mean redactions in general. I	14 Q And who is that?
15 meant redactions related to specific school	15 A That's Ms. Robin Minor.
16 groups.	16 Q Okay.
17 A That -- that particular -- I -- I just	17 A And I would ask her my question.
18 don't recall if it was related to school groups or	18 Q Okay.
19 not.	19 A She might ask who -- whoever is
20 Q If you could take a look at Exhibit 19.	20 required to get the answer and ultimately I would
21 Do you recognize this document -- actually, if you	21 get my answer then.
22 could turn to -- your declaration is in the front,	22 Q Okay. And have you ever -- have you
23 but if you could turn to Attachment 1, that would	23 ever asked anybody questions about this chart?
24 be helpful.	24 A I don't require -- I don't remember or
25 Do you recognize this document?	25 recall asking questions about this specific

Page 202 Page	<p>1 document. I do not.</p> <p>2 However, I see a lot of documents, and</p> <p>3 I would never tell you in its entirety that this</p> <p>4 particular document I remember seeing it on that</p> <p>5 day and I asked or didn't ask questions. I was --</p> <p>6 I can only tell you that looking at it now, I</p> <p>7 don't recall any questions that I would have</p> <p>8 asked.</p> <p>9 Q Okay. And do you know -- do you know</p> <p>10 what documents were used to put this chart</p> <p>11 together, like what are the sources of -- well,</p> <p>12 why don't you answer that question first.</p> <p>13 A What was used to do this chart?</p> <p>14 Q Yeah.</p> <p>15 A I -- I would assume, and let me answer</p> <p>16 your -- your question first. Do -- do I know what</p> <p>17 documents were used to put together this chart?</p> <p>18 No.</p> <p>19 Q Okay. What do you -- what do you</p> <p>20 think -- where do you think this information is</p> <p>21 coming from or what documents do you think this</p> <p>22 information is coming from?</p> <p>23 A The expertise of the borrower defense</p> <p>24 unit and their various working papers, those kinds</p> <p>25 of things.</p>	Page 204 Page	<p>1 that -- the reasons for which the common evidence</p> <p>2 is put there is outside of the scope of those</p> <p>3 dates and things that are provided in column 2.</p> <p>4 Q Okay. So what would happen to an</p> <p>5 application -- so let's just take this as an</p> <p>6 example. What would happen to an application by a</p> <p>7 borrower who enrolled after October 1st, 2012, and</p> <p>8 didn't make any allegations relating to</p> <p>9 partnerships with large companies or programmatic</p> <p>10 accreditation?</p> <p>11 A So if they didn't -- you mean, if they</p> <p>12 didn't -- if they -- if column 2 applied to them</p> <p>13 and so none of the common evidence, at least as --</p> <p>14 as displayed here, was applicable to their case?</p> <p>15 Q Yes.</p> <p>16 A The -- the attorney would adjudicate</p> <p>17 the case.</p> <p>18 Q Okay.</p> <p>19 A And determine it for some other reason</p> <p>20 that there was reasons for the claim to be</p> <p>21 relevant.</p> <p>22 Q Okay. And when they were adjudicating</p> <p>23 the claim, what evidence would they rely on?</p> <p>24 A I don't know. It depends on</p> <p>25 everything -- every case has to be adjudicated in</p>
Page 203 Page	<p>1 Q Okay. Okay. So could you explain to</p> <p>2 me what column 2 represents?</p> <p>3 A Yes, ma'am. So this chart is -- is</p> <p>4 listing in column 3 all of the common evidence</p> <p>5 that has been collected, and in -- and in</p> <p>6 column 1 -- or available. And in column 1, the</p> <p>7 name of the school for which the evidence may</p> <p>8 relate to.</p> <p>9 But column 2 sets out some stipulations</p> <p>10 for which there would be an exclusion -- meaning,</p> <p>11 if whatever issue is brought up falls within a</p> <p>12 time frame, for instance, that is not covered, or</p> <p>13 an enrollment date that's not covered.</p> <p>14 And while that's not exclusive, it just</p> <p>15 says in general that the evidence in these time</p> <p>16 frames are different, and -- and so a claim could</p> <p>17 be against Apollo Group but be outside the scope</p> <p>18 of that time period and therefore the common</p> <p>19 evidence may not apply.</p> <p>20 Q So let's take the Apollo Group for</p> <p>21 example. So if a borrower is within one of these</p> <p>22 categories in column 2, that means they don't fit</p> <p>23 within the evidence that's in column 3; is that</p> <p>24 right?</p> <p>25 A That's -- that's most likely. That --</p>	Page 205 Page	<p>1 a very individualized way. So -- so I don't know.</p> <p>2 I mean, it depends on what came in that case.</p> <p>3 Maybe something could have been provided by the</p> <p>4 borrower; maybe there could be something outside</p> <p>5 of the scope of what's in that common evidence.</p> <p>6 It just depends. You could only answer</p> <p>7 the question that you asked on the specific case</p> <p>8 and the lawyer here to tell you how that specific</p> <p>9 case was adjudicated. I would not want to</p> <p>10 speculate.</p> <p>11 Q Okay. And you said something that</p> <p>12 would be outside the scope of common evidence.</p> <p>13 Can you think of examples of what that would be?</p> <p>14 A I -- I could not, but I don't do this</p> <p>15 on a day-to-day basis. I'm -- I'm certain that an</p> <p>16 attorney might find something that if they were</p> <p>17 seeing all of these, they're familiar with them.</p> <p>18 They may find something.</p> <p>19 But if you're asking me what it could</p> <p>20 be, not -- not knowing Apollo Group or the</p> <p>21 University of Phoenix or any of these other than</p> <p>22 the names on the paper, the answer is I don't</p> <p>23 know.</p> <p>24 Q Okay. And let's say a borrower who</p> <p>25 fits into this column 2, so let's take a borrower</p>

<p style="text-align: right;">Page 206 Page</p> <p>1 from the University of Phoenix who fits into this</p> <p>2 first category, let's say the only thing they</p> <p>3 submitted was a firsthand account of their</p> <p>4 experience signed under penalty of perjury.</p> <p>5 Would that be considered evidence to</p> <p>6 support their claim?</p> <p>7 A Could you say that again? I'm sorry,</p> <p>8 ma'am. You -- you --</p> <p>9 Q I'm sorry.</p> <p>10 A Signed under the penalty of perjury,</p> <p>11 and after that you lost me. I'm sorry.</p> <p>12 Q Okay. I'll repeat the question.</p> <p>13 So let's say a borrower who attended</p> <p>14 University of Phoenix and fits into column 2, so</p> <p>15 she enrolled after October 1st, 2012, and didn't</p> <p>16 make any allegations relating to partnerships with</p> <p>17 large companies or programmatic accreditation, and</p> <p>18 she had a firsthand account of her experience</p> <p>19 being defrauded at the University of Phoenix,</p> <p>20 obviously signed under penalty of perjury.</p> <p>21 Would her application be considered</p> <p>22 evidence?</p> <p>23 A I -- I couldn't answer. I would leave</p> <p>24 the -- kind of the assessment of evidence and what</p> <p>25 qualifies and what doesn't qualify, what rises to</p>	<p style="text-align: right;">Page 208 Page</p> <p>1 Q So to be clear, if an applicant from</p> <p>2 the University of Phoenix fits into column 3,</p> <p>3 their application relates to this common evidence,</p> <p>4 their application would be adjudicated at Step 1?</p> <p>5 MR. HANCOCK: Objection: vague.</p> <p>6 THE WITNESS: I don't -- I don't know</p> <p>7 if -- if you're asking me is adjudication going</p> <p>8 on, do our attorneys the way we describe it here</p> <p>9 today adjudicate claims in Step 1, then the answer</p> <p>10 to that question is yes.</p> <p>11 Again, that answer is yes. Claims</p> <p>12 are -- if you're asking me if the Apollo Group</p> <p>13 and -- and something that's in column 3 absolutely</p> <p>14 means that a case will be adjudicated under our</p> <p>15 processes, I can't answer because I don't -- I</p> <p>16 don't know. I would -- I would say now the lawyer</p> <p>17 has the common evidence and the lawyer has</p> <p>18 everything before them.</p> <p>19 What they and how they do it is why we</p> <p>20 have them. They -- they know those things. I</p> <p>21 cannot tell you that absolutely, yes, it would be</p> <p>22 done, or absolutely, no, it won't be done. I</p> <p>23 don't know the answer to that because I'm not a</p> <p>24 trained attorney.</p> <p>25 BY MS. TORCHIANA:</p>
<p style="text-align: right;">Page 207 Page</p> <p>1 the level. As I stated earlier, that's not an</p> <p>2 area that I can give you answers on.</p> <p>3 I go back to my previous answer that an</p> <p>4 attorney would have to adjudicate this case on its</p> <p>5 own merits and then they would make the decisions</p> <p>6 to the kinds of questions and scenarios that you</p> <p>7 are raising.</p> <p>8 Q Okay. And then what about applications</p> <p>9 that do fit into the scope of common evidence, so</p> <p>10 that do fit into column 3? What happens to those?</p> <p>11 A They're adjudicated, and the common</p> <p>12 evidence is a part of that adjudication.</p> <p>13 Q They are adjudicated both at Step 1 and</p> <p>14 Step 2?</p> <p>15 A So to -- to kind of recap, Step 1 is</p> <p>16 the adjudication process. Step -- Step 2 is when</p> <p>17 you're using the Department of</p> <p>18 Education-determined methodology to assess the</p> <p>19 mathematical part of what percentage of relief</p> <p>20 will be granted. And then you'll go on through</p> <p>21 the administrative process that we talked about</p> <p>22 for which the borrower would be notified.</p> <p>23 So at least in the way that I defined</p> <p>24 it, Step 1 takes care of your adjudication</p> <p>25 process.</p>	<p style="text-align: right;">Page 209 Page</p> <p>1 Q Okay. And just do you know whether any</p> <p>2 applicants of the University of Phoenix -- do you</p> <p>3 know whether any applications have been approved?</p> <p>4 A I would want to consult -- I know that</p> <p>5 there are applications from the University of</p> <p>6 Phoenix. I know that they are going through our</p> <p>7 process. But rather than just kind of tell you</p> <p>8 off the top of my head, I would have to have -- I</p> <p>9 would have to look at the official records and</p> <p>10 determine.</p> <p>11 Q Okay. And have any been denied?</p> <p>12 A Same -- the same answer, ma'am. I'd</p> <p>13 have to -- I'd have to look at the official</p> <p>14 records and then I could cite for you status.</p> <p>15 Q Okay. Let's -- let's go over one more</p> <p>16 school group. So could you turn to page 3 of the</p> <p>17 attachment? And in the top right corner, it will</p> <p>18 say page 4 of 5 in the ECF stamp.</p> <p>19 A I have 4 of 15; is that right?</p> <p>20 Q Yeah, sorry. Four of 15.</p> <p>21 A Okay.</p> <p>22 Q So this is Career Education Corp. which</p> <p>23 we were just speaking about. And just as a</p> <p>24 question, do you know whether Diane Auer Jones</p> <p>25 ever received this fraud list?</p>

Page 210 Page	<p>1 A Received -- if she received this list?</p> <p>2 Q Yeah.</p> <p>3 A I -- I don't know. I --</p> <p>4 Q Okay.</p> <p>5 A I don't know.</p> <p>6 Q And, so, if you could just explain</p> <p>7 column 2 to me. It says, Categories of</p> <p>8 applications determined not to be within the scope</p> <p>9 of the common evidence listed in column 3. And</p> <p>10 then could you -- could you go down and explain --</p> <p>11 so it says, All schools: Borrowers who make</p> <p>12 allegations regarding programmatic accreditations.</p> <p>13 And then, of course, it says,</p> <p>14 Applications that do not fit the criteria below.</p> <p>15 Could you just explain to me how that</p> <p>16 works?</p> <p>17 A Again, column 3 is the available</p> <p>18 evidence for this particular school that's being</p> <p>19 characterized as common evidence. Column 2 is</p> <p>20 intended to be situations which don't apply to the</p> <p>21 common evidence found.</p> <p>22 And, so, I don't know each of these</p> <p>23 specifics, but at least theoretically that's how</p> <p>24 that column is designed. And, so, these things</p> <p>25 would be those things that don't match to the</p>	Page 212 Page	<p>1 read this. And the attempt here is to explain</p> <p>2 that by virtue of -- by virtue of the columns so</p> <p>3 everyone can see it for these particular schools</p> <p>4 that are picked.</p> <p>5 It is not the adjudication of the claim</p> <p>6 itself. It's not decisional documents. Those are</p> <p>7 things the attorney would be doing for each case</p> <p>8 individually.</p> <p>9 Q Okay. And do you know how these</p> <p>10 determinations are made?</p> <p>11 A When you say determinations --</p> <p>12 Q Of who fits into the scope of common</p> <p>13 evidence.</p> <p>14 A I don't know the particulars about each</p> <p>15 piece of common evidence because it's -- you know,</p> <p>16 it's -- it varies. It depends on which one of</p> <p>17 these we're talking about and what list we're</p> <p>18 talking about.</p> <p>19 But I -- but I do know their findings</p> <p>20 inside the common evidence, and that's what is --</p> <p>21 is being used. And -- and the answer to your</p> <p>22 question of who determines, I don't know who</p> <p>23 specifically determines. I know that this is a</p> <p>24 function of the borrower defense unit, and</p> <p>25 therefore this is a product of the borrower</p>
Page 211 Page	<p>1 issues that are found in the common evidence in</p> <p>2 column 3.</p> <p>3 Q Okay. Well -- okay.</p> <p>4 A And if you notice, some of these have</p> <p>5 dates, right.</p> <p>6 Q Uh-huh.</p> <p>7 A Periods that are very similar to the</p> <p>8 one we just discussed.</p> <p>9 Q Let's say I'm a borrower who attended</p> <p>10 the Western School of Health and Business or</p> <p>11 Pittsburgh Career Institute, and I enrolled</p> <p>12 between May 1, 1999 and May 22, 2004. Am I within</p> <p>13 the scope of common evidence or not?</p> <p>14 A On the surface of this, based on me</p> <p>15 reading it, on the surface of it -- and let me</p> <p>16 just clarify before I answer. Not for me to</p> <p>17 determine. I -- this is not for me to determine.</p> <p>18 But the intent of, say, that time</p> <p>19 period does not include what's been found in</p> <p>20 column 3. And, so, for these reasons before you,</p> <p>21 the common evidence of this, I read that to mean</p> <p>22 that they would not have a claim for that</p> <p>23 particular common evidence.</p> <p>24 They may have something else. There</p> <p>25 may be other things there. But that's how I would</p>	Page 213 Page	<p>1 defense unit. So the thought for work that has to</p> <p>2 go into it occurs in there.</p> <p>3 Q Okay. And who do you think would have</p> <p>4 made these determinations within the borrower</p> <p>5 defense unit?</p> <p>6 A I -- I don't know, ma'am.</p> <p>7 Q Okay. Okay. Let's move on to the next</p> <p>8 exhibit. Could you turn to Exhibit 18, the -- the</p> <p>9 oversight committee press release.</p> <p>10 (Exhibit 18 referred to.)</p> <p>11 THE WITNESS: I have it here.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q Okay. And do you recognize this press</p> <p>14 release?</p> <p>15 A I do.</p> <p>16 Q I'm sorry. I didn't -- I didn't catch</p> <p>17 that?</p> <p>18 A I do.</p> <p>19 Q Okay. And have you read it?</p> <p>20 A I read this -- if this is an exact</p> <p>21 copy, which, you know, I'd have to read through it</p> <p>22 and see. If this is an exact copy of what was</p> <p>23 released in the House Oversight Committee, then</p> <p>24 I've read it. I have not read what's before me</p> <p>25 here that I just pulled out of the exhibits.</p>

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<p>1 I'll just leave it as that. If it is</p> <p>2 the -- if it is what was released on around this</p> <p>3 time from the House committee and I see that --</p> <p>4 hold on one second and I'll tell you.</p> <p>5 Q Okay.</p> <p>6 A Hold on.</p> <p>7 (Witness reviews document.)</p> <p>8 Yes, ma'am, I read it.</p> <p>9 Q Okay. And do you generally understand</p> <p>10 the issue that it's discussing?</p> <p>11 A I -- I do understand it.</p> <p>12 Q Okay. And had you heard of any issues</p> <p>13 with this tool that it's discussing?</p> <p>14 MR. HANCOCK: I object to the scope --</p> <p>15 I object to this line of questioning as exceeding</p> <p>16 the scope of the court-ordered discovery.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q You can still answer.</p> <p>19 THE WITNESS: Am -- am I required to</p> <p>20 answer here?</p> <p>21 MR. HANCOCK: You may answer, General</p> <p>22 Brown.</p> <p>23 THE WITNESS: Okay. Can you ask me the</p> <p>24 question again? I'm trying to understand.</p> <p>25 Do I know anything about the press</p>	<p>1 they mean by tool, but I -- but -- but that's what</p> <p>2 we -- that's what we had. The borrower defense</p> <p>3 form was digitized and placed on the portal so</p> <p>4 that people could get it and utilize it.</p> <p>5 This press release is an attempt, I</p> <p>6 believe, to describe that process. I would know</p> <p>7 that process because -- because we own it. We --</p> <p>8 Federal Student Aid owns it. It's the operations</p> <p>9 of what we do, how we -- how we go out and engage</p> <p>10 customers of all types and make things intuitive</p> <p>11 for them to use -- to answer your question of why</p> <p>12 I would know this particular subject.</p> <p>13 Q Okay. And you said you felt -- or</p> <p>14 you -- I am -- I suppose you implied you felt this</p> <p>15 press release was inaccurate.</p> <p>16 Could you describe to me in your terms</p> <p>17 or how you understand what happened with -- with</p> <p>18 this Web tool related to the borrower defense?</p> <p>19 MR. HANCOCK: Objection to the scope.</p> <p>20 BY MS. TORCHIANA:</p> <p>21 Q You can still answer.</p> <p>22 A So I don't understand this press</p> <p>23 release. The distinction here -- the distinction</p> <p>24 I'm trying to make here is I understand the</p> <p>25 automation of our forms and the use of them on the</p>
Page 215 Page	Page 217 Page
<p>1 release?</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q No. Sir, the press release mentions a</p> <p>4 tool designed to ease the borrower defense</p> <p>5 application process that was frozen by Diane Auer</p> <p>6 Jones.</p> <p>7 And are you familiar with -- with this</p> <p>8 issue? Do you remember hearing about it? Were</p> <p>9 you involved in it?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what was your involvement</p> <p>12 with this Web tool?</p> <p>13 A So whoever wrote this doesn't</p> <p>14 accurately describe some of the -- the -- the</p> <p>15 procedures, the techniques. And, so, the reason I</p> <p>16 ask do I have to answer is because I wouldn't use</p> <p>17 any of the terms that you just read here.</p> <p>18 You said this tool and a -- I'm</p> <p>19 familiar with this because we own a digital</p> <p>20 customer care portal, and the digital customer</p> <p>21 care portal is a digitized front door for all</p> <p>22 student engagement products that come out of</p> <p>23 Federal Student Aid. It's a part of what we call</p> <p>24 the next generation of Federal Student Aid.</p> <p>25 It's -- it's -- so I don't know what</p>	<p>1 digital customer care platform. This is a very</p> <p>2 technical kind of issue. I would understand that</p> <p>3 because it's a part of our operations and what we</p> <p>4 do.</p> <p>5 But -- but you're asking me do I</p> <p>6 understand this press release, I -- I think.</p> <p>7 And -- and the answer to that is, no, I don't</p> <p>8 understand this press release other than they're</p> <p>9 referencing a tool that's a part of what we use in</p> <p>10 our digital customer care platform.</p> <p>11 Q Okay. And -- and what tool is that?</p> <p>12 You mentioned it was the -- you mentioned</p> <p>13 something about the BDU form being placed on the</p> <p>14 Web site.</p> <p>15 A So -- so we automated the form. We</p> <p>16 made the form a smart form and placed it as one</p> <p>17 item on the digital customer care platform.</p> <p>18 So if you go out to studentaid.gov and</p> <p>19 you look at the various little symbols out there</p> <p>20 and you have a FAFSA ID, and you hit this</p> <p>21 particular icon, you can get into a smart form --</p> <p>22 or link you can get into a smart form.</p> <p>23 I believe that's what this press</p> <p>24 release was attempting to describe.</p> <p>25 Q And did Diane Auer Jones stop this</p>

Page 218 Page	<p>1 smart form from going on the FSA Web site or on</p> <p>2 the digital customer care platform?</p> <p>3 MR. HANCOCK: Objection to the scope.</p> <p>4 BY MS. TORCHIANA:</p> <p>5 Q You can still answer.</p> <p>6 MS. TORCHIANA: And just for the</p> <p>7 record --</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Well, you can still answer.</p> <p>10 A The form is on the -- is on the digital</p> <p>11 customer care platform today.</p> <p>12 Q Okay. I --</p> <p>13 A So nobody stopped it if I understand</p> <p>14 your question right. It's there. It's -- what I</p> <p>15 describe to you is a reality. It's the form that</p> <p>16 people use.</p> <p>17 Q Okay. And at any point, was the form</p> <p>18 halted or taken down?</p> <p>19 A All of our forms, as I spoke of earlier</p> <p>20 when we were talking about the four different</p> <p>21 types of forms, all of our forms are -- are</p> <p>22 elements of policy; they're extensions of policy.</p> <p>23 And, so, rightfully so, they are</p> <p>24 staffed through the department, the Office of the</p> <p>25 General Counsel, the Office of the Under Secretary</p>	Page 220 Page	<p>1 but it lacked a control number for paper</p> <p>2 reduction. And, so, we took it down to make sure</p> <p>3 we got that appropriate control number, and then</p> <p>4 we put back up the exact same form. So --</p> <p>5 Q Okay. Do you remember how long it was</p> <p>6 taken down for?</p> <p>7 A I don't -- no, ma'am. I can't tell you</p> <p>8 how many days. It wasn't very long. It did not</p> <p>9 take very long to -- to do that process and get it</p> <p>10 back up. It may -- it may have been three or four</p> <p>11 days or something like that, but I don't remember</p> <p>12 exactly how long it was.</p> <p>13 Q Okay. So if you turn to page 3, the</p> <p>14 press release says, According to the</p> <p>15 whistleblower, Jones halted the Web tool because</p> <p>16 it was too user-friendly and would have helped too</p> <p>17 many borrowers complete the application correctly,</p> <p>18 without any disqualifying mistakes.</p> <p>19 Is that accurate?</p> <p>20 A I -- I don't know in this case what</p> <p>21 they are talking about, and that's why I didn't</p> <p>22 want to comment on the press release. I -- I</p> <p>23 don't know -- I couldn't tell you. I don't know</p> <p>24 what the whistleblower is referring to. That's</p> <p>25 the term they use here, whistleblower said. I</p>
Page 219 Page	<p>1 in order to get final approvals. When those forms</p> <p>2 are in their final format that they're going to</p> <p>3 be, we execute by taking them to whatever the</p> <p>4 delivery mode may be.</p> <p>5 The form that's attempting -- that</p> <p>6 we're attempting to describe here today went just</p> <p>7 like that. Went through the staffing process.</p> <p>8 When that staffing process was over, we placed it</p> <p>9 with our contractor for the purpose of having it</p> <p>10 on our digital customer care platform.</p> <p>11 Q And, so, was it ever removed from the</p> <p>12 digital customer care platform?</p> <p>13 MR. HANCOCK: Objection: scope.</p> <p>14 THE WITNESS: Let me make sure I</p> <p>15 understand your question. Was it ever removed</p> <p>16 from the -- you mean, did the form come down and</p> <p>17 go back up?</p> <p>18 BY MS. TORCHIANA:</p> <p>19 Q Or did it -- was it supposed to --</p> <p>20 okay. Did the form go up and then did it go back</p> <p>21 down?</p> <p>22 A Yes. Yes, the form -- this particular</p> <p>23 form went up. It lacked an appropriate control</p> <p>24 number for what's called paper reduction. I know</p> <p>25 this is far more technical maybe than you want,</p>	Page 221 Page	<p>1 don't remember the term "effectively killing"</p> <p>2 being used in anything or conversation that I've</p> <p>3 had.</p> <p>4 Q Okay.</p> <p>5 A I don't know if it's accurate or not,</p> <p>6 ma'am.</p> <p>7 Q Okay. And have you ever heard anyone</p> <p>8 with -- or have you ever heard the under secretary</p> <p>9 suggest that it's too easy to apply for borrower</p> <p>10 defense?</p> <p>11 MR. HANCOCK: Objection to the scope.</p> <p>12 THE WITNESS: No, I can't recall her</p> <p>13 saying it's too easy to apply for borrower</p> <p>14 defense.</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q Not necessarily in those words, but</p> <p>17 anything along those lines?</p> <p>18 MR. HANCOCK: Same objection.</p> <p>19 THE WITNESS: I don't -- I don't recall</p> <p>20 her saying that it was too easy to apply for</p> <p>21 borrower defense.</p> <p>22 MS. TORCHIANA: Okay. Could we take a</p> <p>23 ten-minute break? Is that okay with everyone?</p> <p>24 MR. HANCOCK: That's fine with me.</p> <p>25 Is that okay with you, General Brown?</p>

Page 222 Page	<p>1 MS. BERMAN: Are we wrapping up?</p> <p>2 THE VIDEOGRAPHER: You want to go off</p> <p>3 the record?</p> <p>4 MS. BERMAN: Sure.</p> <p>5 THE VIDEOGRAPHER: Okay. We're going</p> <p>6 off the record. The time is 21:45 UTC.</p> <p>7 (Recess -- 4:47 p.m.)</p> <p>8 (After recess -- 4:55 p.m.)</p> <p>9 THE VIDEOGRAPHER: We're now back on</p> <p>10 the record. The time is 21:55 UTC.</p> <p>11 BY MS. TORCHIANA:</p> <p>12 Q Okay. Mr. Brown, I'm -- so there are a</p> <p>13 couple of questions or topics that I wanted to</p> <p>14 circle back on. One thing we've been discussing</p> <p>15 you mentioned earlier on that there was a decision</p> <p>16 or guidance not to issue any decisions until the</p> <p>17 tiered relief methodology was in place.</p> <p>18 Could you tell me again who made that</p> <p>19 decision?</p> <p>20 MR. HANCOCK: Objection: asked and</p> <p>21 answered; misstates testimony.</p> <p>22 THE WITNESS: So I -- I couldn't -- I</p> <p>23 couldn't speak to who, specifically the -- kind of</p> <p>24 the inner workings of what happened at the</p> <p>25 department. But I can -- I can tell you that</p>	Page 224 Page	<p>1 Office of Federal Student Aid. And I said that to</p> <p>2 say that they executed decisions on policy. They</p> <p>3 don't make them.</p> <p>4 Q Do you think Robin Minor would have</p> <p>5 made that decision?</p> <p>6 A So Robin Minor works directly for me as</p> <p>7 one of the deputy chief operating officers, and</p> <p>8 the borrower defense unit is under her. So I say</p> <p>9 that to say that she works inside of Federal</p> <p>10 Student Aid, so she would not make a policy</p> <p>11 decision. She would execute them.</p> <p>12 Q Okay. And would Secretary DeVos have</p> <p>13 made that decision?</p> <p>14 A So again, as I said earlier, I don't</p> <p>15 know who made the decision. The decisions on</p> <p>16 policy come from the Department of Education and</p> <p>17 are relayed to me through the Office of the Under</p> <p>18 Secretary.</p> <p>19 Q Okay. And similarly, for the denial</p> <p>20 letters, who -- who has the authority -- just</p> <p>21 going back -- back to that subject -- who has the</p> <p>22 authority to authorize changes to the form of</p> <p>23 denial letters?</p> <p>24 A Who has the authority to authorize --</p> <p>25 Q Any changes to the form of denial</p>
Page 223 Page	<p>1 policy decisions are -- come to me through the</p> <p>2 Office of the Under Secretary, and that -- and</p> <p>3 that this was no different.</p> <p>4 BY MS. TORCHIANA:</p> <p>5 Q So did Diane Auer Jones make the</p> <p>6 decision that the BDU wouldn't issue any decisions</p> <p>7 while the Calvillo injunction was in place?</p> <p>8 MR. HANCOCK: Objection: asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I couldn't tell you who,</p> <p>11 as I said earlier, because I don't know. But I</p> <p>12 could tell you that the Office of the Under</p> <p>13 Secretary would have relayed that decision to me.</p> <p>14 Lots, you know, could be going on in the decision</p> <p>15 making process that I'm just not aware of on the</p> <p>16 policy side.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q Did you ask her who came up with that</p> <p>19 decision?</p> <p>20 A No.</p> <p>21 Q Okay. Do you know whether Ms. Colleen</p> <p>22 Nevin had a role in making that decision?</p> <p>23 A So Colleen Nevin is the director of the</p> <p>24 borrower defense unit, which is part of partner</p> <p>25 participation and oversight which is within the</p>	Page 225 Page	<p>1 letters?</p> <p>2 A To the denial letter forms? You mean</p> <p>3 take off question 3 and put on question 4, those</p> <p>4 kind of things?</p> <p>5 Q Yeah.</p> <p>6 A The final -- the final decision on what</p> <p>7 goes on at what -- what -- how the form will be</p> <p>8 constructed, what it will have on it is a -- is,</p> <p>9 in fact, an extension of policy. It's a policy</p> <p>10 decision.</p> <p>11 Q So would -- would Diane Auer Jones have</p> <p>12 the final say over whether to approve any changes</p> <p>13 to the denial forms?</p> <p>14 A So I couldn't tell you who, but I -- I</p> <p>15 could tell you that those -- those policies would</p> <p>16 go through the process of Office of General</p> <p>17 Counsel, Office of Under Secretary, and we would</p> <p>18 have to have something back in general from --</p> <p>19 from those offices before we would move forward</p> <p>20 with an approved form.</p> <p>21 Q And then to go back to another</p> <p>22 question, when we spoke about the partial relief</p> <p>23 methodology, part of that involves earnings</p> <p>24 tables, it sounds like. How many schools has the</p> <p>25 department issued earnings relief tables for?</p>

<p style="text-align: right;">Page 226 Page</p> <p>1 MR. HANCOCK: Objection. It exceeds 2 the scope of discovery. 3 THE WITNESS: I don't know, ma'am. 4 BY MS. TORCHIANA: 5 Q You don't know. 6 Okay. Do you think knowing that 7 information would have been relevant to setting 8 your -- your target metrics for the number of 9 adjudications going out? 10 A Just to be clear, I said I didn't know. 11 I didn't say that there wasn't someone who may 12 have known and may have been a part of that and it 13 may have been a part of the setting and the 14 establishing of metrics. 15 But if you are assuming the premise 16 that it wasn't used in that discussion, I can't 17 validate that that premise is correct. I could 18 only say that I don't know. You know, I couldn't 19 tell you which ones were in and which ones were 20 out at that time. I couldn't tell you that the 21 subject matter experts and the technicians and the 22 policy liaison folks and the folks that are inside 23 the bowels of the organization, they may have been 24 familiar with that, and it could have been a part 25 of their deliberations, but I don't know</p>	<p style="text-align: right;">Page 228 Page</p> <p>1 full -- through this full speech. But if you -- 2 by familiar, do you mean if I know when this was 3 given, the title that's up at the top and -- 4 Q Were you there? 5 A It's all -- it was a virtual 6 conference. 7 Q Okay. Were you listening -- did you -- 8 did you hear this speech? 9 A I was virtually there. I -- I was -- I 10 was on the -- on the platform, I think would be 11 the way to -- to explain it. And I did the 12 introduction, and I listened while the speech was 13 given. 14 Q Okay. 15 A So if -- if that -- if that is what you 16 mean by am I familiar with it, in that regard, I 17 am. But if -- but if you mean have I read this 18 speech, the script that was provided here in the 19 information that you sent me, then the answer to 20 that is I have not. 21 Q Okay. And could you go to page 3 of 6? 22 It's in small -- it's on the bottom right-hand 23 side of the page. 24 A Yes, ma'am. 25 Q And could you read me the paragraph</p>
<p style="text-align: right;">Page 227 Page</p> <p>1 personally. 2 Q Okay. And that 150,000 number of 3 targeted adjudications for borrower defense 4 applications, by adjudications, is that decisions 5 that have been processed and sent to borrowers, or 6 what do you consider an adjudicated decision that 7 counts towards that 150,000? 8 A So when I look at the metric, I take a 9 holistic look at it. And so to get a check in 10 that column, I'm looking for the full circle, 11 which is what we have called today Step 1 and Step 12 2, to have been completed. 13 Q Okay. Okay. I have a couple more 14 things to go over, and then -- so -- so could you 15 turn to tab 33? 16 MS. TORCHIANA: And could we mark that 17 as Exhibit 30? 18 (Deposition Exhibit 30 was marked for 19 identification and attached to the transcript.) 20 BY MS. TORCHIANA: 21 Q And are you familiar with this speech 22 by Secretary DeVos? 23 A (Witness reviews document.) 24 I'm familiar with the event. The -- 25 the speech itself, I have not read through this</p>	<p style="text-align: right;">Page 229 Page</p> <p>1 that starts with, Still more advance? 2 A Still more advance the truly insidious 3 notion of government gift giving. We've heard 4 shrill calls to cancel, to forgive, to make it all 5 free. Any innocuous label out there can't 6 obfuscate what it really is: wrong. 7 Q Okay. And what do you -- what did you 8 understand this to mean, or what do you understand 9 this to mean? 10 MR. HANCOCK: Objection: exceeds the 11 scope of discovery. What's the relevance of this 12 to the court's three categories? 13 BY MS. TORCHIANA: 14 Q You can still answer. 15 A You're asking me what do I believe that 16 statement is? 17 Q Yeah, what do you understand this 18 statement to mean. 19 MR. HANCOCK: Calls for speculation. 20 THE WITNESS: I am -- can you give me a 21 second to read it again? 22 BY MS. TORCHIANA: 23 Q Yeah. 24 A (Witness reviews document.) 25 I don't know what it means. It was --</p>

Page 230 Page	<p>1 it was obviously written by a speechwriter. Those</p> <p>2 are not -- those are not terms I use. I don't --</p> <p>3 I don't know what it means.</p> <p>4 Q Okay. And -- sure.</p> <p>5 And have you ever heard Ms. DeVos in</p> <p>6 your private meetings with her express these same</p> <p>7 sentiments?</p> <p>8 MR. HANCOCK: Object to the scope of</p> <p>9 discovery, and I'm going to instruct the witness</p> <p>10 not to answer.</p> <p>11 MS. TORCHIANA: Okay. Could -- could</p> <p>12 we go off the record?</p> <p>13 MR. HANCOCK: Sure.</p> <p>14 MS. TORCHIANA: I think that's</p> <p>15 exactly --</p> <p>16 THE COURT REPORTER: Wait, wait, wait.</p> <p>17 Wait a minute. Wait a minute. You're not off.</p> <p>18 He's got to read you off.</p> <p>19 MS. TORCHIANA: I'm sorry.</p> <p>20 THE COURT REPORTER: That's okay.</p> <p>21 THE VIDEOGRAPHER: We're going off the</p> <p>22 record; right?</p> <p>23 THE COURT REPORTER: Yes.</p> <p>24 MS. TORCHIANA: It seems to be --</p> <p>25 THE COURT REPORTER: Yes.</p>	Page 232 Page	<p>1 THE WITNESS: Yes.</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q Okay. And are you familiar with this</p> <p>4 PowerPoint? Have you seen it before?</p> <p>5 A (Witness reviews document.)</p> <p>6 So, ma'am, I believe I have seen it</p> <p>7 before.</p> <p>8 Q Okay. So when did you see it?</p> <p>9 A I cannot -- I cannot tell you when, but</p> <p>10 I believe in some of our staff at work and our</p> <p>11 updates, I have seen these charts before.</p> <p>12 Q Okay. And in what context would you</p> <p>13 have seen it?</p> <p>14 A Updates from the borrower defense team,</p> <p>15 preparing for updates, those kinds of things.</p> <p>16 Q Okay. And did you receive regular</p> <p>17 updates from the borrower defense team?</p> <p>18 A So I don't know. I would say the</p> <p>19 updates from the borrower defense team I receive</p> <p>20 vary, as I stated earlier. It just depends on</p> <p>21 what's going on, you know, what needs to be</p> <p>22 discussed, and I'm not sure if you would consider</p> <p>23 that regular or not.</p> <p>24 Q Okay. And this presentation is from</p> <p>25 August 21st, 2019. And if you turn to page 2, it</p>
Page 231 Page	<p>1 Wait a minute.</p> <p>2 MS. TORCHIANA: -- relevant --</p> <p>3 THE COURT REPORTER: Wait a minute.</p> <p>4 MS. TORCHIANA: -- to point --</p> <p>5 THE COURT REPORTER: No. He asked the</p> <p>6 question.</p> <p>7 Dan, yes, please take us off the</p> <p>8 record.</p> <p>9 THE VIDEOGRAPHER: Thank you. We're</p> <p>10 now off the record at ten -- 23:07 UTC.</p> <p>11 (Recess -- 5:07 p.m.)</p> <p>12 (After recess -- 5:09 p.m.)</p> <p>13 THE VIDEOGRAPHER: We're now back on</p> <p>14 the record. The time is 22:09 UTC time.</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q Okay. And, so, Mr. Brown, are you --</p> <p>17 are you declining to answer what you think this</p> <p>18 sentence means?</p> <p>19 A The answer is I don't know.</p> <p>20 Q You -- you don't know. Okay.</p> <p>21 Okay. Let's move on. Let's go to our</p> <p>22 final exhibit, and then we'll be done.</p> <p>23 Could you turn to Exhibit -- let's</p> <p>24 see -- Exhibit 12?</p> <p>25 (Exhibit 12 referred to.)</p>	Page 233 Page	<p>1 says, Total borrower defense applications as of</p> <p>2 the week ending August 6th, 2019.</p> <p>3 Do you know whether these presentations</p> <p>4 were given weekly or . . .</p> <p>5 A (Witness reviews document.)</p> <p>6 No, I can't tell you that they were</p> <p>7 given weekly.</p> <p>8 Q Okay. And were you -- was this</p> <p>9 presentation given to you, or in what context did</p> <p>10 you see this PowerPoint?</p> <p>11 A Because these -- because I have seen, I</p> <p>12 think, most of these slides at different times and</p> <p>13 perhaps some more than once over time. Your</p> <p>14 particular question of when was this presentation</p> <p>15 given to me, I don't -- I don't know that date. I</p> <p>16 just can say for sure that I have seen the slides</p> <p>17 that you are talking about.</p> <p>18 Q Okay.</p> <p>19 A It's not all at the same time is my</p> <p>20 point. Different things, different types,</p> <p>21 different updates.</p> <p>22 Q Okay. And the second line says, 38,700</p> <p>23 applications have been adjudicated but not yet</p> <p>24 processed.</p> <p>25 As -- as we've been describing it,</p>

Page 234 Page	<p>1 would you describe this as Step 1?</p> <p>2 A You -- you mean the adjudication part?</p> <p>3 Q Adjudication but not yet processed.</p> <p>4 A So Step 1 is the adjudication, so I</p> <p>5 would describe that 38,700 as having completed</p> <p>6 Step 1.</p> <p>7 Q Okay.</p> <p>8 A I would not describe it as Step 1 and</p> <p>9 Step 2 because the sentence says have not been</p> <p>10 processed.</p> <p>11 Q Okay. And it says over 27,700 approved</p> <p>12 applications will be finalized.</p> <p>13 So are these grants?</p> <p>14 A I'm sorry. Did you say "grants"?</p> <p>15 Q Yeah.</p> <p>16 A No, we don't do grants, ma'am, in</p> <p>17 borrower defense if I understand your question</p> <p>18 right.</p> <p>19 Q Are -- are these approvals, approved</p> <p>20 applications where the borrower made a successful</p> <p>21 claim for borrower defense?</p> <p>22 A These are -- these are borrower defense</p> <p>23 claims that have determined that the borrower is</p> <p>24 eligible for a borrower defense claim.</p> <p>25 Q Okay.</p>	Page 236 Page	<p>1 So as soon as you would get to a</p> <p>2 2016 -- a claim that's filed under the 2016 rule,</p> <p>3 then you would be required by that requirement to</p> <p>4 go to the school for notification and -- and</p> <p>5 whatever documentation or input they would want to</p> <p>6 bring back.</p> <p>7 So when? Whenever we got to a claim</p> <p>8 that's -- that the dates of that particular claim</p> <p>9 made it fall under the 2016 rule. I -- I don't</p> <p>10 know that exact date, but that's when the borrower</p> <p>11 defense team would have had to have sent</p> <p>12 information to the school.</p> <p>13 Q Okay. And do you know how many schools</p> <p>14 you've sent out this request for responses to?</p> <p>15 A I -- I don't. I don't know how many</p> <p>16 claims have fallen under the 2016 rule yet.</p> <p>17 Q All right. Okay. And then I -- on the</p> <p>18 next page, on page 4, it says at the bottom, A</p> <p>19 decision on the relief methodology would result in</p> <p>20 the ability to proceed with approximately 40,000</p> <p>21 applications.</p> <p>22 Could you explain to me what -- what</p> <p>23 that means?</p> <p>24 A That -- that Step 1 had been completed.</p> <p>25 There were 40,000 applications that had come in,</p>
Page 235 Page	<p>1 A But there's no relief methodology is</p> <p>2 what that note is saying at the time or one is not</p> <p>3 ready, and so they can't go through that second</p> <p>4 part of the process.</p> <p>5 Q Okay. And then if you could turn to</p> <p>6 the next page, it says the -- the six stages of a</p> <p>7 BD application, and below intake borrower</p> <p>8 increase, it says, School response, New under the</p> <p>9 2016 regulations.</p> <p>10 As you understand it, what does that</p> <p>11 entail?</p> <p>12 A It -- it entails letting a school know</p> <p>13 that a claim has been filed against that school</p> <p>14 and -- and showing the school that the evidence or</p> <p>15 documentation that was used in providing an</p> <p>16 appropriate amount of time for the school to</p> <p>17 respond back so that the lawyer, that part of it,</p> <p>18 can do the adjudication.</p> <p>19 Q Okay. When did the department start</p> <p>20 issuing school responses -- or start soliciting</p> <p>21 them?</p> <p>22 A So claims -- claims are covered by the</p> <p>23 rule, I think, that was in place at the time.</p> <p>24 And, so, there are -- there are certain dates that</p> <p>25 fall under the 2016 rule.</p>	Page 237 Page	<p>1 and that once we had a relief methodology, we</p> <p>2 could do the mathematical computations if -- if</p> <p>3 appropriate for these 40,000, and they could be --</p> <p>4 notifications could be sent out.</p> <p>5 Q Okay. And do you know whether this</p> <p>6 included schools other than CCI and ITT?</p> <p>7 A I don't -- I don't know. I would have</p> <p>8 to go back into the numbers and see, but because</p> <p>9 it says August 2019, the majority of those cases</p> <p>10 at the front part of the cycle are CCI and ITT.</p> <p>11 THE COURT REPORTER: I'm sorry. I</p> <p>12 missed the last part. The majority of those cases</p> <p>13 at the front part? Is that what you said?</p> <p>14 THE WITNESS: The majority of those</p> <p>15 cases at the front part of the cycle are CCI and</p> <p>16 ITT.</p> <p>17 THE COURT REPORTER: Thank you. Thank</p> <p>18 you.</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q Okay. And if you turn to the sixth</p> <p>21 page of the PowerPoint, it says, Why are BD</p> <p>22 applications on hold. And it says, No relief</p> <p>23 methodology developed for non-CCI claims.</p> <p>24 So -- so this presentation was given in</p> <p>25 August of 2019. So was there any relief</p>

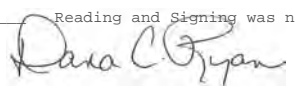
Page 238 Page	<p>1 methodology for non-CCI claims that had started to</p> <p>2 be developed at that time that you know of?</p> <p>3 A Ma'am, could you -- could you repeat</p> <p>4 that question again? I'm sorry.</p> <p>5 Q Yeah.</p> <p>6 So this presentation is from</p> <p>7 August 2019, and it says, No relief methodology</p> <p>8 developed for non-Corinthian claims.</p> <p>9 So do you know whether at the time this</p> <p>10 presentation was given was there any relief</p> <p>11 methodology being developed?</p> <p>12 A August of 2019?</p> <p>13 Q Uh-huh.</p> <p>14 A Relief methodology was being worked on.</p> <p>15 Q Okay. And why had it not yet been</p> <p>16 completed?</p> <p>17 A The policy element wasn't done is</p> <p>18 all -- all that I can tell you. Why? I don't</p> <p>19 know other than I can tell you it's not simple.</p> <p>20 It's a complex work that they have to do. Beyond</p> <p>21 that, I couldn't tell you why it wasn't completed.</p> <p>22 I'm just sure that we weren't using one yet</p> <p>23 because that happened December of 2019.</p> <p>24 Q Okay. And what did you understand as</p> <p>25 the -- what -- what was missing for the</p>	Page 240 Page	<p>1 that it would match loan -- claims to loan numbers</p> <p>2 and then follow the data through the system so</p> <p>3 that accountability was much -- much tighter.</p> <p>4 The -- the platform was developed for</p> <p>5 customer inquiries because we never anticipated</p> <p>6 years ago having over 200,000 claims under --</p> <p>7 under this statute of borrower defense.</p> <p>8 And, so, that -- using that platform,</p> <p>9 it had to be upgraded, as you can imagine, to</p> <p>10 handle more data, to handle more content and to</p> <p>11 also move data from one system to the next. All</p> <p>12 of that was required because this was no longer</p> <p>13 a -- an Excel spreadsheet operation. This -- this</p> <p>14 was a major case management processing, and that's</p> <p>15 what -- that's what's meant occasionally through</p> <p>16 here when we reference the platform, the upgrades</p> <p>17 that needed to happen.</p> <p>18 Q Okay. And have these upgrades -- have</p> <p>19 they been completed?</p> <p>20 A So with technology systems, you know,</p> <p>21 completed is kind of an optimistic term. I would</p> <p>22 say that they are working much better today, and</p> <p>23 they are fully utilized, but I don't know that</p> <p>24 there aren't some more upgrades that are planned</p> <p>25 down the road for -- for this system.</p>
Page 239 Page	<p>1 methodology to be completed? What -- what stage</p> <p>2 of the process was it at?</p> <p>3 A I don't know.</p> <p>4 Q And there's also here -- it says, No</p> <p>5 processing systems available from summer 2018 to</p> <p>6 the present due to platform development and</p> <p>7 migration.</p> <p>8 Could you tell me who decided that</p> <p>9 applications would not be processed during this</p> <p>10 platform and migration?</p> <p>11 A I don't -- I don't know -- I started</p> <p>12 work at Federal Student Aid as the chief operating</p> <p>13 officer in March of 2019, so I don't know if</p> <p>14 there's a decision in 2018 related to the</p> <p>15 platform.</p> <p>16 But as I stated earlier, the two things</p> <p>17 that needed to get done were more attorneys and</p> <p>18 more resources in the development of the platform</p> <p>19 in order to make the borrower defense process</p> <p>20 work.</p> <p>21 Q And what about the platform is being</p> <p>22 developed?</p> <p>23 A So I can't speak again for what's</p> <p>24 referenced here in 2018. I don't know. But we</p> <p>25 needed a more advanced data collection system so</p>	Page 241 Page	<p>1 Q Okay. So this says, No processing</p> <p>2 systems available. So at what point would you say</p> <p>3 there was a processing system that was available?</p> <p>4 A I -- you know, I -- I can't speak again</p> <p>5 to 2018, but when we got into the April, May, June</p> <p>6 timeline -- timeline coming into July and August</p> <p>7 and September of -- of 2019, we had already begun</p> <p>8 to resource those upgrades and had what I would</p> <p>9 call a functioning -- a functioning system from</p> <p>10 which we could go forward on.</p> <p>11 Q Okay. Well -- okay. It says, No</p> <p>12 processing systems available from December 2018 to</p> <p>13 the present, and the present is August 2019.</p> <p>14 A Yeah.</p> <p>15 Q And it says, Upgrades to platform to be</p> <p>16 completed by August 30th.</p> <p>17 So would you say by August 30th the</p> <p>18 updates were completed, or what -- what happened</p> <p>19 there?</p> <p>20 A I can't -- I can't recall those exact</p> <p>21 dates, but I know that we began putting financial</p> <p>22 instructions into the systems in those months that</p> <p>23 I just named to -- to make it functional.</p> <p>24 Q Okay. And who made the decision to</p> <p>25 stop processing applications while these</p>

Page 242 Page	<p>1 processing systems were being updated?</p> <p>2 MR. HANCOCK: Objection: asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I -- I wasn't there in</p> <p>5 2018, ma'am. I don't . . .</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q Okay. And do you think decisions could</p> <p>8 have been adjudicated while the platform is being</p> <p>9 upgraded?</p> <p>10 A I -- I don't know if I answered your --</p> <p>11 you're asking me were we allowed to continue</p> <p>12 adjudicating decisions in -- in 2000- -- if you're</p> <p>13 asking me from March 2019 through the summer of</p> <p>14 2019 and the fall, when these system changes</p> <p>15 continuing to go on and upgrades continued to</p> <p>16 happen, if we were able to adjudicate cases. I'm</p> <p>17 just trying to repeat what I think you're -- is</p> <p>18 that what you're asking me?</p> <p>19 Q Yes.</p> <p>20 A And, so, again I would say that</p> <p>21 adjudications have never stopped. They have</p> <p>22 continued on. But -- but keep in mind what we're</p> <p>23 talking about is Step 2, the processing of -- of</p> <p>24 things which is not in Step 1. And, so, the</p> <p>25 relationships to adjudications, you can do</p>	Page 244 Page	<p>1 some of that again, ma'am, maybe in --</p> <p>2 BY MS. TORCHIANA:</p> <p>3 Q Yeah. So when we've been speaking,</p> <p>4 you've mentioned that two of the major limitations</p> <p>5 to the BDU were staffing and IT concerns; is that</p> <p>6 right?</p> <p>7 A That's correct.</p> <p>8 Q And was the -- the IT concern in</p> <p>9 question, was this -- when you were referring to</p> <p>10 that, were you referring to this processing system</p> <p>11 that was being updated from summer 2018 to present</p> <p>12 or something else?</p> <p>13 A I was -- I was referring to the</p> <p>14 platform which is used to process borrower defense</p> <p>15 applications, and I believe that's the same thing</p> <p>16 that's being referred to here.</p> <p>17 Q Okay. And what changes were made to</p> <p>18 that platform?</p> <p>19 A We've -- we began to use a -- a -- a</p> <p>20 system known as Salesforce. We upgraded the --</p> <p>21 the database to be able to hold that. We</p> <p>22 increased the capacity for numbers of documents</p> <p>23 and a series of other technical upgrades to the --</p> <p>24 to the program and software that we're using that</p> <p>25 I'm certainly not technically qualified to lay out</p>
Page 243 Page	<p>1 adjudications, but you can't do it with a high</p> <p>2 level of efficiency the processing in the mass</p> <p>3 numbers we're talking about minus some of the IT</p> <p>4 support that this briefing that you're referencing</p> <p>5 here is getting at.</p> <p>6 Q And could Step 2 decisions have gone</p> <p>7 out while the platform was being updated?</p> <p>8 A Step 2 decisions or borrower</p> <p>9 notifications, those kinds of things, required a</p> <p>10 methodology that would be used to compute things.</p> <p>11 And, so, we mixed a few things up. Until you had</p> <p>12 the methodology, platform, no platform, decisions</p> <p>13 aren't going out at least that require relief.</p> <p>14 And, so, what caused the decisions to go out was</p> <p>15 the announcement of a methodology December 2019.</p> <p>16 Q Okay. And you've repeatedly mentioned</p> <p>17 that one of the issues holding back issuing</p> <p>18 decisions was staff limitations and IT</p> <p>19 limitations. So when you talk about IT, is this</p> <p>20 what you're talking about, the processing system</p> <p>21 that had to be upgraded, or were you speaking</p> <p>22 about something else?</p> <p>23 MR. HANCOCK: Objection: misstates</p> <p>24 testimony.</p> <p>25 THE WITNESS: Could -- could you say</p>	Page 245 Page	<p>1 for you in total.</p> <p>2 But it's those kinds of upgrades where</p> <p>3 you increase both the capacity and the memory; you</p> <p>4 increase the speed; you increase the level of</p> <p>5 details that you're able to get out of the -- the</p> <p>6 system; all of those kind of things.</p> <p>7 Q Okay. And how long did it take to</p> <p>8 upgrade those things?</p> <p>9 A I -- I don't remember the total amount</p> <p>10 of time because they're done in phases, like phase</p> <p>11 one and phase two and phase three. They're all</p> <p>12 bringing up, you know, additional capability.</p> <p>13 But the system was being upgraded and</p> <p>14 worked on throughout the spring and summer of</p> <p>15 2019, I believe.</p> <p>16 Q Okay. Okay.</p> <p>17 MS. TORCHIANA: I think -- I think</p> <p>18 that's it. We've gone through most of my</p> <p>19 questions and, you know, I'm sure everyone's</p> <p>20 tired, so . . .</p> <p>21 MR. HANCOCK: Okay.</p> <p>22 THE WITNESS: If you're -- if you're</p> <p>23 done, ma'am --</p> <p>24 THE VIDEOGRAPHER: Should we conclude?</p> <p>25 MS. TORCHIANA: Yes.</p>

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1 THE VIDEOGRAPHER: All right. This
 2 concludes today's deposition. We're now going off
 3 the record. The time is 22:32 UTC time.
 4 MR. HANCOCK: Before you go -- before
 5 you go --
 6 MS. TORCHIANA: Actually, sorry.
 7 MR. HANCOCK: Dan?
 8 THE VIDEOGRAPHER: Yes.
 9 MR. HANCOCK: I would like to reserve
 10 the ability for the witness to read and sign the
 11 transcript.
 12 MS. TORCHIANA: I would also like to
 13 reserve the right to keep the deposition open, and
 14 if we learn of anything that we need to, you know,
 15 reopen this deposition for . . .
 16 THE VIDEOGRAPHER: Okay. Shall we
 17 close it again?
 18 MS. TORCHIANA: Yes, thank you.
 19 THE VIDEOGRAPHER: We're now off the
 20 record. The time is 22:32 UTC time.
 21 (Signature having not been waived, the
 22 Remote Videotaped Deposition of MARK BROWN ended
 23 at 5:32 p.m.)
 24
 25

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1 REPORTER'S CERTIFICATE
 2 I, Dana C. Ryan, Certified Shorthand Reporter in
 3 and for the State of Maryland, hereby certify that
 4 the deponent was by me first duly sworn and the
 5 foregoing testimony was reported by me and was
 6 thereafter transcribed with computer-aided
 7 transcription; that the foregoing is a full,
 8 complete, and true record, to the best of my
 9 ability, of said proceedings.
 10 I further certify that I am not of counsel or
 11 attorney for either or any of the parties in the
 12 foregoing proceedings and caption named or in any
 13 way interested in the outcome of the cause in said
 14 caption.
 15 The dismantling, unsealing, or unbinding of the
 16 original transcript will render the reporter's
 17 certificate null and void.
 18 In witness whereof, I have hereunto set my hand
 19 this day: December 18, 2020.
 20 Reading and Signing was requested.
 21 Reading and Signing was waived.
 22 Reading and Signing was not requested.
 23 
 24 _____
 25 Dana C. Ryan, RPR, CRR

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1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections. You
 5 should state the reason in the appropriate space
 6 on the errata sheet for any corrections that are
 7 made.
 8 After doing so, please sign the errata
 9 sheet and date it.
 10 You are signing same subject to the
 11 changes you have noted on the errata sheet which
 12 will be attached to your deposition.
 13 It is imperative that you return the
 14 original errata sheet to the deposing attorney
 15 within thirty (30) days of receipt of the
 16 deposition transcript by you. If you fail to do
 17 so, the deposition transcript may be deemed to be
 18 accurate and may be used in court.
 19
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1 E R R A T A S H E E T
 2 IN RE: THERESA SWEET, et al. v. ELISABETH DEVOS,
 3 in her official capacity as Secretary of the
 4 United States Department of Education.
 5 RETURN BY: _____
 6 PAGE LINE CORRECTION AND REASON
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ACKNOWLEDGMENT OF DEPONENT

I, Mark Brown, do hereby acknowledge
that I have read and examined the foregoing
testimony, and the same is a true, correct and
complete transcription of the testimony given by
me and any corrections appear on the attached
Errata sheet signed by me.

(DATE) (SIGNATURE)

CERTIFICATE OF NOTARY PUBLIC

Sworn and subscribed to before me this
_____ day of _____, _____

NOTARY PUBLIC MY COMMISSION EXPIRES

December 15, 2020

1

Exhibits		
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E R R A T A S H E E T

IN RE: THERESA SWEET, et al. v. ELISABETH DEVOS,
 in her official capacity as Secretary of the
 United States Department of Education.

RETURN BY: Mark A. Brown

PAGE	LINE	CORRECTION AND REASON
<u>18</u>	<u>16</u>	<u>"let" should be "left"; strike "go"</u>
<u>26</u>	<u>23</u>	<u>"policy defense team" should be "borrower defense team"</u>
<u>28</u>	<u>19</u>	<u>"emerged" should be "immersed"</u>
<u>120</u>	<u>14</u>	<u>"locations" should be "implications"</u>
<u>144</u>	<u>9</u>	<u>"like, 452" should be "like, 52"</u>
<u>178</u>	<u>12-14</u>	<u>"would this form be in presence" should be "would this form be produced"</u>
<u>January 12, 2021</u>		<u>Mark A. Brown</u>
(DATE)		(SIGNATURE)

Page

ACKNOWLEDGMENT OF DEPONENT

I, Mark Brown, do hereby acknowledge
 that I have read and examined the foregoing
 testimony, and the same is a true, correct and
 complete transcription of the testimony given by
 me and any corrections appear on the attached
 Errata sheet signed by me.

January 12, 2021

Mark A. Brown

(DATE)

(SIGNATURE)

CERTIFICATE OF NOTARY PUBLIC

Sworn and subscribed to before me this

_____ day of _____, _____

NOTARY PUBLIC

MY COMMISSION EXPIRES

Deposition Transcripts

Cited in Supplemental Complaint, March 19, 2021

Transcript 2 – Diane Auer Jones

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

- - - - - X
THERESA SWEET, et al., on :
behalf of themselves and all :
others similarly situated, :
Plaintiffs, :
vs. :
ELISABETH DEVOS, in her :
official capacity as :
Secretary of the United :
States Department of :
Education, et al., :
Defendants. :
- - - - - X

Remote Videotaped Deposition Of DIANE AUER JONES
Friday, November 20, 2020
9:15 a.m. (EST)

Job No. 330599
Pages: 1 - 301
Reported by: Dana C. Ryan, RPR, CRR

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2

3 November 20, 2020

4 9:15 a.m. (EST)

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8 Remote Videotaped Deposition of DIANE AUER

9 JONES, held via Zoom video teleconference, before

10 Dana C. Ryan, Registered Professional Reporter,

11 Certified Realtime Reporter and Notary Public in

12 and for the State of Maryland.

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1 A P P E A R A N C E S

2

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1 A P P E A R A N C E S C O N T I N U E D

2

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7 Victoria Roytenberg

8 Jed Brinton

9 Andrew Teoh

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P R O C E E D I N G S

THE VIDEOGRAPHER: We're now on the record. Participants should be aware that this proceeding is being recorded and as such all conversations held will be recorded unless there is a request and agreement to go off the record. Private conversations and/or attorney-client interactions should be held outside the presence of your remote interface.

This is the remote video recorded deposition of Ms. Diane Jones taken today, Friday, November 20th, 2020. The time is now 14:15 in UTC time. We're here in the matter of Theresa Sweet versus Elizabeth DeVos.

My name is Dan Macom. I'm the remote video technician on behalf of U.S. Legal Support which is located at 90 Broad Street, New York, New York. I'm not related to any party in this action nor am I financially interested in its outcome.

At this time I'll ask our court reporter Ms. Dana Ryan, on behalf of U.S. Legal Support, to please enter the statement for remote proceedings into the record.

THE COURT REPORTER: The attorneys participating in this deposition acknowledge that

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1 I am not physically present in the deposition room
 2 and that I will be reporting this deposition
 3 remotely.
 4 They further acknowledge that, in lieu
 5 of an oath administered in person, the witness
 6 will be sworn in remotely and will verbally
 7 declare her testimony in this matter is under
 8 penalty of perjury.
 9 The parties and their counsel consent
 10 to this agreement and waive any objections to this
 11 manner of reporting.
 12 Now if I could ask all parties to
 13 please state their agreement to this stipulation
 14 on the record.
 15 MR. MERRITT: Yes. This is Charlie
 16 Merritt on behalf of the defendants agreeing to
 17 that.
 18 MS. O'GRADY: This is Margaret O'Grady
 19 on behalf of plaintiffs also agreeing.
 20 THE COURT REPORTER: Could I now get
 21 you to please raise your right hand, Ms. Jones?
 22 *****
 23 DIANE AUER JONES,
 24 having been duly sworn, testified as follows:
 25 *****

Page 11

1 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
 2 BY MS. O'GRADY:
 3 Q Good morning, Ms. Jones. I'm Margaret
 4 O'Grady. I'm an attorney with the Project on
 5 Predatory Student Lending. I go by Maggie, so
 6 it's fine if you refer to me that way today.
 7 A Okay.
 8 Q It's nice to meet you in these strange
 9 remote circumstances, so I appreciate everyone's
 10 flexibility in figuring out how to do this and
 11 hope everything runs smoothly. And if it doesn't,
 12 we can just all work together to ensure that it
 13 does.
 14 I want to go over a few things, much
 15 like what I would say if we were in person but
 16 some of it tailored for our remote situation.
 17 So one of them is just to confirm that
 18 even though we probably all have the ability to
 19 communicate privately via our smartphones on the
 20 desk or something, that you will not be doing that
 21 during this deposition today?
 22 A I will not be.
 23 Q And do you have a smartphone or any
 24 kind of device within arm's reach right now?
 25 A I do. I have my personal phone. I can

Page 12

1 move it.
 2 Q I would appreciate it if you would move
 3 it.
 4 A Yep.
 5 Q Thank you.
 6 And then that's the only other kind of
 7 device that you could use today during the
 8 deposition?
 9 A Yeah, I just have my computer and a
 10 separate monitor in front of me.
 11 Q Okay. Thanks. If you can move that
 12 out of reach just to ensure that we're sure that
 13 there's no communication happening.
 14 A Sure.
 15 Q And that said, if you need breaks
 16 today -- I know that we have a break from 11:30 to
 17 noon scheduled. But any other break, you know, to
 18 use the restroom, to take a drink of water, to go
 19 off the record for a little while just for fatigue
 20 sake, just say so. I'm happy to take breaks at
 21 any time as long as there's not a question
 22 pending.
 23 A Okay.
 24 Q And just in general, is there anything
 25 preventing you from being truthful today?

Page 13

1 A No.
 2 Q Anything preventing you from, you know,
 3 having your best memory of events that we might be
 4 talking about?
 5 A No.
 6 Q And let me just -- we're going to --
 7 the first exhibit is the deposition notice in this
 8 case, so if we -- if you open up the folder, the
 9 files will be in alphabetical order. There are a
 10 couple of extra folders in there, but if we go to
 11 the file that is Diane Auer Jones revised
 12 deposition notice.
 13 MS. O'GRADY: That's going to be our
 14 first exhibit which we'll mark as Exhibit 1.
 15 (Jones Deposition Exhibit 1 was marked
 16 for identification and attached to the
 17 transcript.)
 18 BY MS. O'GRADY:
 19 Q Okay. And, Ms. Jones, do you remember
 20 this document?
 21 MS. BERMAN: Sorry, I'm not seeing that
 22 exhibit. Can you tell me where in the zip file it
 23 is?
 24 MS. O'GRADY: Sure. If you open up the
 25 zip file, there should be a number of PDFs and

<p style="text-align: right;">Page 14</p> <p>1 then some folders and subfolders. This is one of</p> <p>2 the PDFs and it should be showing up in</p> <p>3 alphabetical order under D. Her name is Diane.</p> <p>4 THE WITNESS: This does not look</p> <p>5 familiar to me. I don't recall seeing this</p> <p>6 document before. It's just a three-page document</p> <p>7 as well?</p> <p>8 BY MS. O'GRADY:</p> <p>9 Q Yes. It's just the notice deposition</p> <p>10 for the deposition. But you're here today, so I'm</p> <p>11 assuming your counsel saw it.</p> <p>12 MS. O'GRADY: Marcy, have you been able</p> <p>13 to find it.</p> <p>14 MS. BERMAN: Yes, I see it. It's the</p> <p>15 fourth one down; right? Yes. I got it. Thank</p> <p>16 you.</p> <p>17 MS. O'GRADY: No problem.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q As we go forward, the PDFs are</p> <p>20 automatically alphabetized so I will try to read</p> <p>21 out the file names as clearly as I can.</p> <p>22 Ms. Jones, I wanted to talk to you</p> <p>23 about preparation for this deposition. Did you do</p> <p>24 anything to prepare for today?</p> <p>25 A I reviewed my deposition.</p>	<p style="text-align: right;">Page 16</p> <p>1 from DOJ as well? Hancock? Do I have the name</p> <p>2 right? I'm sorry.</p> <p>3 Q Kevin.</p> <p>4 A Kevin. I'm sorry. I'm sorry.</p> <p>5 Q Okay. And how many -- how much time</p> <p>6 would you say you spent preparing for today's</p> <p>7 deposition, both conversations and then how much</p> <p>8 time you spent reviewing the previous declaration?</p> <p>9 A I wasn't keeping a time log so I can't</p> <p>10 give you an exact time.</p> <p>11 Q Approximately? Five hours, more or</p> <p>12 less?</p> <p>13 A I would say maybe between eight hours</p> <p>14 and --</p> <p>15 Q Okay. And besides your declaration,</p> <p>16 the declaration of Mark Brown and the declaration</p> <p>17 of Colleen Nevin, did you review any other</p> <p>18 documents to refresh your recollection?</p> <p>19 A I -- no. I'm trying to think if I</p> <p>20 looked at anything else. Oh, I did go back and</p> <p>21 looked at the time -- I looked at the date when</p> <p>22 the 2019 Department of Defense regulation</p> <p>23 finalized just to refresh the timeline.</p> <p>24 Q Did you look at the exhibits to those</p> <p>25 declarations or just the declarations themselves?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q And which deposition?</p> <p>2 A I'm sorry. The declaration.</p> <p>3 Q Okay.</p> <p>4 A I reviewed the declaration that had</p> <p>5 been submitted earlier.</p> <p>6 Q Okay. Did you review any other</p> <p>7 documents?</p> <p>8 A I reviewed the declaration that was</p> <p>9 submitted by Mark Brown and the one that was</p> <p>10 submitted I believe by Colleen Nevin and had</p> <p>11 conversations with folks on the phone today.</p> <p>12 Q Who did you have conversations with</p> <p>13 today?</p> <p>14 A Conversations today or conversations</p> <p>15 prior to today?</p> <p>16 Q Conversations -- any conversations</p> <p>17 preparing for this deposition. And I'm not asking</p> <p>18 for anything privileged. I don't need to know the</p> <p>19 content of those conversations, but I'm just</p> <p>20 wondering who you spoke to to prepare for today's</p> <p>21 deposition?</p> <p>22 A So the attorneys from DOJ that are on</p> <p>23 the call today, Marcy, Katherine, Charlie and then</p> <p>24 Jed from the Department of Education, and -- and I</p> <p>25 think -- is it David? I'm sorry. Is it David</p>	<p style="text-align: right;">Page 17</p> <p>1 A The exhibits to my declaration, I don't</p> <p>2 believe were included, so I did not. And I think</p> <p>3 in the case of other documents, there were some</p> <p>4 exhibits that I saw and some that I did not.</p> <p>5 Q Okay. Do you happen to recall -- well,</p> <p>6 I'll ask if today we are going through exhibits</p> <p>7 and they are one you used to prepare, I'd be</p> <p>8 interested to know that, if you've seen it</p> <p>9 recently and not just when the document was first,</p> <p>10 you know, issued or when you first saw it.</p> <p>11 A Okay.</p> <p>12 Q Okay. I'm going to ask just a couple</p> <p>13 of questions about your job history, work history.</p> <p>14 And I would like to know, have you ever been</p> <p>15 deposed before?</p> <p>16 A Yes.</p> <p>17 Q And how many times?</p> <p>18 A Twice.</p> <p>19 Q And what cases were those?</p> <p>20 A Once I served as an expert witness.</p> <p>21 This was several years ago, and so I was deposed</p> <p>22 as an expert witness. And once was when I was a</p> <p>23 teenager, I was deposed as part of my parents'</p> <p>24 divorce hearing.</p> <p>25 Q And when you served as an expert</p>

<p style="text-align: right;">Page 18</p> <p>1 witness, was that on behalf of the Center for 2 Excellence in Higher Education? 3 A Yes. 4 MS. O'GRADY: Okay. We're going to 5 mark as Exhibit 2 the declaration that you had no 6 specific -- that you used to prepare for this 7 deposition. And in the folder, that is going to 8 be ECF number 56-3, Jones Declaration. It is 9 about the eighth file down in the folder. 10 THE WITNESS: This is the declaration? 11 MS. O'GRADY: Yes, Jones declaration. 12 (Jones Deposition Exhibit 2 was marked 13 for identification and attached to the 14 transcript.) 15 BY MS. O'GRADY: 16 Q And do you have that open and ready? 17 A I do. 18 Q So, Ms. Jones, did you write this 19 document? 20 A Yes. 21 Q Did you have anyone assist you in 22 writing it? 23 A Yes. 24 Q And who helped you write it? 25 A Office of General Counsel at the</p>	<p style="text-align: right;">Page 20</p> <p>1 are responsible for? 2 A I'm responsible for overseeing the 3 Office of Postsecondary Education and that 4 includes both the regulatory, the policy and 5 regulatory division of the Office of Postsecondary 6 Ed. That hasn't -- the direct supervisor of the 7 assistant secretary ultimately reports up to the 8 media office. That also includes our grant 9 programs and all our postsecondary ed grant 10 programs. 11 I also receive the office of what's 12 called OCTAE, the Office of Career, Technical and 13 Adult Education. And again, they have a number of 14 grant programs, and the Perkins loan program -- 15 I'm sorry, the Perkins Act programs and those 16 report up to me. 17 And then federal student aid also 18 reports to me. In the case of federal student 19 aid, it is a performance-based organization, and 20 so the relationship between the department and the 21 FSA is slightly different than OPE or OCTAE, the 22 other two divisions that report up to me. 23 With regard to FSA, I am -- I have 24 oversight over the policy that is implemented by 25 FSA. So policy and operations are divided in</p>
<p style="text-align: right;">Page 19</p> <p>1 Department of Ed. 2 Q Anything else? 3 A No. 4 Q And on the last page, that's your 5 signature? 6 A Yes, it is. 7 Q Okay. And I just want to note for the 8 record you signed this under penalty of perjury? 9 A Yes. 10 Q Now, I'm just -- use your declaration 11 as a jumping off point for getting a sense of your 12 job history and then eventually your 13 responsibilities at the Department of Education. 14 So if we can just go to paragraph 2 15 which discusses your job title and 16 responsibilities. 17 A I can see it. 18 Q Thank you. Okay. I'm hoping you can 19 expound upon this right now and give me a broader 20 sense of what you at this point consider your job 21 responsibilities to be? 22 A So I serve currently as the principal 23 deputy under secretary and am delegated the duties 24 of under secretary at the Department of Ed. 25 Q And what are the main areas that you</p>	<p style="text-align: right;">Page 21</p> <p>1 statute, and the operations of FSA are the domain 2 of the chief operating officer, and then policy 3 oversight is the domain of both the Office of 4 Postsecondary Ed and then my oversight in the 5 Office of the Under Secretary. 6 Q So who else besides you oversees policy 7 at FSA? 8 A Do you mean the implementation of 9 policy or the development of policy? 10 Q I'll ask both. First the development 11 of policy? 12 A So the development of policy, you know, 13 it involves the Office of Postsecondary Education, 14 it involves my office, the Office of the Secretary 15 and the Office of General Counsel. 16 Policy development involves all of 17 those offices in the process, and in some cases 18 the Office of Management and Budget as well. 19 Q And then the implementation of policy, 20 was that the second prong? 21 A (Witness nods head.) 22 Q Okay. And who oversees that? 23 A So there -- at FSA, there is a policy 24 implementation office. They are involved in the 25 actual implementation of the policy at which point</p>

<p style="text-align: right;">Page 22</p> <p>1 my role becomes making sure that the</p> <p>2 implementation of the policy aligns with our</p> <p>3 regulations.</p> <p>4 Q Is anyone else besides you performing</p> <p>5 that role of, I think as you put it, ensuring the</p> <p>6 implementation of the policies within the</p> <p>7 regulations?</p> <p>8 A Yes, the Office of the Secretary, the</p> <p>9 Office of General Counsel and, in some cases, the</p> <p>10 Office of Management and Budget.</p> <p>11 Q And when you say "the Office of the</p> <p>12 Secretary," do you mean the secretary herself, or</p> <p>13 are there other certain individuals that are</p> <p>14 tasked with that?</p> <p>15 A There are a group of people that are</p> <p>16 involved depending upon which policy decision</p> <p>17 you're discussing, so in some cases it would</p> <p>18 involve the secretary's chief of staff, the</p> <p>19 Capitol floor to the secretary, the deputy</p> <p>20 secretary. And in some cases where there's a</p> <p>21 formal decision on loans, for example, the</p> <p>22 secretary, you know, would be the person who would</p> <p>23 sign off.</p> <p>24 So it depends on the issue. It depends</p> <p>25 on the topic. But it could involve her, the</p>	<p style="text-align: right;">Page 24</p> <p>1 So in that case she did sign off. I -- I was part</p> <p>2 of that meeting.</p> <p>3 In other cases, I don't always know who</p> <p>4 the decision maker was. There were conversations,</p> <p>5 but I don't always know who the decision maker</p> <p>6 was.</p> <p>7 Q But regarding the 2019 regulations, the</p> <p>8 secretary herself was a decision maker?</p> <p>9 A Oh, you're talking about our -- our</p> <p>10 rule-making effort in December 2019?</p> <p>11 Q Well, I was just talking about the</p> <p>12 meeting that you just referenced.</p> <p>13 A The meeting I just referenced was with</p> <p>14 regard to the relief methodology --</p> <p>15 Q Okay.</p> <p>16 A -- that was determined in 2019.</p> <p>17 If you're asking me about negotiated</p> <p>18 rule making, that is a fundamentally different</p> <p>19 process in -- in which case, no, the secretary is</p> <p>20 not -- does not, you know, directly sign off on</p> <p>21 that. There's negotiator rule-making process, a</p> <p>22 public comment period, a response. So that is a</p> <p>23 much longer process. That is not just an effort</p> <p>24 of the secretary making a decision.</p> <p>25 Q Okay. And in terms of the relief</p>
<p style="text-align: right;">Page 23</p> <p>1 entire group or some subset of that group.</p> <p>2 Q With regard to borrower defense</p> <p>3 policies, does that include the secretary herself?</p> <p>4 A Again it would depend on the issue</p> <p>5 within the -- under the umbrella of borrower</p> <p>6 defense, there are many, many issues that fall</p> <p>7 under that. Some could include the secretary and</p> <p>8 some might not.</p> <p>9 Q And when has the secretary herself been</p> <p>10 included?</p> <p>11 A Are you asking me about conversations</p> <p>12 or decisions?</p> <p>13 Q I'm asking about decisions. You said</p> <p>14 there are certain instances where she might become</p> <p>15 personally involved, and I'm wondering what those</p> <p>16 instances are if you can give me examples, if not</p> <p>17 an exhaustive list?</p> <p>18 A Right. I can't give you an exhaustive</p> <p>19 list because, you know, I haven't been witness to</p> <p>20 every decision so I'm not always sure who exactly</p> <p>21 made the decision. But I can tell you that with</p> <p>22 regard to the development and approval of the new</p> <p>23 relief methodology that was announced in</p> <p>24 December 2019, I believe, the secretary did sign</p> <p>25 off and authorize the use of a new methodology.</p>	<p style="text-align: right;">Page 25</p> <p>1 methodology decision, was she involved just in</p> <p>2 that one meeting or in decision-making meetings up</p> <p>3 to that meeting?</p> <p>4 MR. MERRITT: Objection: scope.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q I want to get a sense of whether or not</p> <p>7 there was a single meeting where the secretary</p> <p>8 signed the relief methodology or if there had been</p> <p>9 previous involvement with her personally.</p> <p>10 MR. MERRITT: Well, the relief</p> <p>11 technology is not a topic on which the court</p> <p>12 authorized discovery.</p> <p>13 MS. O'GRADY: Well, I would disagree.</p> <p>14 I believe it's related. But for purposes of just</p> <p>15 getting us started, I'll move on.</p> <p>16 BY MS. O'GRADY:</p> <p>17 Q Okay. Ms. Jones, who do you report to?</p> <p>18 I just want to get a sense of the general</p> <p>19 reporting structure in your current role.</p> <p>20 A I report to the Secretary of Education.</p> <p>21 Q And is there anyone else between you</p> <p>22 and her that you report to?</p> <p>23 A Directly or indirectly?</p> <p>24 Q I suppose -- if there's no one</p> <p>25 directly, I suppose indirectly.</p>

<p style="text-align: right;">Page 26</p> <p>1 A Yeah. I mean, the secretary's chief of</p> <p>2 staff performs, and I perform. So I guess in some</p> <p>3 sense, you know, one could say that I report to</p> <p>4 him. You know, he does that review.</p> <p>5 Q Is there anyone else involved in your</p> <p>6 performance reviews?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q And how often do you receive those?</p> <p>9 A That's an annual process.</p> <p>10 Q And whose performance reviews are you</p> <p>11 responsible for?</p> <p>12 A I'm responsible -- that is -- that has</p> <p>13 changed over time as my role has changed, so I</p> <p>14 would need to know do you mean today, this year,</p> <p>15 in prior years?</p> <p>16 Q Would it be too cumbersome to give me</p> <p>17 the evolution?</p> <p>18 A Well, it could be, but I'll try. When</p> <p>19 I -- there was a period of time early in my tenure</p> <p>20 where I was the principal deputy undersecretary,</p> <p>21 the acting assistant secretary and the acting</p> <p>22 deputy assistant secretary. I either had the</p> <p>23 direct responsibility or was the secondary signer</p> <p>24 on over 100 performance reviews.</p> <p>25 As the assistant secretary -- when the</p>	<p style="text-align: right;">Page 28</p> <p>1 A My direct reports -- do you want them</p> <p>2 by name or position?</p> <p>3 Q Both, if possible.</p> <p>4 A Michael Brickman is a policy advisor in</p> <p>5 my -- in my office. Jesse Hokanson is a</p> <p>6 confidential assistant in my office. John Lucas</p> <p>7 Adair -- he goes by Lucas, so I only refer to him</p> <p>8 as Lucas. Lucas Adair is a confidential assistant</p> <p>9 in my office.</p> <p>10 Johnathan Holifield is the director of</p> <p>11 the White House Initiative on Historically Black</p> <p>12 Colleges and Universities. Technically, I am his</p> <p>13 supervisor, but because of workload, Michael</p> <p>14 Brickman has stepped in and does the first-line</p> <p>15 performance review for Johnathan and does the</p> <p>16 regular meetings with Johnathan.</p> <p>17 So I'm ultimately responsible, but</p> <p>18 Michael Brickman is his day-to-day liaison to my</p> <p>19 office.</p> <p>20 Q Okay.</p> <p>21 A There was a period of time where there</p> <p>22 were other White House initiatives that reported</p> <p>23 to me, so I also had direct supervision of those</p> <p>24 directors and their performance review, but they</p> <p>25 have now moved to the Office of Communications,</p>
<p style="text-align: right;">Page 27</p> <p>1 assistant secretary was finally confirmed, he took</p> <p>2 much of that responsibility off of my plate.</p> <p>3 And then in my role as principal deputy</p> <p>4 undersecretary, I have the oversight over the</p> <p>5 individual who runs the Historically Black</p> <p>6 Colleges and University initiative, and then he</p> <p>7 has staff beneath him under which, you know, I can</p> <p>8 serve as a secondary reviewer.</p> <p>9 I have members of my direct staff, so I</p> <p>10 have three individuals who are either policy</p> <p>11 advisors or confidential assistants in the Office</p> <p>12 of the UnderSecretary. I do their performance</p> <p>13 reviews. And Mark Brown, the chief operating</p> <p>14 officer, I am responsible for his performance</p> <p>15 review.</p> <p>16 Q And are you responsible for anyone's</p> <p>17 performance review in FSA?</p> <p>18 A I'm only responsible for Mark Brown's</p> <p>19 performance review who is the chief operating</p> <p>20 officer.</p> <p>21 Q But it's just him in FSA?</p> <p>22 A Just him.</p> <p>23 Q Okay. Who would say -- separate from</p> <p>24 the question of performance reviews, who would you</p> <p>25 say are your direct reports?</p>	<p style="text-align: right;">Page 29</p> <p>1 and so I no longer am involved in their</p> <p>2 performance review or their management.</p> <p>3 Q Thank you.</p> <p>4 A Uh-huh.</p> <p>5 Q If we can go to paragraph 4 of</p> <p>6 Exhibit 2, your declaration. And if you could</p> <p>7 just read paragraph 4 beginning, As part of my</p> <p>8 responsibilities?</p> <p>9 A As part of my responsibilities in the</p> <p>10 department, I have worked extensively on issues</p> <p>11 relating to the implementation and administration</p> <p>12 of the department's regulations regarding borrower</p> <p>13 defenses to the collection of federal student</p> <p>14 loans.</p> <p>15 Q Okay. And, Ms. Jones, if you could</p> <p>16 give me a sense of what that work entailed?</p> <p>17 Who are the other team members? You</p> <p>18 can start there.</p> <p>19 A So we engaged in a negotiating</p> <p>20 rule-making effort on borrower defense. I had not</p> <p>21 yet joined the department when the negotiated</p> <p>22 rule-making process was underway. But I was at</p> <p>23 the department for the development of the notice</p> <p>24 of proposed rule making for the 2019 borrower</p> <p>25 defense regulations.</p>

<p style="text-align: right;">Page 30</p> <p>1 The day-to-day work on that is done by</p> <p>2 the Office of Postsecondary Education, but I don't</p> <p>3 have oversight of that and involvement in it.</p> <p>4 We then -- we got over 38,000 comments</p> <p>5 in response to the notice of proposed rule making.</p> <p>6 Obviously we have staff -- career staff in the</p> <p>7 Office of Postsecondary Ed who reviewed those</p> <p>8 comments and responded to them, but obviously I</p> <p>9 reviewed that document before moving forward.</p> <p>10 Office of Management and Budget and</p> <p>11 other federal offices are involved in the</p> <p>12 clearance process of a notice of proposed rule</p> <p>13 making and as well as in the publication of a</p> <p>14 final regulation.</p> <p>15 So, you know, I didn't write the</p> <p>16 specific responses, but obviously all of that I</p> <p>17 had oversight over and, you know, was involved in</p> <p>18 making sure we met the timeline and got that final</p> <p>19 regulation published.</p> <p>20 Q And as you began your role, who got you</p> <p>21 up to speed?</p> <p>22 A On what issue?</p> <p>23 Q On -- on the negotiated rule making</p> <p>24 that had already been taking place?</p> <p>25 A I believe that I was brought up to</p>	<p style="text-align: right;">Page 32</p> <p>1 started working on the borrower defense</p> <p>2 regulation. It was as a policy advisor in the</p> <p>3 Office of Postsecondary Ed. There was no</p> <p>4 predecessor. Then I moved into the role of acting</p> <p>5 assistant secretary. There -- the predecessor</p> <p>6 there was Frank Brogan who was serving in the</p> <p>7 acting assistant secretary role until he became</p> <p>8 confirmed for his permanent role.</p> <p>9 Q Ms. Jones, when you were a policy</p> <p>10 advisor, how long were you a policy advisor?</p> <p>11 A I believe it was some -- somewhere in</p> <p>12 the neighborhood of maybe four months. I can't</p> <p>13 remember exactly when Frank Brogan was confirmed,</p> <p>14 but I joined the department approximately in</p> <p>15 February, and I believe that Frank Brogan was</p> <p>16 confirmed early -- perhaps early in the summer.</p> <p>17 So there was a period of time of a few</p> <p>18 months.</p> <p>19 Q And that's February 2018?</p> <p>20 A That is correct.</p> <p>21 Q And before February 2018, what was your</p> <p>22 job?</p> <p>23 A Senior policy advisor to the Secretary</p> <p>24 of Labor at the U.S. Department of Labor.</p> <p>25 Q And how long did you have that</p>
<p style="text-align: right;">Page 31</p> <p>1 speed by a team of people -- and I'm not going to</p> <p>2 remember every person who was in the room. It was</p> <p>3 a group of staff in the Office of Postsecondary</p> <p>4 Education, the staff in the policy group that</p> <p>5 actually the rule making and wrote the MPRM. So</p> <p>6 there were, you know, maybe five, six, seven</p> <p>7 members of the Office of Postsecondary Education.</p> <p>8 There were several members of the Office of</p> <p>9 General Counsel. Michael Brickman, who at the</p> <p>10 time was still in the Office of Postsecondary Ed.</p> <p>11 So there were -- I was brought up to speed on rule</p> <p>12 making by engaging in these meetings with Office</p> <p>13 of General Counsel and office of Postsecondary Ed</p> <p>14 in the development of the MPRM in those proposed</p> <p>15 rule making.</p> <p>16 Q Did your predecessor have any</p> <p>17 involvement when you began your role?</p> <p>18 A Which predecessor do you mean?</p> <p>19 Q Well, who was your direct predecessor?</p> <p>20 A Jim Manning was the acting under --</p> <p>21 well --</p> <p>22 Q Yeah.</p> <p>23 A To be clear, when we -- when we</p> <p>24 started -- when I started in my role, I was a</p> <p>25 policy advisor. There was no predecessors. I</p>	<p style="text-align: right;">Page 33</p> <p>1 position?</p> <p>2 A From November of 2017 until February of</p> <p>3 2018.</p> <p>4 Q And before that, what was your role?</p> <p>5 A I was at the Urban Institute, where I</p> <p>6 was a fellow working on apprenticeship issues, and</p> <p>7 that started in 2015.</p> <p>8 Q And then before 2015?</p> <p>9 A 2010 to 2015, I was an employee at the</p> <p>10 Career Education Corporation.</p> <p>11 Q What were your roles there?</p> <p>12 A When I joined the company, I was a -- I</p> <p>13 can't remember if I was a senior vice president or</p> <p>14 vice president but in regulatory affairs, and</p> <p>15 I'm -- over time I was promoted, I guess, to</p> <p>16 senior vice president for regulatory affairs and</p> <p>17 then ultimately I was promoted to senior vice</p> <p>18 president for external relations, I think, is the</p> <p>19 title and chief external affairs officer.</p> <p>20 Q At any of those roles at CEC, did you</p> <p>21 deal with borrower defense?</p> <p>22 A Can you define what you mean by "deal</p> <p>23 with"?</p> <p>24 Q Did you give any advice regarding,</p> <p>25 develop policies about, ever answer anybody's</p>

<p style="text-align: right;">Page 34</p> <p>1 questions about it, whatever regarding your job?</p> <p>2 MR. MERRITT: Objection. It's broad,</p> <p>3 and also it's scope.</p> <p>4 MS. O'GRADY: I believe the witness can</p> <p>5 still answer.</p> <p>6 MR. MERRITT: Yeah. Sorry. Go ahead.</p> <p>7 THE WITNESS: So could you restate the</p> <p>8 question?</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q I'm wondering if in your role at CEC</p> <p>11 you ever had to discuss borrower defense?</p> <p>12 A I was at CEC during the negotiated rule</p> <p>13 making. So while the department was engaged in</p> <p>14 negotiated rule making for 2016, that negotiated</p> <p>15 rule-making process began while I was at CEC. So,</p> <p>16 yes, I absolutely followed that rule-making</p> <p>17 process.</p> <p>18 Q And did you provide advice to CEC about</p> <p>19 that rule making -- while that rule-making process</p> <p>20 was going on?</p> <p>21 MR. MERRITT: Objection: scope.</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q You can still answer despite Charlie's</p> <p>24 objection.</p> <p>25 MR. MERRITT: Yeah, you can answer that</p>	<p style="text-align: right;">Page 36</p> <p>1 Q And when you say "retained," they paid</p> <p>2 you a fee to do that; correct?</p> <p>3 A Correct.</p> <p>4 Q Okay. We're going to go back to</p> <p>5 Exhibit 2. Let's look at paragraph 7 of your</p> <p>6 declaration. And this is under the heading --</p> <p>7 excuse me, we don't need to actually just go to</p> <p>8 paragraph 7. I just want to go to the heading at</p> <p>9 the very top of the page --</p> <p>10 A I'd also like to add because I think</p> <p>11 it's important to understand that I also spent ten</p> <p>12 years working at the Community College of</p> <p>13 Baltimore County, I worked time working at the</p> <p>14 University of Maryland, and I spent several years</p> <p>15 working at Princeton University.</p> <p>16 So I do want to make it clear that my</p> <p>17 past employment in higher education was --</p> <p>18 included a number of institutions and not just</p> <p>19 Career Education Corporation.</p> <p>20 Q On the top of the third page of the PDF</p> <p>21 of Exhibit 2, your declaration, the heading there</p> <p>22 is, The department's federal student aid</p> <p>23 priorities 2018 to 2019.</p> <p>24 And when you began your position, what</p> <p>25 was your understanding of those priorities?</p>
<p style="text-align: right;">Page 35</p> <p>1 question. But I guess we'll see how -- see how</p> <p>2 long -- how deep this line of questioning is going</p> <p>3 to go.</p> <p>4 THE WITNESS: I mean, obviously I</p> <p>5 followed the negotiated rule-making process and</p> <p>6 provided updates to the management at CEC about</p> <p>7 first, what had taken place in rule making, and</p> <p>8 then subsequently the content of the proposed</p> <p>9 rule.</p> <p>10 I can't remember if I was still at CEC</p> <p>11 when the final BP reg was published. I just can't</p> <p>12 remember the timeline. But I do remember updating</p> <p>13 CEC employees, leaders about the progress of -- of</p> <p>14 rule making.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q And, Ms. Jones, at what point -- you</p> <p>17 had mentioned a deposition you gave as an expert</p> <p>18 for CEHE. When were you working for them, at what</p> <p>19 point?</p> <p>20 A I was never working for them. You</p> <p>21 know, I was retained to give a deposition. And I</p> <p>22 can't remember the exact date, but it was after I</p> <p>23 was no longer employed by CEC. So it would have</p> <p>24 been after 2015 but before I came back to federal</p> <p>25 service.</p>	<p style="text-align: right;">Page 37</p> <p>1 A When I began my position, my</p> <p>2 priority -- the priority in which I was engaged</p> <p>3 was completing the final rule making for borrower</p> <p>4 defense. So when I joined the department, I was</p> <p>5 in the Office of Postsecondary Ed. I did not have</p> <p>6 any oversight role with regard to federal student</p> <p>7 aid. So my focus was on -- on the -- completing</p> <p>8 the final rule. So first, the notice of proposed</p> <p>9 rule making and then a final rule for the 2019</p> <p>10 regulation.</p> <p>11 Q Okay. And in the next -- two pages</p> <p>12 later, so this is on page 5 of the PDF in</p> <p>13 paragraph 10. Here you discuss, Once the court</p> <p>14 decisions were issued and the 2016 regulations</p> <p>15 became effective, the start of that paragraph.</p> <p>16 In the middle of that paragraph you</p> <p>17 write, The department also had to develop</p> <p>18 processes for implementing the new financial</p> <p>19 responsibility requirements of the 2016</p> <p>20 regulations, which included substantial reporting</p> <p>21 requirements. The department spent considerable</p> <p>22 time and effort identifying which offices would</p> <p>23 handle different parts of the process and</p> <p>24 developing the necessary instructions.</p> <p>25 How much time went into that process?</p>

<p style="text-align: right;">Page 38</p> <p>1 A I don't have a record of hours spent, 2 so I can't tell you how many hours, but it was a, 3 you know, very complicated -- it was a very 4 complicated issue that required many meetings 5 which ultimately resulted in the development of an 6 electronic announcement so that we could notify 7 institutions about how to implement the 2016 reg. 8 Initially, I put in a lot of time. I can tell you 9 that. But I can't estimate how many hours.</p> <p>10 Q In your role do you create timelines 11 and budgets for projects for implementation of 12 regulations?</p> <p>13 A In which role? I mean, are you talking 14 about when I first came to the department? In my 15 current role? In which role?</p> <p>16 Q Both. So how about we'll start with 17 when you first came to the department.</p> <p>18 A When I first came to the department, I 19 was involved in timelines for publishing final 20 rules. And then, you know, we launched negotiated 21 rule making for another large regulatory package, 22 so I was involved in -- in developing the timeline 23 for completing those regulations.</p> <p>24 When I was in the Office of 25 Postsecondary Ed, you know, I oversaw the</p>	<p style="text-align: right;">Page 40</p> <p>1 Q And borrower defense falls under the 2 Title IV programs that you mentioned?</p> <p>3 A That is correct.</p> <p>4 Q Okay. And in Exhibit 2, paragraph 15, 5 which is going to be on PDF page 6. So this 6 paragraph discusses what was going on in 2017 7 which is before your tenure either as policy 8 advisor or your subsequent roles.</p> <p>9 With that in your mind --</p> <p>10 A If that's your question, yes.</p> <p>11 Q With that in mind, I just want to note 12 that I understand this is from before your tenure, 13 but you did write in this declaration about in 14 2017, that the department conducted a thorough 15 review.</p> <p>16 What's your understanding why that 17 happened, why that review was conducted?</p> <p>18 A So when I -- when I -- so this did take 19 place before I came to the department. And when I 20 came to the department, I was told that there were 21 people at the department who worked to figure out 22 how to provide relief to borrowers who had 23 submitted claims. And I believe at the time I was 24 told that the focus was on the Corinthian -- the 25 borrowers who had gone to Corinthian Colleges.</p>
<p style="text-align: right;">Page 39</p> <p>1 development -- I mean, the development of the 2 Office of Postsecondary Ed's budget. I'm involved 3 now in overseeing the development of the Office of 4 the Under Secretary's budget, but it's a very, 5 very tiny budget. It's a small office.</p> <p>6 And then FSA develops its own budget, 7 but I am involved in the review of that budget and 8 ultimately our budget services office works with 9 the Office of Management and Budget, you know, to 10 develop the president's budget request. So, you 11 know, I'm involved in conversations about that, 12 but the Office of Management and Budget ultimately 13 approves the president's budget request.</p> <p>14 Q And, Ms. Jones, if you don't mind, I 15 just want to ask you one more question about your 16 role as policy advisor at the department budget.</p> <p>17 What was your portfolio of policies?</p> <p>18 A Any -- any regulation under the Title 19 IV program. So that would include regulations 20 about our federal student aid programs, the TRIO 21 programs, GEAR UP programs, and then all of the 22 regulations related to our grant programs. So we 23 have regulations called EDGAR. I cannot remember 24 what EDGAR stands for, but it's the regulations 25 under which all of our grant programs operate.</p>	<p style="text-align: right;">Page 41</p> <p>1 So, you know, I was told that that methodology had 2 been developed prior to my arrival.</p> <p>3 Q And when you say this focus was on 4 borrowers who had gone to Corinthian, what do you 5 mean?</p> <p>6 A Meaning that the first group of claims 7 to be reviewed would have been the oldest group of 8 claims, which would have been the claims from 9 Corinthian borrowers.</p> <p>10 Q And who told you that?</p> <p>11 A I believe it was an individual in the 12 Office of General Counsel.</p> <p>13 Q And in this paragraph, you state that 14 the conclusion was it did not have an adequate 15 process to handle the growing list of borrower 16 defense claims.</p> <p>17 What do you mean by "adequate process"?</p> <p>18 A As I understand it, when the Trump 19 administration came into the Department of 20 Education, as I understand it, there was no 21 methodology in place to review claims. There was 22 no methodology for determining relief.</p> <p>23 And, in fact, the prior administration 24 had told directly in this Web site and 25 communications to borrowers from ITT that the way</p>

<p style="text-align: right;">Page 42</p> <p>1 they would be receiving relief would be through</p> <p>2 closed school loan discharge, so borrowers who had</p> <p>3 left -- who had been students at ITT were -- were</p> <p>4 advised to use closed school loan discharge. So</p> <p>5 the administration had not directed those students</p> <p>6 to file borrower defense claims and, to my</p> <p>7 knowledge, had not developed any methodology for</p> <p>8 reviewing those claims and had not developed a</p> <p>9 methodology for assessing financial harm to either</p> <p>10 Corinthian borrowers or any other borrower that</p> <p>11 might apply. So that was my understanding, that</p> <p>12 there was no methodology.</p> <p>13 It's also my understanding that there</p> <p>14 were a number of denials that had been -- that</p> <p>15 determinations had been made by the prior</p> <p>16 administration, but the notifications had not been</p> <p>17 sent to borrowers.</p> <p>18 Q Okay. I want to ask a few questions</p> <p>19 about what you just said. So taking the last</p> <p>20 point, you said there were a number of denials</p> <p>21 that had been made but not communicated to</p> <p>22 borrowers?</p> <p>23 A That's my understanding.</p> <p>24 Q Do you have a sense of how many?</p> <p>25 A I -- I know I've seen numbers, but I</p>	<p style="text-align: right;">Page 44</p> <p>1 programs at other times or for reviewing, I</p> <p>2 suppose, applications that students would submit</p> <p>3 for other programs at other times.</p> <p>4 Q So I want to just really understand the</p> <p>5 timeline we're talking about here. The time that</p> <p>6 you're saying there was no methodology for review,</p> <p>7 which regulations were governing at that time?</p> <p>8 A Well, that's complicated as well. At</p> <p>9 the time that I joined the department, the</p> <p>10 1994-1995 regulations were in place. As my -- you</p> <p>11 know, as my tenure so continued and ultimately the</p> <p>12 court determined that we had to implement the 2016</p> <p>13 regs, then loans that were either taken after a</p> <p>14 certain point or consolidated after a certain</p> <p>15 point would then be subject to a different</p> <p>16 methodology under the 2016 regs.</p> <p>17 So when I first entered the department,</p> <p>18 claims were being adjudicated under the '94-95</p> <p>19 regs using a state standard, and then as the 2016</p> <p>20 regulation was implemented, that shifted to a</p> <p>21 federal standard.</p> <p>22 So it depends when you ask. The answer</p> <p>23 changes.</p> <p>24 Q Okay. I'm going to have a few</p> <p>25 questions about this. I want to go back to a</p>
<p style="text-align: right;">Page 43</p> <p>1 cannot recall what that number is right now.</p> <p>2 Q Okay. And were there grants that had</p> <p>3 been decided but not communicated?</p> <p>4 A I don't know.</p> <p>5 Q When you say "there was no</p> <p>6 methodology," what do you mean by that?</p> <p>7 A So the -- there was no way -- so -- so</p> <p>8 the 2016 regulation, for example, talks about</p> <p>9 financial harm, but there had been no methodology</p> <p>10 developed to figure out what that level of</p> <p>11 financial harm was. So there was no methodology</p> <p>12 to determine financial harm.</p> <p>13 And, to my knowledge, the department</p> <p>14 had not reviewed the documents that it had</p> <p>15 collected from Corinthian Colleges, and so it --</p> <p>16 it had made a decision on a limited number of</p> <p>17 programs during a limited time period.</p> <p>18 So the Trump administration had</p> <p>19 asserted that it had found evidence of</p> <p>20 misrepresentation in certain programs at certain</p> <p>21 times, but they hadn't gone beyond that set of</p> <p>22 programs.</p> <p>23 And, so, outside of that list of</p> <p>24 programs and -- and dates, there had been no</p> <p>25 methodology developed for either reviewing other</p>	<p style="text-align: right;">Page 45</p> <p>1 statement you made that previously the department</p> <p>2 had not reviewed documents from Corinthian.</p> <p>3 Is it your understanding under the</p> <p>4 regulations that it's necessary to do so?</p> <p>5 A It is my understanding that the</p> <p>6 Department of Education has to review evidence</p> <p>7 provided to it and make a determination about</p> <p>8 whether or not misrepresentation took place.</p> <p>9 Q And in your view, that necessitates</p> <p>10 review of documents sent by the school?</p> <p>11 A It could be documents sent by the</p> <p>12 schools. It could be documents submitted by a</p> <p>13 borrower. It could be documents collected from</p> <p>14 some other entity, another agency, another state</p> <p>15 entity.</p> <p>16 So the sources of those documents, you</p> <p>17 know, there are multiple sources of those</p> <p>18 documents. But, yes, the Department of Education</p> <p>19 is supposed to review and determine that there has</p> <p>20 been misrepresentation.</p> <p>21 Q But is it your opinion that the -- it's</p> <p>22 your understanding of the regulation the school</p> <p>23 must be given the opportunity to respond in some</p> <p>24 way?</p> <p>25 A Well, that depends on which regulation</p>

<p style="text-align: right;">Page 46</p> <p>1 you're talking about.</p> <p>2 Q So let's first take under the '94-95</p> <p>3 regulations.</p> <p>4 A So the interesting thing here is that</p> <p>5 when the prior administration started adjudicating</p> <p>6 claims, technically it was under the '94-95</p> <p>7 regulations; however, they had also adopted</p> <p>8 certain practices that would eventually be in the</p> <p>9 2016 regulations even though they were not in</p> <p>10 regulation at the time.</p> <p>11 Q So what's your understanding of what is</p> <p>12 different from the 2016 regulations and the '94-95</p> <p>13 regulations?</p> <p>14 MR. MERRITT: Objection: Overbroad.</p> <p>15 MS. O'GRADY: I can narrow that just</p> <p>16 for clarity.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Especially with regard to the state</p> <p>19 standard.</p> <p>20 THE WITNESS: Can I answer that,</p> <p>21 Charlie?</p> <p>22 MR. MERRITT: You go ahead, Diane,</p> <p>23 yeah.</p> <p>24 THE WITNESS: Okay.</p> <p>25 So the 1995 regulation relied on a</p>	<p style="text-align: right;">Page 48</p> <p>1 defense applications from among borrowers who were</p> <p>2 in those programs during that time period whose</p> <p>3 claims had been adjudicated. That's my</p> <p>4 understanding. I obviously didn't see those</p> <p>5 adjudications, but that is my understanding.</p> <p>6 MS. O'GRADY: Okay. If we can open --</p> <p>7 this is going to be marked as Exhibit 3.</p> <p>8 (Jones Deposition Exhibit 3 was marked</p> <p>9 for identification and attached to the</p> <p>10 transcript.)</p> <p>11 MS. O'GRADY: In the PDF file, its file</p> <p>12 name is IG report.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q Do you have that open and visible?</p> <p>16 A I do.</p> <p>17 Q Okay. And do you recognize this?</p> <p>18 A I recognize the title of the report,</p> <p>19 and I've heard about the report. I've never read</p> <p>20 the report.</p> <p>21 Q You've never read the report.</p> <p>22 A (Witness nods head.)</p> <p>23 Q Okay. Have you discussed the report?</p> <p>24 A The element of the report that I have</p> <p>25 discussed is apparently in that report there was</p>
<p style="text-align: right;">Page 47</p> <p>1 state standard. And so, if the institution was in</p> <p>2 violation of a state law connected to the making</p> <p>3 of a loan, then it would be adjudicated under that</p> <p>4 standard.</p> <p>5 The 2016 regulation replaced the state</p> <p>6 standard with a federal standard defined -- and</p> <p>7 defined that standard and defined the kinds of</p> <p>8 actions or omissions that would constitute</p> <p>9 misrepresentation.</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Let me go back to your statement that</p> <p>12 there was no methodology to review previously.</p> <p>13 On what -- if there was no methodology</p> <p>14 to review as you understood it, what is your</p> <p>15 understanding of the grants that were made for</p> <p>16 borrowers who attended CCI and IIT?</p> <p>17 A It is my understanding that the</p> <p>18 department received communication from the</p> <p>19 California AG based on interviews that the</p> <p>20 California AG conducted. And based on the results</p> <p>21 of those interviews, the prior administration had</p> <p>22 made a determination that misrepresentation had</p> <p>23 occurred at certain campuses within certain</p> <p>24 programs and during certain periods of time. And</p> <p>25 it is my understanding that it was borrower</p>	<p style="text-align: right;">Page 49</p> <p>1 climbing that the department did not have the</p> <p>2 appropriate systems in place to -- to track or</p> <p>3 record claims. So as I understand it the</p> <p>4 department was using Excel spreadsheets to try to</p> <p>5 manage this process, and it was my understanding</p> <p>6 that one of the challenges the IG identified that</p> <p>7 the use of Excel spreadsheets was inadequate.</p> <p>8 Now, that's just my understanding. I</p> <p>9 haven't read the report.</p> <p>10 Q Okay. I just want to talk about,</p> <p>11 understanding that you haven't read it previously,</p> <p>12 a few statements and findings in it.</p> <p>13 This is going to be on the fifth page</p> <p>14 of the PDF, and if it's easier you can use the 500</p> <p>15 page number at the very bottom.</p> <p>16 A Okay. Okay.</p> <p>17 Q In its findings, the beginning of the</p> <p>18 third paragraph, if you could just read out loud</p> <p>19 the first three sentences.</p> <p>20 A Are you talking about the paragraph</p> <p>21 that begins, We found?</p> <p>22 Q Yes, please.</p> <p>23 A We found that FSA established seven</p> <p>24 categories of claims that qualified for loan</p> <p>25 discharge based on characteristics that the claims</p>

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1 had in common. We also found that FSA maintained
 2 support for its borrower defense loan discharge
 3 decisions. FSA's business operations maintained
 4 borrower claim applications, attestations, and
 5 other supporting documentation, such as school
 6 transcripts.

7 Q And then the next sentence, also, if
 8 you wouldn't mind?

9 A BDU used this information to make
 10 borrower defense claim determinations and maintain
 11 documentation.

12 Q Okay. And then if you see up under the
 13 headline of what we did on this very same page,
 14 the last sentence of that paragraph says, Our
 15 review covered FSA's borrower defense loan
 16 discharge process from the end of June 2016
 17 through July 31st, 2017.

18 A I see that.

19 Q So is that time period between
 20 June 2016 and July 2017 the same time period you
 21 were just saying there was no methodology?

22 A I -- I don't remember -- I don't recall
 23 exactly when the department started adjudicating
 24 claims, so I -- I don't know whether June 2016 was
 25 the beginning date, but it is that general time

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1 period that I was told that the department's
 2 limited work was based on a -- a certain number of
 3 programs at a certain number of campuses during a
 4 certain period of time.

5 Q And in the paragraph -- the sentences
 6 that I had you read first in that third paragraph
 7 regarding the seven categories of claims, are you
 8 familiar with those seven categories of claims?

9 MR. MERRITT: Objection to the scope
 10 and use of the IT report.

11 BY MS. O'GRADY:

12 Q Ms. Jones, you can answer.

13 A I am aware that there were certain
 14 programs during a certain period of time for which
 15 the department was informed by the California AG
 16 that misrepresentations occurred.

17 I don't remember the count, but I know,
 18 for example, that there were job placement rate
 19 claims at certain programs at certain campuses
 20 during certain time periods. I don't recall
 21 exactly which programs and which time period.

22 Q And you're aware just of CCI claims
 23 being adjudicated?

24 A During that time frame, yes, I am aware
 25 only of CCI claims being adjudicated in those

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1 particular programs.

2 Q And what about ITT?

3 A I'm not aware of ITT claims having been
 4 adjudicated other than it is my understanding that
 5 there were some ITT campuses in California. I
 6 don't know when the adjudication began of those
 7 claims, but it is my understanding that there may
 8 have been -- in -- in the California campuses of
 9 ITT, there may have been some adjudications. I
 10 just don't know the time frame of when those took
 11 place.

12 Q Okay. If we could look at the zip file
 13 within the zip file that's titled -- actually, it
 14 might not be a file; it might just be a regular
 15 folder -- ECF 66-2 Declaration and Exhibits.

16 A I'm sorry. ECF?

17 Q It's a folder, not a file. It's ECF
 18 66-2 Declaration and Exhibits.

19 MR. MERRITT: It appears at the very
 20 top of the list, Diane.

21 THE WITNESS: Okay.

22 BY MS. O'GRADY:

23 Q Okay. And if you could open the one
 24 that is Exhibit 6.

25 MS. O'GRADY: So we'll mark this as

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1 Exhibit 4 for this deposition.

2 (Jones Deposition Exhibit 4 was marked
 3 for identification and attached to the
 4 transcript.)

5 BY MS. O'GRADY:

6 Q Have you ever seen this memorandum
 7 before?

8 A Yeah. Let me scroll through first.
 9 (Witness reviews document.)

10 I have seen this document.

11 Q In what context have you seen this
 12 document?

13 A I first saw this document when I was
 14 asked to sign -- and I might use the wrong
 15 terminology here. I'm not an attorney by
 16 training. I think it was a declaration that I had
 17 to sign regarding the recusal -- I don't mean
 18 recusals -- please help me find the right terms,
 19 but there were documents that our Office of
 20 General Counsel had to produce, and there's a
 21 process by which information is redacted -- maybe
 22 redaction is the right term -- and I was asked to
 23 review a series of documents to confirm that what
 24 was being redacted was deliberative information,
 25 and it was in that context that I first saw this

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<p>1 document.</p> <p>2 Q Okay. And then just briefly for the</p> <p>3 record, what is this document?</p> <p>4 A So this is a document apparently</p> <p>5 written by somebody at the borrower defense unit</p> <p>6 to Under Secretary Ted Mitchell.</p> <p>7 Q Regarding?</p> <p>8 A Regarding recommendation for ITT</p> <p>9 borrowers based on guarantees for employment.</p> <p>10 Q And this is, as far as you can tell at</p> <p>11 this point, a full and accurate copy of this</p> <p>12 document?</p> <p>13 A It is a full and accurate copy of the</p> <p>14 document. I mean, I'm not reading it word for</p> <p>15 word, but it looks like the document I've seen.</p> <p>16 Q So as you said, this is a</p> <p>17 recommendation from the borrower defense unit for</p> <p>18 ITT borrowers alleging that they were guaranteed</p> <p>19 employment.</p> <p>20 What regulations govern this</p> <p>21 recommendation, under what borrower defense</p> <p>22 regulations?</p> <p>23 A Well, it's interesting. So</p> <p>24 technically, this recommendation would have been</p> <p>25 made under the 1995 regulations, but it involved</p>	<p>1 administration. I believe that the prior</p> <p>2 administration had determined that this was the</p> <p>3 basis of their decision about misrepresentation.</p> <p>4 Q Just under the prior administration?</p> <p>5 Would you say the current administration would</p> <p>6 also consider student testimony as evidence?</p> <p>7 A I think that's a really broad question.</p> <p>8 You know, I think that our borrower defense</p> <p>9 attorneys look at, you know, a whole variety of</p> <p>10 evidence. And I should let you know that, you</p> <p>11 know, as a nonattorney, I'm not actually involved</p> <p>12 in reviewing individual claims. You know, we have</p> <p>13 trained attorneys. I personally don't know how</p> <p>14 you determine what meets the preponderance of</p> <p>15 evidence standard.</p> <p>16 You know, those are questions you'd</p> <p>17 have to ask our borrower defense attorneys. I</p> <p>18 don't get involved in those decisions.</p> <p>19 Q Is there a specific person who you work</p> <p>20 with who is most directly involved in those kinds</p> <p>21 of decisions?</p> <p>22 A You know what, I don't -- I wouldn't --</p> <p>23 I don't directly supervise her, but it is my</p> <p>24 understanding that Colleen Nevin in the borrower</p> <p>25 defense unit is the person who leads the group of</p>
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<p>1 the imposition of a group discharge process which</p> <p>2 was created by the 2016 regulations that were not</p> <p>3 yet in effect.</p> <p>4 Q Now, if we could go to page -- it's PDF</p> <p>5 page 4, page 3 by the footer of this document.</p> <p>6 A Okay.</p> <p>7 Q And these appear to be a number of</p> <p>8 quotations from ITT students.</p> <p>9 A Yes.</p> <p>10 Q You had noted before that under the</p> <p>11 regulations, the borrower defense unit must review</p> <p>12 evidence.</p> <p>13 A Yes.</p> <p>14 Q Are quotations like this evidence in</p> <p>15 your understanding?</p> <p>16 A You know, I would have to have more</p> <p>17 information. I -- you know, I -- I think you're</p> <p>18 asking me to make a decision about evidence that I</p> <p>19 haven't reviewed.</p> <p>20 Q Well, I'm just -- I'm asking you to</p> <p>21 make a decision, but I suppose my question is just</p> <p>22 is testimony from a borrower about their</p> <p>23 experience the kind of evidence that is considered</p> <p>24 when deciding a borrower defense application?</p> <p>25 A It was considered by the prior</p>	<p>1 attorneys that would be evaluating evidence and</p> <p>2 making determinations about what meets the</p> <p>3 preponderance standard.</p> <p>4 Q Okay. Great. If we can, in this same</p> <p>5 folder we're in, open up Exhibit 4.</p> <p>6 A ECF 63-3 number 4?</p> <p>7 Q Yes. For the next few minutes, we're</p> <p>8 just going to be in this folder. So this</p> <p>9 Exhibit -- the file name is Exhibit 4, but we're</p> <p>10 going to mark it for this deposition as Exhibit 5.</p> <p>11 (Jones Deposition Exhibit 5 was marked</p> <p>12 for identification and attached to the</p> <p>13 transcript.)</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q And, Ms. Jones, do you recognize this</p> <p>16 document?</p> <p>17 A (Witness reviews document.)</p> <p>18 This appears to be similar or the same</p> <p>19 to the document I've seen. Again, I don't have</p> <p>20 the two documents in front of me, but this appears</p> <p>21 to be a document that I've reviewed in the past.</p> <p>22 Q Okay. Just for the record, can you</p> <p>23 just say who this is to, from, the date, and what</p> <p>24 it's regarding?</p> <p>25 A Sure. The date is October 24th, 2016.</p>

<p style="text-align: right;">Page 58</p> <p>1 It is from the borrower defense unit and it is a 2 memo with a recommendation to Under Secretary Ted 3 Mitchell.</p> <p>4 Q Is this document typical of memoranda 5 that you review currently?</p> <p>6 A No.</p> <p>7 Q Now, these are recommendations for 8 Everett/WyoTech borrowers alleging transfer of 9 credit claims.</p> <p>10 A Uh-huh.</p> <p>11 Q Are these recommendations still in 12 effect or has something superseded these?</p> <p>13 A For these groups of claims, the 14 department -- this administration -- it is my 15 understanding that this administration has decided 16 to honor the position of the prior administration. 17 So when the prior administration identified 18 certain programs during certain time periods where 19 misrepresentation took place, this administration 20 has accepted that.</p> <p>21 So I think this administration has 22 accepted the premise or the allegation that 23 misrepresentation took place in certain programs 24 at certain periods of time.</p> <p>25 Q So there's been no additional guidance</p>	<p style="text-align: right;">Page 60</p> <p>1 Q We're going to talk more about that.</p> <p>2 At this point, I would like to just go back to 3 this folder and look at what in the folder is 4 Exhibit 5.</p> <p>5 MS. O'GRADY: And for this deposition, 6 it will be marked as Exhibit 6.</p> <p>7 (Jones Deposition Exhibit 6 was marked 8 for identification and attached to the 9 transcript.)</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Again, Ms. Jones, my question is have 12 you seen this document before, and, if so, can you 13 state for the record what it is?</p> <p>14 A This appears to be a document that I 15 have reviewed before. It is a January 9th, 2017 16 memo from the borrower defense unit to Under 17 Secretary Ted Mitchell making recommendations 18 about Corinthian borrowers alleging they were 19 guaranteed employment.</p> <p>20 Q Okay. Has this -- has this written 21 recommendation been superseded by any other 22 written recommendation?</p> <p>23 A It is my understanding that the 24 programs for which the Obama administration 25 determined that misrepresentation took place, that</p>
<p style="text-align: right;">Page 59</p> <p>1 given for this group of students?</p> <p>2 A About the determination of the merit of 3 their claims? Is that what you're asking me?</p> <p>4 Q Yes.</p> <p>5 A For the -- for the borrowers who were 6 in those programs that were listed by the 7 Department of Education on its Web site as 8 programs where it had determined that 9 misrepresentation took place, it is my 10 understanding that this administration has not 11 gone back to second guess that; that, you know, 12 those programs for which borrowers were told 13 misrepresentation took place, this administration 14 is accepting that determination that 15 misrepresentation took place.</p> <p>16 In other words, you know, they -- they 17 made a decision that misrepresentation took place, 18 and to my knowledge, we're not challenging or, you 19 know, changing that determination.</p> <p>20 Q When you say you're not challenging or 21 determining -- you're not challenging that 22 determination, excuse me, are you separating out a 23 determination of a misrepresentation from the 24 amount of relief?</p> <p>25 A Yes, I am.</p>	<p style="text-align: right;">Page 61</p> <p>1 we have honored that determination of 2 misrepresentation.</p> <p>3 So it is my understanding that the 4 campuses and programs for which the prior 5 administration determined that there was 6 misrepresentation about guaranteed employment, we 7 have honored those determinations of 8 misrepresentation.</p> <p>9 Q Under this recommendation made at this 10 time, the amount of relief for these borrowers was 11 100 percent; is that your understanding?</p> <p>12 A I'm not sure. I'm not aware what that 13 determination was.</p> <p>14 Q But when you say you're honoring the 15 decision about the misrepresentation, that is 16 separate from a decision made by the previous 17 administration about the percentage of relief; is 18 that right?</p> <p>19 A That is correct.</p> <p>20 Q But at this point, you don't recall 21 what the previous administration's decision about 22 the percentage of relief was?</p> <p>23 A I -- I -- I don't in particular. I do 24 know that where they issued relief, that they did 25 provide 100 percent relief.</p>

<p style="text-align: right;">Page 62</p> <p>1 So in the adjudication that they did, 2 it is my understanding that most, if not all, were 3 issued 100 percent relief. I haven't seen those 4 claims, but it is my understanding that among the 5 claims they completed, borrowers in those programs 6 were afforded -- you know, if not 100 percent 7 relief, the majority were. I haven't seen the 8 exact numbers.</p> <p>9 Q Okay. Now, we're going to look at what 10 is Exhibit 7 in this folder.</p> <p>11 MS. O'GRADY: And we're going to mark 12 for this deposition as Exhibit 7.</p> <p>13 (Jones Deposition Exhibit 7 was marked 14 for identification and attached to the 15 transcript.)</p> <p>16 THE WITNESS: Okay.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Have you seen this document before, 19 and, if so, can you state for the record what it 20 is?</p> <p>21 A (Witness reviews document.) 22 You know, because so much of it is 23 redacted, it's hard for me to know if this is 24 exactly, but I -- this may have been one of the 25 documents included in the packet of documents that</p>	<p style="text-align: right;">Page 64</p> <p>1 Are you familiar with this decision? 2 A I have been told about this decision. 3 Q In what context were you told about the 4 decision? 5 A I -- I -- I can't -- I can't recall 6 exactly when, but at some point in time, you know, 7 early when I joined the department, you know, I -- 8 I -- it may have been in the context of the 9 Manriquez decision when I asked for, you know, 10 information about what were we doing. So it may 11 have been when I asked a question about the 12 methodology. I just -- I just don't recall 13 exactly when I -- I, you know, was told that a 14 decision had been made. I just can't remember the 15 exact timeline.</p> <p>16 Q I just have -- I have three more 17 documents that we're spending a relatively short 18 amount of time on, and then I think we can take 19 our quick break.</p> <p>20 Does that sound okay?</p> <p>21 A Sure.</p> <p>22 Q Okay. So the next one is Exhibit 8 in 23 this folder which we'll mark for this deposition 24 as Exhibit 8. 25 (Jones Deposition Exhibit 8 was marked</p>
<p style="text-align: right;">Page 63</p> <p>1 I reviewed for redaction. I -- I don't recall -- 2 I don't recall specifically whether this was in 3 that packet, but I know it was a number of 4 documents that I had certified that what was 5 redacted was deliberative, and this may have been 6 in that packet.</p> <p>7 Q This is a memo from James Manning to 8 the secretary, May 4th, 2017, and the subject is 9 action items in borrower defense.</p> <p>10 A Uh-huh.</p> <p>11 Q Have you reviewed this document in any 12 context other than reviewing it for redaction?</p> <p>13 A Not to my recollection.</p> <p>14 Q Can you turn to the fourth page?</p> <p>15 A The fourth page of this memo?</p> <p>16 Q Yes. It's actually -- it's the last 17 page of the PDF, so I think it says four of four, 18 but it's probably five of the PDF.</p> <p>19 A I've got to get my cursor. I'm sorry. 20 I'm trying to work with two screens here, so --</p> <p>21 Q Totally understand. But it's run 22 pretty smoothly so far.</p> <p>23 A Okay. So you're looking at the actual 24 page that has the decision.</p> <p>25 Q Right.</p>	<p style="text-align: right;">Page 65</p> <p>1 for identification and attached to the 2 transcript.)</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q And, Ms. Jones, if you could just state 5 if you've seen this document before and, if so, 6 what it is?</p> <p>7 A (Witness reviews document.) 8 I believe I have seen this document 9 before. It was a memo to James Manning from Steve 10 Menashi, who was then acting general counsel, 11 through Justin Riemer, who also -- he was counsel 12 at the time. And it is their legal bases for 13 approval and discharge of pending borrower defense 14 claims for former Corinthian students qualifying 15 for approval on the grounds of job placement rate, 16 guaranteed jobs, and transfer of credit findings.</p> <p>17 MR. MERRITT: I'm going to object to 18 any further questioning regarding this memo as 19 calling for privileged information. It is a 20 document which the department maintains a claim of 21 privilege.</p> <p>22 MS. O'GRADY: I'll state for the record 23 that the document is publicly available as a New 24 York Times attachment.</p> <p>25 MR. MERRITT: Nonetheless, there has --</p>

<p style="text-align: right;">Page 66</p> <p>1 you know, the department still maintains privilege</p> <p>2 as having not been subject to an authorized</p> <p>3 disclosure.</p> <p>4 BY MS. O'GRADY:</p> <p>5 Q Okay. If we can look at Exhibit 9 in</p> <p>6 the folder.</p> <p>7 MS. O'GRADY: And this document I'm</p> <p>8 going to mark as Exhibit 9 for the deposition.</p> <p>9 (Jones Deposition Exhibit 9 was marked</p> <p>10 for identification and attached to the</p> <p>11 transcript.)</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q Do you recognize this document?</p> <p>14 A (Witness reviews document.)</p> <p>15 I do not recognize this document.</p> <p>16 Q The title is borrower defense unit</p> <p>17 claims review protocol. Have you ever reviewed</p> <p>18 such a protocol?</p> <p>19 A I don't recall ever reviewing this</p> <p>20 document. It would have been put in place before</p> <p>21 I was at the department, and I -- I -- it is</p> <p>22 possible that at some point in time, you know,</p> <p>23 it -- I don't recall it. I don't recall reviewing</p> <p>24 this.</p> <p>25 Q So I don't understand you don't recall</p>	<p style="text-align: right;">Page 68</p> <p>1 something that you would have looked at?</p> <p>2 A Only the methodology. So there may</p> <p>3 have been questions on the methodology, for</p> <p>4 example, you know, do we use four-digit or</p> <p>5 six-digit CIP codes to identify an occupation.</p> <p>6 So policy questions would have come to</p> <p>7 me. Standard operating procedures, no. I would</p> <p>8 characterize this as a standard operating</p> <p>9 procedure, and, no, that would not have come to</p> <p>10 me.</p> <p>11 Q Who would it have gone to?</p> <p>12 A No, I -- I would be speculating. I</p> <p>13 mean, my guess is that it would go to the attorney</p> <p>14 of the BD unit, but that's speculation on my part.</p> <p>15 I don't know.</p> <p>16 Q Well, I mean, if the BD unit is giving</p> <p>17 guidance to attorneys for how to review based on a</p> <p>18 new methodology, who would be in charge of</p> <p>19 ensuring that the protocol matched the</p> <p>20 methodology?</p> <p>21 A That would be an operations decision</p> <p>22 made by FSA.</p> <p>23 Q Okay. If I could just go back to</p> <p>24 Exhibit 8, and this is the memoranda from Steven</p> <p>25 Menashi.</p>
<p style="text-align: right;">Page 67</p> <p>1 reviewing this particular one, but are there</p> <p>2 borrower defense unit claims review protocols that</p> <p>3 are currently in effect you would have reviewed?</p> <p>4 A The only -- the only protocol, so to</p> <p>5 speak, that I was involved in is the development</p> <p>6 of the new methodology for determining review.</p> <p>7 So, you know, I was involved as part of a team</p> <p>8 looking for a new methodology when the Northern</p> <p>9 District of California enjoined the methodology</p> <p>10 that had been developed in 2017.</p> <p>11 Q As a product of that work, was a</p> <p>12 guidance sheet like this developed?</p> <p>13 A I don't know.</p> <p>14 Q If it had been, would you have seen it?</p> <p>15 A You know, this looks to me like it was</p> <p>16 more like a standard operating procedure, and I</p> <p>17 would not have reviewed a standard operating</p> <p>18 procedure. That is something that the attorneys</p> <p>19 in the BD unit would have developed. It's not a</p> <p>20 policy document. It's an operations document.</p> <p>21 And, so, I -- I mean it --</p> <p>22 Q As -- I mean, as your role at -- of --</p> <p>23 as your role regarding policy implementation, if</p> <p>24 there was guidance provided to the unit in</p> <p>25 connection with the new methodology, is that</p>	<p style="text-align: right;">Page 69</p> <p>1 MS. O'GRADY: Charlie, are there any</p> <p>2 questions I can ask on this document, or are you</p> <p>3 claiming that the entire document is privileged?</p> <p>4 MR. MERRITT: I'm claiming privilege</p> <p>5 over the entire document.</p> <p>6 MS. O'GRADY: Okay. If we could take a</p> <p>7 five-minute break. Is that all right with</p> <p>8 everyone?</p> <p>9 THE WITNESS: Sure.</p> <p>10 MR. MERRITT: Sure.</p> <p>11 MS. O'GRADY: Okay.</p> <p>12 THE VIDEOGRAPHER: Okay. We're now</p> <p>13 going off the record. The time is 15:42 UTC time.</p> <p>14 (Recess -- 10:42 a.m.)</p> <p>15 (After recess -- 10:56 a.m.)</p> <p>16 THE VIDEOGRAPHER: We're now back on</p> <p>17 the record. The time is 15:56 UTC time.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q All right. We're going to return to</p> <p>20 Exhibit 2, your declaration. And I'd like to turn</p> <p>21 to paragraph 15 which is the middle of the page</p> <p>22 that is PDF page 6.</p> <p>23 A I have to figure out how to get back to</p> <p>24 that document.</p> <p>25 You know, before we leave this exhibit,</p>

<p style="text-align: right;">Page 70</p> <p>1 I just want to make one point of clarification.</p> <p>2 So I'm a scientist by training, so when I think of</p> <p>3 methodology -- when I use the word "methodology,"</p> <p>4 I'm talking about the relief methodology. I want</p> <p>5 to make it clear I'm not an attorney, so I don't</p> <p>6 get involved in any protocols or methods about</p> <p>7 determining evidence or reviewing evidence.</p> <p>8 So when I use the term "methodology," I</p> <p>9 want to be -- I want to make sure that I'm clear</p> <p>10 that I'm talking about the relief methodology. So</p> <p>11 I may not have used those term -- you know, the</p> <p>12 term consistently, so I just want to make sure</p> <p>13 that you understand when I say methodology, I mean</p> <p>14 the relief methodology.</p> <p>15 Q Understood.</p> <p>16 A Okay. Now I'm going to go try to find</p> <p>17 that document. I am not facile with technology,</p> <p>18 so --</p> <p>19 Q We've been doing pretty well today,</p> <p>20 so . . .</p> <p>21 A So we are now returning to my</p> <p>22 declaration. And I found it.</p> <p>23 Q All right.</p> <p>24 A Here we are.</p> <p>25 Q So we're going to page 6 and</p>	<p style="text-align: right;">Page 72</p> <p>1 on financial harm?</p> <p>2 A I don't know. I wasn't part of that</p> <p>3 review.</p> <p>4 Q And the department developed a new</p> <p>5 methodology for determining the amount of relief.</p> <p>6 That new methodology is what?</p> <p>7 A As I understand it, that was the</p> <p>8 methodology that was ultimately enjoined by the</p> <p>9 Northern District of California.</p> <p>10 Q And that methodology, you say here,</p> <p>11 determined the amount of relief to be given to</p> <p>12 successful borrower defense claimants who attended</p> <p>13 certain schools operated by Corinthian. So it was</p> <p>14 solely for Corinthian?</p> <p>15 A As I -- that's it -- that's how it was</p> <p>16 explained to me.</p> <p>17 Q By whom?</p> <p>18 A I -- I don't recall exactly who</p> <p>19 explained it to me. Yeah, I mean there -- there</p> <p>20 are -- I can't remember exactly who gave me that</p> <p>21 explanation.</p> <p>22 Q So this new methodology is about the</p> <p>23 amount of relief and not about -- let me put this</p> <p>24 a different way.</p> <p>25 We've discussed step-one and step-two</p>
<p style="text-align: right;">Page 71</p> <p>1 paragraph 15.</p> <p>2 A Okay.</p> <p>3 Q And if you wouldn't mind, if you could</p> <p>4 just read that paragraph 15 for the record because</p> <p>5 this is what we will be discussing.</p> <p>6 A In 2017, the department conducted a</p> <p>7 thorough review of its existing methods for</p> <p>8 adjudicating borrower defense claims and</p> <p>9 calculating relief and concluded that it did not</p> <p>10 have an adequate process to handle the growing</p> <p>11 list of borrower defense claims. As a result of</p> <p>12 that review, the department developed a new</p> <p>13 methodology for determining the amount of relief</p> <p>14 to be given to successful borrower defense</p> <p>15 claimants who attended certain schools operated by</p> <p>16 Corinthian Colleges.</p> <p>17 Q Okay. And in this paragraph, what is</p> <p>18 the thorough review that you're referring to?</p> <p>19 A So I can only speak to what -- what I</p> <p>20 was told. I wasn't part of this review, so I'm</p> <p>21 not sure exactly what was included in the review.</p> <p>22 But as I understand it, the review was to look at</p> <p>23 the resources available to the department to try</p> <p>24 to identify methods for evaluating financial harm.</p> <p>25 Q And was the focus of that review solely</p>	<p style="text-align: right;">Page 73</p> <p>1 determinations. Have we used those words today?</p> <p>2 Are those words that you have used when</p> <p>3 discussing --</p> <p>4 A I don't believe so.</p> <p>5 Q -- relief methodology?</p> <p>6 A I don't know what you mean by step one</p> <p>7 and step two. I think I've talked about, you</p> <p>8 know, the relief methodology. That's the part I</p> <p>9 know about.</p> <p>10 MR. MERRITT: I don't believe we've</p> <p>11 used those terms today.</p> <p>12 MS. O'GRADY: All right. You're right.</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q I think I -- let's actually go to --</p> <p>15 back out to the main exhibit folder. We're going</p> <p>16 to go to ECF number 56-4, Nevin declaration.</p> <p>17 MR. MERRITT: And do you mean the</p> <p>18 second one that's only Nevin declaration as</p> <p>19 opposed to the one that says Exhibit 20?</p> <p>20 MS. O'GRADY: Yes. Thanks for</p> <p>21 clarifying.</p> <p>22 THE WITNESS: Now I'm having trouble</p> <p>23 getting back. Give me a second here.</p> <p>24 So you're looking at ECF -- oh, shoot.</p> <p>25 There's number 66. Let me see if I can get back.</p>

<p style="text-align: right;">Page 74</p> <p>1 MR. MERRITT: Yeah, you should be able</p> <p>2 to go back like a folder -- jump back a folder.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. MERRITT: To the one's that</p> <p>5 called -- well, I don't know what you named yours.</p> <p>6 Mine was called Jones deposition exhibits.</p> <p>7 THE WITNESS: And what document am I</p> <p>8 looking for? Oh, I think I see it, ECF number</p> <p>9 56-4.</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Yes. And it says Nevin Declaration.</p> <p>12 MR. MERRITT: So to clarify, Diane,</p> <p>13 it's the second one on the list, because there's</p> <p>14 also one on top of it that also is called ECF</p> <p>15 56-4, but it's, like, Exhibit 20. So it's the</p> <p>16 second one in alphabetical answer.</p> <p>17 THE WITNESS: Yep. Okay. I have that</p> <p>18 open right now.</p> <p>19 BY MS. O'GRADY:</p> <p>20 Q And this one, Ms. Jones, you said</p> <p>21 that -- is this the document -- the Nevin</p> <p>22 declaration that you had reviewed in advance of</p> <p>23 today's deposition?</p> <p>24 A This looks like the document I</p> <p>25 reviewed.</p>	<p style="text-align: right;">Page 76</p> <p>1 And if the borrower satisfied the first</p> <p>2 step, then number two is a determination of the</p> <p>3 amount of relief that the borrower should receive.</p> <p>4 Q So here is that step-one, step-two</p> <p>5 classification. My question was when we were just</p> <p>6 looking at paragraph 15 and discussing the new</p> <p>7 methodology for determining the amount of relief,</p> <p>8 is that solely step two that you refer to in</p> <p>9 paragraph 24?</p> <p>10 A So I don't know about the methodology</p> <p>11 in total because I wasn't involved in the</p> <p>12 development, but the element of that methodology,</p> <p>13 that 27 methodology on which I have been briefed</p> <p>14 would be committed to step two.</p> <p>15 So it may have been that the</p> <p>16 methodology involves, you know, steps beyond step</p> <p>17 two, but the part that I was briefed on and</p> <p>18 under- -- you know, that I know was put in place</p> <p>19 is step two.</p> <p>20 Q Who would know if there was more to it</p> <p>21 than the changes for step two?</p> <p>22 A The -- the people who wrote that policy</p> <p>23 document.</p> <p>24 Q And which policy document is that?</p> <p>25 A So I think you just showed me a</p>
<p style="text-align: right;">Page 75</p> <p>1 Q And if you would just give me one</p> <p>2 second to find what page we're going to go to.</p> <p>3 My apologies. I actually -- we are</p> <p>4 going to use this document, but not right now.</p> <p>5 A Okay.</p> <p>6 Q I apologize for that.</p> <p>7 If you can go back to your declaration,</p> <p>8 and if you we could look at paragraph 24, and that</p> <p>9 is at the very bottom of page 9.</p> <p>10 A Yes.</p> <p>11 Q So in this paragraph, if you wouldn't</p> <p>12 mind reading it out loud for the record, this is</p> <p>13 why I was using that step-one, step-two --</p> <p>14 A Okay.</p> <p>15 Q -- language. So if you wouldn't mind</p> <p>16 reading out loud paragraph 24 there.</p> <p>17 A The department's consideration of a</p> <p>18 borrower's application for a borrower defense</p> <p>19 discharge includes two steps. Step number one, a</p> <p>20 determination of whether the borrower has</p> <p>21 submitted a borrower defense claim supported by</p> <p>22 evidence submitted by the borrower or otherwise</p> <p>23 available to the department in accordance with the</p> <p>24 applicable standard. And if -- I'm sorry. I have</p> <p>25 to scroll down.</p>	<p style="text-align: right;">Page 77</p> <p>1 document earlier that involves Steve Menashi and</p> <p>2 Justin Riemer and James Manning. I would assume</p> <p>3 that one of those individuals would know.</p> <p>4 Q So your sole involvement with the new</p> <p>5 methodology that you identify in paragraph 15 is</p> <p>6 as it related to the amount of relief for</p> <p>7 Corinthian borrowers?</p> <p>8 A Ultimately I became involved in the</p> <p>9 determination of a relief methodology for all --</p> <p>10 all borrowers, all future claimants. So they --</p> <p>11 my involvement was of a methodology that would go</p> <p>12 beyond Corinthian borrowers, but it was limited to</p> <p>13 the relief methodology.</p> <p>14 Q So were you ever involved in developing</p> <p>15 a methodology regarding step one?</p> <p>16 A I -- I don't recall ever being in a</p> <p>17 conversation about step one. You know, again, I'm</p> <p>18 not an attorney, so I don't know how you look at</p> <p>19 evidence. So I just don't recall ever being in a</p> <p>20 conversation about step one.</p> <p>21 Q So you don't recall in your role ever</p> <p>22 having a conversation about how to decide the</p> <p>23 merits of a borrower defense application?</p> <p>24 A No, not to my recollection. No.</p> <p>25 Q So your understanding right now, what</p>

<p style="text-align: right;">Page 78</p> <p>1 methodology is in place to determine whether or 2 not a borrower defense application is 3 successful -- that is, what methodology governs 4 step one?</p> <p>5 A Our attorneys in the borrower defense 6 unit under Colleen Nevin's direction evaluate the 7 evidence and make that determination.</p> <p>8 Q When you're involved in the rule-making 9 process, did that ever involve step-one 10 determinations?</p> <p>11 A Do you mean in the development of the 12 2019 regulation?</p> <p>13 Q Yeah.</p> <p>14 A So again, those conversations focused 15 on the evidentiary standard, and there was a 16 conversation about the use of the preponderance of 17 evidence versus -- I can't remember what the 18 higher standard was called, but you would know 19 this. There's a higher standard above 20 preponderance, and I believe in our proposed rule, 21 we put the proposal out using the higher standard, 22 but based on public comments that we got, we 23 ultimately went with the preponderance of evidence 24 standard because that was the standard in the 2016 25 reg.</p>	<p style="text-align: right;">Page 80</p> <p>1 So I -- I know that there was one group 2 of borrowers for whom there was this base 3 guarantee of 10 percent, so I don't know whether 4 you would -- I don't know how to characterize 5 that. But in the new methodology, it was -- it 6 was limited only to those borrowers who the 7 attorneys would have deemed eligible for relief.</p> <p>8 Q So if you were in charge of policy but 9 only step two, who was in charge of the policy 10 regarding who gets denied? Because in order to 11 get to step two, you have to have been granted 12 borrower defense relief; right?</p> <p>13 A Right. I mean, Colleen Nevin is the 14 attorney in charge of the BD unit. She has 15 decision-making power about which claims are, you 16 know, based on the merit of the review to 17 determine whether borrowers are eligible or 18 ineligible, so the determination of eligible and 19 ineligible would be made by Colleen Nevin and her 20 team of attorneys.</p> <p>21 Q And who advises Colleen Nevin about how 22 to implement Department of Education policy 23 regarding the merits of the applications?</p> <p>24 A I don't believe she's advised. I 25 believe that she's an attorney who we trust</p>
<p style="text-align: right;">Page 79</p> <p>1 Q So you've been involved in the policy 2 regarding step-two determinations. How -- how do 3 you know when a step-two determination is needed? 4 I mean, you have to go through step one first; 5 right?</p> <p>6 A Right. But I don't make the 7 determination on a particular borrower's claim 8 even with regard to relief. My role is to develop 9 a methodology that FSA can employ consistently to 10 determine that relief, but I don't look at any 11 particular claim even on a step-two basis.</p> <p>12 Q Okay. So I guess I'm not asking about 13 particular claims, though. My question is if 14 you're only doing with step two in your role and 15 have never even had a conversation about policy 16 regarding step one, that means, then, you're only 17 dealing with granted applications; is that right?</p> <p>18 A The relief -- the relief methodology 19 would -- would apply to granted applications and 20 with -- with one exception which is that in the 21 case of Corinthian, I believe the 2017 methodology 22 included a minimum guarantee of percent relief, so 23 that was a -- that was a conversation in which I 24 was not involved, and I don't know exactly to whom 25 that applies.</p>	<p style="text-align: right;">Page 81</p> <p>1 understands how to review evidence and make a 2 determination.</p> <p>3 I -- I -- I don't think anybody advises 4 her on how to review evidence. I mean, I think 5 that's why we hire attorneys and that --</p> <p>6 Q I guess I'm trying to parse out the 7 notion of reviewing evidence as a lawyer and 8 setting policy, and my understanding is your job 9 has been to set policy.</p> <p>10 A That's correct.</p> <p>11 Q But you have not ever set policy or had 12 a conversation about the policy regarding deciding 13 the application in step one?</p> <p>14 A I've never been involved in deciding on 15 a particular application in step one whether a 16 borrower was eligible or ineligible.</p> <p>17 However, in the process of finalizing 18 the 2019 regs, I was involved in conversations 19 about preponderance of evidence versus whatever 20 that other standard is. I was involved in 21 conversations about whether or not breach of 22 contract would be included in the 2019 reg. I was 23 involved in conversations about how we would look 24 at lawsuits brought against a school versus 25 determining judgments on the merits.</p>

<p style="text-align: right;">Page 82</p> <p>1 So at a high level in developing the</p> <p>2 2019 reg, you know, I was involved in</p> <p>3 conversations about, you know, that kind of</p> <p>4 evidence; in other words, whether there's breach</p> <p>5 of contract evidence. But that doesn't mean I</p> <p>6 know how to --</p> <p>7 Q Right. Right. Yeah. I mean, I know</p> <p>8 you're not an attorney looking at them in that</p> <p>9 way.</p> <p>10 I guess who has final authority to sign</p> <p>11 off on a borrower defense denial or grant, step</p> <p>12 one?</p> <p>13 A Colleen Nevin or her -- I don't know</p> <p>14 whether she delegates that to attorneys in her</p> <p>15 group, but ultimately those attorneys report to</p> <p>16 her. She has final say on the determination.</p> <p>17 Q And no one else reviews that</p> <p>18 determination?</p> <p>19 A I don't know what her process is. I</p> <p>20 don't know who is involved in her process. But</p> <p>21 I -- but I know that she makes -- she and her team</p> <p>22 of attorneys make that determination.</p> <p>23 Q And do you know if they have any</p> <p>24 guidance documents that tell them how to make that</p> <p>25 determination?</p>	<p style="text-align: right;">Page 84</p> <p>1 back to Exhibit 7 for this deposition, which is --</p> <p>2 you may not even have to look at it. It's the one</p> <p>3 where their recommendation has been given for --</p> <p>4 it's heavily redacted. It's from James Manning to</p> <p>5 the Secretary, May 4th, 2017, and the Secretary</p> <p>6 signs the granting of the borrower defense.</p> <p>7 So -- so that -- would you consider</p> <p>8 this a step-one or a step-two determination, this</p> <p>9 memorandum?</p> <p>10 A You know, there's so much redacted in</p> <p>11 it that I'm not sure exactly what the content of</p> <p>12 that memo was. So I -- I can't -- I can't say</p> <p>13 what she signed off on because I don't remember</p> <p>14 what -- you know, I don't know if I've seen the</p> <p>15 unredacted form. Let me see if I can pull it back</p> <p>16 up and . . .</p> <p>17 (Witness reviews document.)</p> <p>18 Okay. I've pulled it --</p> <p>19 Q Well, I guess -- I can ask a broader</p> <p>20 question which is it -- your understanding that</p> <p>21 Colleen Nevin is the sole authority to sign off on</p> <p>22 whether a borrower is denied or granted their</p> <p>23 application, has that always been the case?</p> <p>24 MR. MERRITT: Objection as to</p> <p>25 characterization of her prior statement.</p>
<p style="text-align: right;">Page 83</p> <p>1 A I don't know.</p> <p>2 Q So in the memos we looked at before --</p> <p>3 just give me one moment. I have to grab my</p> <p>4 exhibits, too.</p> <p>5 Well, we can take the . . .</p> <p>6 A I do want to clarify. So you asked me</p> <p>7 the question about have I ever been involved in</p> <p>8 conversations. I did just remember a conversation</p> <p>9 that I want to make sure I share, and that is at</p> <p>10 one point, you know, I -- I asked Colleen and her</p> <p>11 team where they were in the process of reviewing</p> <p>12 evidence for ITT Tech, and they told me that they</p> <p>13 had a million pages to review. So we did have a</p> <p>14 conversation where they told me they had a million</p> <p>15 pages of evidence to review, and my answer was,</p> <p>16 oh, okay.</p> <p>17 Q Okay. So that's the only conversation</p> <p>18 you've ever had with anyone about step-one</p> <p>19 determinations?</p> <p>20 A Right. Right. At a very high level,</p> <p>21 you know, how far are you in processing -- in</p> <p>22 reviewing the evidence --</p> <p>23 Q Okay.</p> <p>24 A -- on that. Yeah.</p> <p>25 Q So it's my -- so I just wanted to go</p>	<p style="text-align: right;">Page 85</p> <p>1 BY MS. O'GRADY:</p> <p>2 Q Okay. Please correct me if I</p> <p>3 mischaracterized your prior statement.</p> <p>4 A Could you say it -- could you state</p> <p>5 that again?</p> <p>6 Q So who currently has the authority to</p> <p>7 sign off on step-one determinations?</p> <p>8 A It -- it is my understanding that</p> <p>9 Colleen Nevin and her group made that decision.</p> <p>10 I -- I don't know how she delegates authority</p> <p>11 within that group. I don't know that she</p> <p>12 personally signs off on every decision.</p> <p>13 Q So she could delegate to someone to</p> <p>14 sign off on the decision?</p> <p>15 A She has a team of attorneys, and it's</p> <p>16 possible that she has delegated. I just don't</p> <p>17 know.</p> <p>18 Q Is it your understanding that that</p> <p>19 has -- how long has that been the case where</p> <p>20 Colleen or the person in Colleen's position has</p> <p>21 the authority to sign off on granting or</p> <p>22 borrowing?</p> <p>23 A I don't know the answer to that</p> <p>24 question. I'm not aware of the different</p> <p>25 circumstance, but that doesn't mean it doesn't</p>

<p style="text-align: right;">Page 86</p> <p>1 exist. I just know of the circumstance -- of the</p> <p>2 circumstance I'm aware of, she has that authority,</p> <p>3 but I don't know if there were different</p> <p>4 circumstances earlier. I just don't know.</p> <p>5 Q And -- and to just -- I -- I think I</p> <p>6 may have asked this again, but I just want to make</p> <p>7 sure I'm clear on it.</p> <p>8 What policies guide Ms. Nevin's</p> <p>9 decisions?</p> <p>10 A So the policies that guide her</p> <p>11 decisions are the '95 regs, the 2016 regs and the</p> <p>12 2019 regs. So, for example, a policy had to be</p> <p>13 established regarding which state standard would</p> <p>14 be used to evaluate claims. Now, I don't have the</p> <p>15 expertise to be able to review the state standards</p> <p>16 in different states to understand which one should</p> <p>17 be implied, and so I did ask Colleen to work with</p> <p>18 our Office of General Counsel to develop a policy</p> <p>19 for determining which state standard to use.</p> <p>20 Now --</p> <p>21 Q Did they develop that policy?</p> <p>22 MR. MERRITT: Objection. It's calling</p> <p>23 for privileged information.</p> <p>24 MS. O'GRADY: I just wanted to know if</p> <p>25 the policy was ever completed.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Okay. And you said this was around</p> <p>2 when they were reviewing evidence for ITT. Was</p> <p>3 this the same question when she said -- I think</p> <p>4 you said, you know, there were millions of</p> <p>5 documents they had to review?</p> <p>6 A Yes.</p> <p>7 Q Okay. So this is that one</p> <p>8 conversation.</p> <p>9 A Yes.</p> <p>10 Q About what month and year was this?</p> <p>11 A It was before Covid, I know, because</p> <p>12 the conversation took place in my office.</p> <p>13 Q Okay. Even if you just have an</p> <p>14 approximate range?</p> <p>15 A You know, I'm going to have to think</p> <p>16 about it. I just can't remember the timeline, but</p> <p>17 I know it was prior to Covid. And -- and it is my</p> <p>18 understanding that they have determined a policy</p> <p>19 on a -- to identify the state standard.</p> <p>20 Q Okay.</p> <p>21 A But it involves understanding -- so you</p> <p>22 know this better than I do. Different states have</p> <p>23 different laws about --</p> <p>24 Q Right.</p> <p>25 A -- what they have for eminent domain.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. MERRITT: Go ahead, Diane.</p> <p>2 THE WITNESS: I actually don't know.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q So you've never seen it?</p> <p>5 A I've never seen it. So I'm not -- you</p> <p>6 know, I -- I gave the instruction that it needed</p> <p>7 to be done, but I don't have the expertise to</p> <p>8 review it.</p> <p>9 Q When did you give the instruction that</p> <p>10 it needed to be done?</p> <p>11 A I believe when Colleen notified me that</p> <p>12 they were ready to start reviewing evidence for</p> <p>13 ITT claims, and at that point I said, well, then I</p> <p>14 think we need to figure out, you know, under which</p> <p>15 state standard will you be evaluating those</p> <p>16 claims.</p> <p>17 So I can't remember the exact date, but</p> <p>18 it was when she said they were getting ready to</p> <p>19 review those documents and I said, you know, there</p> <p>20 has to be a policy for under which state standard.</p> <p>21 Q Was it a conversation, or did you write</p> <p>22 her an email or a memo instructing her to do that?</p> <p>23 A I remember that we had a conversation.</p> <p>24 There -- there may have been an email where I</p> <p>25 asked her if we had determined what it was.</p>	<p style="text-align: right;">Page 89</p> <p>1 I don't know what the right word is. So I do know</p> <p>2 Colleen that has come to a decision about how to</p> <p>3 identify the state standard. I -- I just -- you</p> <p>4 know, I -- I can't -- I can't -- I don't know how</p> <p>5 to evaluate --</p> <p>6 Q Sure.</p> <p>7 A -- it, so --</p> <p>8 Q So you think that she has some sort of</p> <p>9 memorandum that memorializes which state standard</p> <p>10 to use at this point?</p> <p>11 A I don't know if there's a memorandum,</p> <p>12 but I do believe that she has determined a way for</p> <p>13 identifying which state standard to use.</p> <p>14 Q Okay. And that's -- that's the extent</p> <p>15 you know? You don't know if it -- it's written</p> <p>16 down by her anywhere or has been disseminated to</p> <p>17 her team at all?</p> <p>18 A I -- I don't know.</p> <p>19 Q Okay. When you asked her to develop</p> <p>20 that state standard, why was that important to do</p> <p>21 at the time?</p> <p>22 A It was important because I -- I don't</p> <p>23 know how state standards work, but it's my</p> <p>24 understanding that different states have different</p> <p>25 laws regarding, you know, matters relevant to our</p>

<p style="text-align: right;">Page 90</p> <p>1 defense claims. Consumer protection law I guess 2 is how I would phrase it because I don't know the 3 names of the laws. 4 But it is my understanding that 5 different states have different laws, and when 6 we -- you know, when she told me that she was 7 ready to start looking at evidence for ITT Tech, 8 understanding that they had campuses across the 9 country in multiple states, my question to her was 10 how are you going to figure out -- for loans taken 11 prior to July 1, 2017, how are you going to figure 12 out which state law you're going to use. 13 Q And previous to giving her this 14 instruction to develop a 50-state -- or develop a 15 state standard policy, what was your understanding 16 of what state standard she'd been using? 17 A It was my understanding that in the 18 case of Corinthian, they had decided to use the 19 California state law standard. Corinthian is 20 headquartered in California. 21 So my question to her was, well, ITT is 22 headquartered in Indiana, does that mean you'll 23 use an Indiana state law standard or will you 24 continue to use the California state law standard, 25 and -- and -- and it took -- and that's when --</p>	<p style="text-align: right;">Page 92</p> <p>1 That's fine with me. 2 MS. O'GRADY: Okay. All right. Let's 3 continue, then. 4 BY MS. O'GRADY: 5 Q So you had said that -- you had said 6 that one of the -- one of the reasons you need to 7 know the state law standard is to inform the 8 school about what standard has been used. 9 Is that true under the '95 regulations 10 and the 2016 and the 2019 in your understanding? 11 A It is not. Under the 2016 and 2019 12 regulations, it's a federal standard. So the 13 issue of which state goes away. So it is only for 14 claims adjudicated under the '95 regulations that 15 the state standard is an important determination. 16 Q And is it your understanding that under 17 the 1995 regulations, a school must be alerted 18 about the borrower defense application? 19 A I am not -- I honestly don't know 20 whether or not the '95 regulation requires that. 21 Q Okay. All right. 22 A Let me -- let me make a clarifying 23 statement. 24 However, the way the 2016 regulation 25 was written, it is applied retroactively. So it</p>
<p style="text-align: right;">Page 91</p> <p>1 you know, there wasn't an answer for that one. 2 So I said, well, I think as a matter of 3 policy, we have to figure out how are you going to 4 determine which state law standard you use. It 5 becomes very easy for loans after July 1, 2017, 6 but for earlier loans, A, to determine which state 7 standard, and B, to make sure that borrowers and 8 schools would know under which state standard they 9 were evaluated. 10 Q So part of the reason you gave her this 11 instruction, if I understand what you just said, 12 is so that -- one of the reasons is that a 13 borrower who receives a determination about their 14 application would know which state standard had 15 been used? 16 A And -- and the school. 17 Q And the school who's receiving 18 information about the application? 19 A That's correct. 20 Q Okay. 21 MS. O'GRADY: It's 11:28 by my count. 22 And I think, Ms. Jones, you have an obligation 23 from 11:30 to noon; do I have that right? 24 THE WITNESS: My calendar has been 25 cleared, so we can go until a regular lunchtime.</p>	<p style="text-align: right;">Page 93</p> <p>1 depends on when you're asking the question, but 2 once the 2016 regulation was in place, many of the 3 requirements, such as notification of the school, 4 then applied to the loans being adjudicated under 5 the '95 regs. 6 So prior to the 2016 reg, I honestly -- 7 I just can't -- I don't think we had detailed 8 enough regulations to say one way or the other 9 prior to '95, but I would have to go back and look 10 at that reg. But then once the 2016 reg went into 11 effect, it then had requirements that applied to 12 loans that were otherwise considered under the '95 13 reg. 14 Q So we're going to go back to Exhibit 2, 15 your declaration. 16 A Uh-huh. 17 Q And we had just been talking about 18 paragraph 15 on the bottom of page 6. Okay. And 19 now I want to move on to the middle of page 7 20 which is paragraph 17. And in the middle of that 21 paragraph, you write, The court enjoined the 22 department from using that methodology as it 23 currently existed to the extent that the secretary 24 relies upon information provided by the Social 25 Security Administration in violation of the</p>

<p style="text-align: right;">Page 94</p> <p>1 Privacy Act.</p> <p>2 So what was your understanding at the</p> <p>3 time that you wrote this of what the court in</p> <p>4 Calvillo Manriquez prevented the Department of</p> <p>5 Education from doing?</p> <p>6 A It's my understanding that the court</p> <p>7 prevented the Department of Education, that it</p> <p>8 enjoined our methodology which at the time relied</p> <p>9 on earnings data from the Social Security</p> <p>10 Administration. It is my understanding that the</p> <p>11 court had concerns about potential violation of</p> <p>12 the Privacy Act in using Social Security data for</p> <p>13 this purpose. And it is my understanding that</p> <p>14 that methodology was enjoined.</p> <p>15 Q And was enjoined as to whom?</p> <p>16 A That particular ruling would have</p> <p>17 applied to the class of borrowers that we refer to</p> <p>18 as the Manriquez class. There were a group of</p> <p>19 borrowers. I do not recall how many.</p> <p>20 So the particular ruling was related to</p> <p>21 those borrowers, but the methodology would have</p> <p>22 been employed by the department otherwise to --</p> <p>23 you know, to -- to the larger pool of borrowers.</p> <p>24 Q Okay. So the methodology that you</p> <p>25 describe in paragraph 15 was not just for those</p>	<p style="text-align: right;">Page 96</p> <p>1 the 2017 methodology. I had no involvement</p> <p>2 whatsoever in its development or application.</p> <p>3 Q So let's go to paragraph 18. If you</p> <p>4 want to just read that out loud for the record?</p> <p>5 A The department appealed the district</p> <p>6 court's decision in Manriquez and still waiting</p> <p>7 for a decision from the appellate court. In the</p> <p>8 meantime, the department has undertaken</p> <p>9 significant efforts to explore and develop an</p> <p>10 alternative approach for determining the amount of</p> <p>11 relief to be given not just to Corinthian</p> <p>12 borrowers, but to all borrowers with approved</p> <p>13 borrower defense claims.</p> <p>14 Q Okay. So were you involved with the</p> <p>15 efforts to explore and develop an alternative</p> <p>16 approach?</p> <p>17 A I was.</p> <p>18 Q Okay. And what was the goal of that</p> <p>19 alternative approach?</p> <p>20 A The goal was, you know, should the --</p> <p>21 should the District Court of Northern California</p> <p>22 determine that the methodology already in place</p> <p>23 was one that we could not use but there would be</p> <p>24 an alternative methodology that we could use for</p> <p>25 part two, for step two.</p>
<p style="text-align: right;">Page 95</p> <p>1 who attended certain schools operated by</p> <p>2 Corinthian, but for all borrowers?</p> <p>3 A So I -- the answer to your question is</p> <p>4 I don't know. It was communicated to me as the</p> <p>5 methodology that was developed for Corinthian</p> <p>6 borrowers. I don't know when it was developed</p> <p>7 what the intent was for its long-term use. I -- I</p> <p>8 don't know.</p> <p>9 Q What was your -- what was your role</p> <p>10 regarding this methodology? What was your</p> <p>11 involvement?</p> <p>12 MR. MERRITT: Objection. It's</p> <p>13 ambiguous.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q In your role, were you tasked with</p> <p>16 applying -- of setting policy that applied this</p> <p>17 methodology to step-two determinations?</p> <p>18 A Are you asking me about the 2017</p> <p>19 methodology?</p> <p>20 Q I'm asking you about the methodology</p> <p>21 that you discuss in paragraph 15, which is what</p> <p>22 was made after the department conducted a thorough</p> <p>23 review of its existing methods and developed a new</p> <p>24 methodology for Corinthian students?</p> <p>25 A I believe that paragraph 15 refers to</p>	<p style="text-align: right;">Page 97</p> <p>1 Q And I think my question was were you</p> <p>2 involved in developing this. Did you lead the</p> <p>3 development of this effort?</p> <p>4 A It was -- it was a group that was</p> <p>5 involved, and I was part of that group.</p> <p>6 Q And who was in that group?</p> <p>7 A That group included myself, Michael</p> <p>8 Brickman from my team; Jeff Appel, who was at FSA</p> <p>9 and who is sadly now deceased. Ian Foss, who was</p> <p>10 at Federal Student Aid. Then there were others</p> <p>11 who came in and out of discussions. We had, you</p> <p>12 know, representatives from the Office of General</p> <p>13 Counsel who were involved in some meetings. You</p> <p>14 know, there were conversations with our different</p> <p>15 statistical offices.</p> <p>16 So other people were brought into the</p> <p>17 conversation, but I'd say the main working group</p> <p>18 was, you know, myself, Michael, Jeff Appel, Ian</p> <p>19 and probably Robin Minor was involved.</p> <p>20 Q Did you have regular meetings?</p> <p>21 A I can't recall whether it was a</p> <p>22 regularly scheduled meeting, but we had many</p> <p>23 meetings.</p> <p>24 Q When did this -- when did this effort</p> <p>25 to explore and develop an alternative approach --</p>

<p style="text-align: right;">Page 98</p> <p>1 when did that begin?</p> <p>2 A I think the group convened to start the</p> <p>3 formal discussion somewhere in the neighborhood of</p> <p>4 April, May, June of 2019. I'd have to go back and</p> <p>5 look, but I think it was sometime in the spring of</p> <p>6 2019.</p> <p>7 Q And was the secretary involved in these</p> <p>8 discussions?</p> <p>9 A No.</p> <p>10 Q Whose idea was it to make significant</p> <p>11 efforts to explore and develop an alternative</p> <p>12 approach?</p> <p>13 A I think that, you know, Mark Brown had</p> <p>14 taken his new role and was concerned that we had</p> <p>15 still not gotten clarity from the Northern</p> <p>16 District of California, and he raised this issue</p> <p>17 with me, and I shared his concern that enough time</p> <p>18 had passed that it was time for us to start</p> <p>19 thinking about an alternative methodology.</p> <p>20 The -- the other thing that prompted</p> <p>21 that is eventually I was told that the Social</p> <p>22 Security Administration would not be continuing</p> <p>23 the memorandum of understanding to provide future</p> <p>24 earnings data. And, so, that also, you know,</p> <p>25 triggered in my mind that we -- we did need to</p>	<p style="text-align: right;">Page 100 Page</p> <p>1 A I -- I don't believe our conversation</p> <p>2 about state law standard was taking place during</p> <p>3 this time period. No, I think that conversation</p> <p>4 about the state law standard was subsequent to the</p> <p>5 development of the step-two methodology.</p> <p>6 Q And you've said that was your only</p> <p>7 conversation with anyone about step one, so there</p> <p>8 would be no other.</p> <p>9 A Right. I mean, I got reports on</p> <p>10 numbers -- you know, numbers of claims that were</p> <p>11 pending, but, you know, it was just a -- you know,</p> <p>12 a high level number.</p> <p>13 Q You got reports on, okay, numbers of</p> <p>14 borrower defense claims that were pending, so</p> <p>15 borrower defense claims that were awaiting a</p> <p>16 step-one determination?</p> <p>17 A Early on, I don't even -- early on, I</p> <p>18 think the reports were just simply, you know, how</p> <p>19 many claims we have gotten, yes, and how many</p> <p>20 claims are pending. I don't know that I would</p> <p>21 have known a percentage of them were in process.</p> <p>22 You know, early on, it was just that this is the</p> <p>23 number.</p> <p>24 Q Did you receive information or reports</p> <p>25 about claims that had a step-one determination and</p>
<p style="text-align: right;">Page 99</p> <p>1 come up with a new methodology that didn't rely on</p> <p>2 social security data because while the court would</p> <p>3 determine for current borrowers, you know, whether</p> <p>4 they were going to approve the methodology, moving</p> <p>5 forward I knew we would not have access to social</p> <p>6 security data.</p> <p>7 Q And just to clarify, the methodology</p> <p>8 we're talking about again is just about the amount</p> <p>9 of relief, so a step-two determination; correct?</p> <p>10 A That is correct.</p> <p>11 Q So as this is all going on, Ms. Nevin</p> <p>12 is continuing her determinations of denial or</p> <p>13 grants on the merits?</p> <p>14 A I don't supervise Colleen directly, and</p> <p>15 so I can only speculate. I -- I don't know --</p> <p>16 Q Okay. So you don't know whether</p> <p>17 step-one determinations are being made at this</p> <p>18 point because your methodology is just about step</p> <p>19 two?</p> <p>20 A That is correct.</p> <p>21 Q And while this -- while your</p> <p>22 development of this new methodology regarding step</p> <p>23 two is going on, you weren't having conversations</p> <p>24 with Colleen or anyone else about step-one</p> <p>25 determinations; is that right?</p>	<p style="text-align: right;">Page 101 Page</p> <p>1 were awaiting a step-two determination?</p> <p>2 A Later on, after the methodology had</p> <p>3 been approved and it was being applied, we -- we</p> <p>4 did start getting updates on, you know, how</p> <p>5 many -- how many claims were under review under</p> <p>6 the part-one review. So that was much later.</p> <p>7 Like I said, after the methodology had been</p> <p>8 approved, then I did start getting reports on, you</p> <p>9 know, total number of claims, number of claims</p> <p>10 being -- we use the term adjudicated to mean the</p> <p>11 determination of the merit.</p> <p>12 Q So before the methodology was</p> <p>13 completed, you were not receiving reports about</p> <p>14 any adjudications occurring?</p> <p>15 A Well, you know, again, there -- we --</p> <p>16 you know, we -- adjudication is different than</p> <p>17 processing, meaning notifications.</p> <p>18 Q So "adjudication" to you means</p> <p>19 notifying a student of the decision?</p> <p>20 A No, adjudication to me means the</p> <p>21 attorney is reviewing the evidence to determine if</p> <p>22 there was merit.</p> <p>23 Q Okay. So adjudication is reviewing a</p> <p>24 step one.</p> <p>25 So what's processing?</p>

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<p>1 A Well, I didn't invent the terminology, 2 but the terminology as I understand it is that 3 adjudication is step one, reviewing the merit. 4 Step two is the determination of relief. And then 5 when that is done, the borrower is notified.</p> <p>6 Q Okay. So processing is not a term of 7 art, then? It goes adjudication, decision 8 notification?</p> <p>9 A I think FSA uses the term "processing" 10 to mean the notification of the borrower.</p> <p>11 Q Okay. Now, with this step-one, 12 step-two division, if a claim in step one is 13 adjudicated as denied, step two is not necessary; 14 is that right?</p> <p>15 A I -- I don't recall exactly how the 16 10 percent decision is applied to Corinthian, so I 17 can't answer the question there.</p> <p>18 Q Taking that aside.</p> <p>19 A Outside of that group, I -- I wouldn't 20 imagine that if they're ineligible you'd have to 21 do a determination, so I would imagine that step 22 two the sep- -- it would be separate.</p> <p>23 Q So in your role, you've only ever had 24 involvement with grants of borrower defense 25 applications; is that right?</p>	<p>1 November 2019, step-one determinations were being 2 made pending the development of the new partial 3 relief methodology; is that right?</p> <p>4 A That's what I've been told. I mean, I 5 don't have supervision over that unit, so it 6 was -- I guess you could say I'm speculating here, 7 but that is the information I was provided.</p> <p>8 Q And, again, by whom?</p> <p>9 A It would either -- you know, I -- I 10 am -- I'm sure Mark Brown would have given me that 11 information, but I may have also gotten it from 12 Colleen Nevin in a meeting.</p> <p>13 Q Okay. And the second part of this 14 sentence is, you know, determinations that some 15 borrowers established successful borrower defense 16 in accordance with the applicable standard, and 17 that standard is the standard governing step-one 18 determinations; right?</p> <p>19 A That is correct.</p> <p>20 Q Okay. I think -- we've talked a lot 21 about your lack of involvement with that standard?</p> <p>22 A Right.</p> <p>23 Q I -- I just want to understand your 24 role. Is there a reason that you have had no 25 involvement in step one?</p>
Page 103 Page	Page 105 Page
<p>1 A I'm not involved in granting any 2 borrower defense applications. My role has been 3 around the policy for the regulations and the 4 methodology for determination of relief.</p> <p>5 Q Okay. So my question is the 6 methodology for determination of relief is solely 7 about the percentage of relief once an application 8 has been granted; it doesn't involve a denied 9 application?</p> <p>10 A That is correct, you know, with this 11 carve-out for this 10 percent Corinthian.</p> <p>12 Q Okay. In paragraph 25, I want to just 13 read the first sentence of that paragraph for the 14 record. It's a little bit long.</p> <p>15 A Sure.</p> <p>16 As explained in other declarations 17 submitted as part of this administrative record, 18 the department has continued to adjudicate claims 19 since the injunction was issued in Manriquez, 20 consistent with that injunction, including making 21 step-one determinations that some borrowers have 22 established a successful borrower defense in 23 accordance with the applicable standard.</p> <p>24 Q Okay. So this is -- here you say that 25 claims -- this was written in November. So as of</p>	<p>1 A I -- I think there are two reasons. 2 One is I'm not an attorney. I -- I have no 3 expertise or professional experience or ability to 4 evaluate evidence. I just don't. So I think, you 5 know -- so one of the reasons is that, you know, 6 I'm not an attorney.</p> <p>7 But the second reason is that the -- 8 the legislation that establishes federal student 9 aid as a performance-based organization makes very 10 clear the division between policy and operations. 11 And with the borrower defense unit residing in 12 FSA, those are operational decisions. The -- the 13 application of a regulation is FSA's decision to 14 make, right. So when there is a policy question 15 about that, I get involved; but outside of the 16 policy questions, you know, they are a 17 semi-autonomous unit, so not only --</p> <p>18 Q So what --</p> <p>19 A -- (indiscernible) experience, you 20 know, that would be crossing the separation of 21 labor.</p> <p>22 Q I want to understand, though, how -- 23 how do you determine what is a policy question 24 that would be appropriate for you to weigh in on?</p> <p>25 A You know, I -- it's hard to give a</p>

Page 106 Page	<p>1 general rule, right, because policy -- it depends,</p> <p>2 right. So the answer is it depends. But I think</p> <p>3 the place that maybe best described this is that</p> <p>4 policy are questions about regulations versus what</p> <p>5 the BD unit which is making decisions about an</p> <p>6 individual borrower's application.</p> <p>7 Q So in your understanding, there is no</p> <p>8 policy to govern step-one determinations; there's</p> <p>9 only an individual attorney-driven adjudication of</p> <p>10 evidence?</p> <p>11 And I do not want to put words in your</p> <p>12 mouth. I want to understand.</p> <p>13 A No, I mean, I think the -- the policy</p> <p>14 question on step one, as I, you know, explained</p> <p>15 earlier, was which state standard, right. So, you</p> <p>16 know, I think we needed a general policy about how</p> <p>17 do you figure out which state standard to use.</p> <p>18 Now, I'm not the one who issued that</p> <p>19 policy, but, for example, do you use the state</p> <p>20 where the company is located? Do you use the</p> <p>21 state where the campus is located? Do you use the</p> <p>22 state where the borrower is located?</p> <p>23 Q So your understanding is the only</p> <p>24 policy question with regard to adjudicating</p> <p>25 borrower defense applications is which state</p>	Page 108 Page	<p>1 potential to be the highest paid employee at the</p> <p>2 department because of the bonus structure, and</p> <p>3 when Congress created the PBO, which I believe was</p> <p>4 in 1998, they felt as though FSA as a PBO had to</p> <p>5 be held accountable for their performance and</p> <p>6 therefore had to have semi-autonomous operational</p> <p>7 control.</p> <p>8 But Congress did not want them to be</p> <p>9 the policy or the regulatory body, and Congress</p> <p>10 assigned that role to the department.</p> <p>11 Q So it's your understanding of that</p> <p>12 structure -- I hear you saying that that structure</p> <p>13 determines in part your ability to involve</p> <p>14 yourself in step-one determinations; is that</p> <p>15 right?</p> <p>16 A Well, I mean, I think it's twofold;</p> <p>17 right? I mean, one that is an operational</p> <p>18 protocol, so I would not be involved because under</p> <p>19 the way we are managing FSA, I -- I don't get</p> <p>20 involved in day-to-day operation decisions. But</p> <p>21 even if we did, I personally couldn't because I'm</p> <p>22 not an attorney.</p> <p>23 Q Okay. So what's the difference,</p> <p>24 though, between step one and step two?</p> <p>25 A The difference between step one is it's</p>
Page 107 Page	<p>1 standard to use?</p> <p>2 A Outside of the regulatory questions</p> <p>3 about whether or not breach of contract is</p> <p>4 considered, right. So we have the high-level</p> <p>5 policy decisions defining misrepresentation, and</p> <p>6 obviously I'm involved in creating the 2019</p> <p>7 regulation which sets forth a definition of</p> <p>8 misrepresentation.</p> <p>9 But when it comes to determining for an</p> <p>10 individual borrower whether misrepresentation</p> <p>11 occurred, that's not a policy decision beyond the</p> <p>12 regulatory requirement that the definition of</p> <p>13 misrepresentation be applied.</p> <p>14 Q I want to go back to your statement</p> <p>15 about it being performance based and you being in</p> <p>16 operations.</p> <p>17 Can you clarify that for me and just</p> <p>18 explain what you meant by that for me a little bit</p> <p>19 more?</p> <p>20 A Sure. Because FSA is a</p> <p>21 performance-based organization, they have</p> <p>22 different hiring authority; they have different</p> <p>23 contracting authority; and they have a different</p> <p>24 pay scale. Senior leaders at FSA get bonuses.</p> <p>25 The COO, the chief operating officer, has the</p>	Page 109 Page	<p>1 the evaluation of legal evidence to make a legal</p> <p>2 determination of whether misrepresentation</p> <p>3 occurred. That is very different than the policy</p> <p>4 which defines misrepresentation in regulations.</p> <p>5 Q Right.</p> <p>6 I suppose I'm getting at so the policy</p> <p>7 that defines misrepresentation in regulations and</p> <p>8 the policy that sets a schedule for determining,</p> <p>9 you know, a percentage of relief borrowers on the</p> <p>10 whole will be getting, why is your role different</p> <p>11 with respects to step one and step two?</p> <p>12 A Well, again in step two, I am not</p> <p>13 making the determination for any particular</p> <p>14 borrower about what level of relief they're</p> <p>15 getting. All I'm trying to do is in the same way</p> <p>16 that a policy process defined misrepresentation, I</p> <p>17 was involved in a policy process to define</p> <p>18 financial harm. And then the BD unit applies that</p> <p>19 definition.</p> <p>20 So I think you could look at what I</p> <p>21 refer to as the methodology as the policy</p> <p>22 definition of what constitutes financial harm. So</p> <p>23 the policy is set at a very high level. This is</p> <p>24 how we define financial harm, but it's the BD unit</p> <p>25 that applies it to any particular borrower.</p>

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1 Q And why isn't it the case with step one	1 Q No problem.
2 that policy would be set on --	2 A Yes, this looks like the transcript of
3 A Policy was set in establishing the	3 my hearing before the House Oversight Committee.
4 definition of misrepresentation.	4 Q Okay. And who prepared you for this
5 Q And that's the extent of your	5 testimony?
6 involvement with that?	6 MR. MERRITT: Objection to the scope.
7 A That is the extent of my involvement is	7 BY MS. O'GRADY:
8 in defining misrepresentation in the 2019 regs.	8 Q I believe you can still answer.
9 Granted, I was not involved in defining	9 MR. MERRITT: Okay. Go ahead for now.
10 misrepresentation in the 2016 regs or the 1995	10 THE WITNESS: Largely I prepared myself
11 regs, but I was involved in defining	11 for the hearing, but, you know, there were
12 misrepresentation for the 2019 regs.	12 meetings with, you know, attorneys in the Office
13 MS. O'GRADY: Okay. If we can go to	13 of General Counsel. And -- and certainly people
14 another exhibit. This will be -- if I could just	14 on my team, you know, helped me pull documents to
15 ask the court reporter, Dana, did I actually mark	15 review.
16 Exhibit 10 or did I not? I'm hoping that I did	16 BY MS. O'GRADY:
17 not, but just let me know either way.	17 Q Okay. And what kind of documents did
18 THE COURT REPORTER: Can you hear me?	18 you review?
19 MS. O'GRADY: Now I can.	19 MR. MERRITT: Objection as to calling
20 THE COURT REPORTER: Okay. Just give	20 for privileged information as well.
21 me just a second. I separated files, so I've got	21 BY MS. O'GRADY:
22 to go into the last file.	22 Q I certainly don't want any privileged
23 MS. O'GRADY: By my count, I'm now up	23 information, but if there were members of your
24 to Exhibit 10 because we didn't actually talk	24 team who were not lawyers that you worked with or
25 about the Nevin declaration. But if I'm wrong	25 to the extent you prepared yourself by reviewing
Page 111 Page	Page 113 Page
1 about that and it's Exhibit 11, that's fine. Just	1 previous memoranda, I'd like to know what those
2 please let me know so I don't mess up the	2 were.
3 numbering.	3 A Well, this is a totally different
4 THE COURT REPORTER: I have 9 as the	4 matter. This has nothing to do with borrower
5 last one you marked.	5 defense.
6 MS. O'GRADY: I can tell you which	6 Q Well, I believe -- I believe some does.
7 document we're going to open. It's a PDF in the	7 We can go to that. But did -- I take from your
8 main folder, Hearing Examining For-Profit College	8 answer you mean you did not review any documents
9 Oversight.	9 about borrower defense in preparation for this
10 THE COURT REPORTER: I'm sorry, Maggie.	10 testimony?
11 Nine is the last one you marked. Ten is next.	11 MR. MERRITT: Again, objection. It's
12 Could you hear me then?	12 calling for privileged company.
13 MS. O'GRADY: No. If you could just	13 MS. O'GRADY: That's fine. I'll move
14 tell me if the next exhibit is 10 or 11?	14 on.
15 I see it in the chat. Thank you.	15 BY MS. O'GRADY:
16 So this exhibit will be Exhibit 10 for	16 Q I want to talk about your exchange with
17 this deposition.	17 Congresswoman Pressley, and this is about borrower
18 (Jones Deposition Exhibit 10 was marked	18 defense. I think the easiest page numbering is
19 for identification and attached to the	19 from the top of the page, and it's 49.
20 transcript.)	20 A Yes, I remember this part of the
21 BY MS. O'GRADY:	21 dialogue well.
22 Q And, Ms. Jones, do you recognize this	22 Q So at the bottom, Congresswoman
23 document?	23 Pressley asked, Ms. Jones, at this moment, do you
24 A Sorry. I had to get my cursor over to	24 know how many claims remain unprocessed?
25 my microphone.	25 And here she is talking about borrower

Page 114 Page	<p>1 defense claims; correct?</p> <p>2 A Yes, so she's asking me about the</p> <p>3 number of claims.</p> <p>4 Q If you want to just read your answer</p> <p>5 for the record.</p> <p>6 A (Witness reviews document.) Okay.</p> <p>7 Q So beginning there, It is a number that</p> <p>8 changes from time to time.</p> <p>9 A Oh, you want me to read it out loud?</p> <p>10 Q Yes, if you don't mind.</p> <p>11 A Okay. Let me scroll back up.</p> <p>12 It is a number that changes from time</p> <p>13 to time. It is probably in the neighborhood of</p> <p>14 160,000. The last official count I got was</p> <p>15 158,000, so I'm assuming it's somewhere in the</p> <p>16 name of 160,000 by now.</p> <p>17 Q Okay. And then on the next page, she</p> <p>18 says -- this is at the top of the page 50 --</p> <p>19 Ms. Jones, for the record, yes or no, is there</p> <p>20 currently a policy which restricts the office of</p> <p>21 Federal Student Aid from adjudicating or</p> <p>22 processing any borrower defense claims that did</p> <p>23 not stem from school closure?</p> <p>24 And there's a little bit of</p> <p>25 interruption there. And the bulk of your answer</p>	Page 116 Page	<p>1 Q Okay.</p> <p>2 A So it was my understanding that they</p> <p>3 were continuing to look at evidence, but I don't</p> <p>4 have direct knowledge.</p> <p>5 Q And of the pending claims that you've</p> <p>6 stated were in the neighborhood of 160,000, what</p> <p>7 schools do those 160,000 borrowers attend?</p> <p>8 MR. MERRITT: Objection. It's</p> <p>9 overbroad.</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Are they all CCI?</p> <p>12 A I -- I would have to go back and look,</p> <p>13 but I -- no. I don't know what percentage of them</p> <p>14 were CCI, but, no, by this point in time, there</p> <p>15 were claims from -- from, you know, a list of</p> <p>16 institutions.</p> <p>17 Q Okay. So I -- I guess I'm still trying</p> <p>18 to understand why the injunction in the Calvillo</p> <p>19 Manriquez matter would have prevented step-one and</p> <p>20 step-two determinations from those who did not</p> <p>21 attend CCI schools?</p> <p>22 A I don't think I've ever suggested that</p> <p>23 step one stop. I don't know. I'm not involved in</p> <p>24 step one. I was told it continued, but I don't</p> <p>25 have direct knowledge. So I can't tell you for</p>
Page 115 Page	<p>1 is then where you begin, There is not a policy</p> <p>2 that prevents.</p> <p>3 Would you just read that part of your</p> <p>4 answer out loud for the record?</p> <p>5 A Sure.</p> <p>6 There is not a policy that prevents the</p> <p>7 review of claims. However, we are not able to</p> <p>8 determine the level of harm or the level of relief</p> <p>9 that a borrower should get because the methodology</p> <p>10 we use is now being challenged by the California</p> <p>11 courts, so we continue to process.</p> <p>12 Q Okay. So I want to understand what you</p> <p>13 mean here by there's not a policy that prevents</p> <p>14 their view of claims.</p> <p>15 A Yes. There was no policy in place to</p> <p>16 prevent Colleen Nevin's team from continuing to</p> <p>17 review evidence, to review claims, to evaluate the</p> <p>18 merit of an application.</p> <p>19 Q And I think you said earlier today that</p> <p>20 you do not know either way if she and her team</p> <p>21 were doing that?</p> <p>22 A Right. I mean, I -- you know, I was</p> <p>23 told on a level that we're continuing to review,</p> <p>24 but I don't have direct knowledge of that. I</p> <p>25 don't supervise her.</p>	Page 117 Page	<p>1 certain whether it did or it didn't, but there was</p> <p>2 certainly no policy to stop step one.</p> <p>3 Q Okay. Assuming step one had continued,</p> <p>4 what was preventing the department from doing step</p> <p>5 two for non-CCI students?</p> <p>6 A A lack of a methodology to do step two.</p> <p>7 Q And what is the reason for the lack of</p> <p>8 a methodology at this point?</p> <p>9 A Because the Northern District of</p> <p>10 California had determined that our methodology</p> <p>11 potentially involved a Privacy Act violation.</p> <p>12 Q So at the point of the injunction of</p> <p>13 Calvillo Manriquez, was it Ed's intention to use</p> <p>14 that partial relief methodology for all pending</p> <p>15 borrower defense claims step-two determinations?</p> <p>16 A I don't know what the intent was of the</p> <p>17 2017 methodology at the time.</p> <p>18 Q Here, you testified that there could be</p> <p>19 no step-two determinations because of the</p> <p>20 injunction, and --</p> <p>21 A Correct.</p> <p>22 Q -- those 160,000 borrowers are not only</p> <p>23 CCI graduates. So in effect, that methodology</p> <p>24 being enjoined prevented all step-two</p> <p>25 determinations; is that right?</p>

Page 118 Page	<p>1 A At the time -- yes. So what -- if your</p> <p>2 question to me is, you know, when -- when the --</p> <p>3 let me just take a step back.</p> <p>4 The application of the methodology by</p> <p>5 the time I got involved was not just focused on</p> <p>6 Corinthian Colleges, right. I get involved in the</p> <p>7 methodology in the spring of 2019. So at the time</p> <p>8 that I engage in the methodology, it is a</p> <p>9 methodology being developed to be applied broadly.</p> <p>10 Prior to my involvement, I was not</p> <p>11 involved in discussions about the methodology. I</p> <p>12 could only speculate on its intended use. But</p> <p>13 when I became involved in the development of a</p> <p>14 methodology, the intent was that it would be</p> <p>15 applicable to any borrower defense claim from any</p> <p>16 institution at any point in time in the future.</p> <p>17 Q Okay. So the step-one determinations</p> <p>18 that you believe, but do not know for sure, were</p> <p>19 being made while the Calvillo injunction was</p> <p>20 preventing you from making step-two</p> <p>21 determinations, have they been preserved or kept</p> <p>22 anywhere or would they be in the normal course?</p> <p>23 I guess my question is if those</p> <p>24 step-one determinations were being made, what</p> <p>25 would have happened to them?</p>	Page 120 Page	<p>1 Q Is the methodology -- the partial</p> <p>2 relief methodology that you've been working on to</p> <p>3 replace, that used in Calvillo, is that complete?</p> <p>4 A What do you mean by "complete"?</p> <p>5 Q Has there -- is there a document that</p> <p>6 sets that policy and outlines the methodology?</p> <p>7 A The new methodology --</p> <p>8 Q Right.</p> <p>9 A -- in December 2019?</p> <p>10 Q Yeah.</p> <p>11 A Yes. I believe on our Web site we have</p> <p>12 told borrowers how that methodology works. I</p> <p>13 believe it's published on our Web site.</p> <p>14 Q And that guidance -- how is that</p> <p>15 guidance used by somebody in FSA?</p> <p>16 MR. MERRITT: Objection to scope.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q I guess I just want to understand how</p> <p>19 the step-two workflow goes.</p> <p>20 So you develop the methodology. It's</p> <p>21 been provided to borrowers on the Web site, and</p> <p>22 then there are individuals who then apply step-two</p> <p>23 methodology to step-one determinations which are</p> <p>24 all going to be the grants, obviously.</p> <p>25 So I -- I'd like to know how that's</p>
Page 119 Page	<p>1 A You'd have to ask Colleen Nevin.</p> <p>2 Q So the regulations that you were</p> <p>3 working on, the new methodology, who would be</p> <p>4 applying step two?</p> <p>5 A So --</p> <p>6 MR. MERRITT: Objection as vague.</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q We know Colleen and her team do step</p> <p>9 one. Who -- who does step two?</p> <p>10 A First, I want to clarify that the</p> <p>11 regulations we were developing are separate from</p> <p>12 the development of the methodology.</p> <p>13 Q Thank you for clarifying. I should</p> <p>14 have said methodology.</p> <p>15 A Yeah. So I want to be clear about</p> <p>16 that.</p> <p>17 Q Thank you.</p> <p>18 A I don't know who in Colleen's unit</p> <p>19 conducts the step two.</p> <p>20 Q Okay. So it would be someone else in</p> <p>21 her unit. An attorney?</p> <p>22 A It would be somebody in FSA. I don't</p> <p>23 know who actually does that. I don't know -- I</p> <p>24 don't know the qualifications of everybody on her</p> <p>25 team.</p>	Page 121 Page	<p>1 communicated and has been communicated in</p> <p>2 determining --</p> <p>3 MR. MERRITT: I'm still going to object</p> <p>4 on scope as the step-two processes is not part of</p> <p>5 the court's discovery order.</p> <p>6 MS. O'GRADY: I think it all goes to</p> <p>7 reasons for -- for delay, but . . .</p> <p>8 Charlie, are you instructing the</p> <p>9 witness not to answer or --</p> <p>10 MR. MERRITT: Well, what was the</p> <p>11 question?</p> <p>12 MS. O'GRADY: The question is how the</p> <p>13 step-two policy that has been developed -- the</p> <p>14 step-two methodology has been communicated to</p> <p>15 individuals in Ed in FSA who are actually tasked</p> <p>16 with implementing it to a decision.</p> <p>17 MR. MERRITT: You can answer that.</p> <p>18 THE WITNESS: So the answer is I don't</p> <p>19 know. There is a team in FSA who creates the data</p> <p>20 tables, who actually analyzes the data. And there</p> <p>21 is a second team at FSA who quality controls the</p> <p>22 data to divide (audio distortion) the tables.</p> <p>23 I do know there are two teams involved</p> <p>24 in development and the quality review of the data</p> <p>25 tables. I do not know how Colleen's team divides</p>

Page 122 Page	<p>1 up the work. I -- I don't know how the standard</p> <p>2 operating procedure brings those data tables into</p> <p>3 the process. I don't know.</p> <p>4 MS. O'GRADY: It's 12:15. Do we want</p> <p>5 to have a break for lunch now? Does that work for</p> <p>6 everyone?</p> <p>7 THE WITNESS: It's up to you.</p> <p>8 MS. O'GRADY: Okay. I think that would</p> <p>9 work. I think we're at a good breaking point</p> <p>10 right now and that would work for me if that's</p> <p>11 okay. I -- I suggest a short lunch just</p> <p>12 because --</p> <p>13 THE VIDEOGRAPHER: You want to go off</p> <p>14 the record for this convo?</p> <p>15 MS. O'GRADY: Yes, thank you.</p> <p>16 THE VIDEOGRAPHER: Okay. We're now</p> <p>17 going off the record. The time is 17:14 UTC time.</p> <p>18 Thank you.</p> <p>19 (Lunch recess -- 12:15 p.m.)</p> <p>20 (After lunch recess -- 12:49 p.m.)</p> <p>21 THE VIDEOGRAPHER: We are now back on</p> <p>22 the record. The time is 17:49 UTC time.</p> <p>23 BY MS. O'GRADY:</p> <p>24 Q Okay. Ms. Jones, I have a few</p> <p>25 follow-up questions about what we discussed at</p>	Page 124 Page	<p>1 the Calvillo -- for step-two determinations for</p> <p>2 non-CCI students when the Calvillo injunction</p> <p>3 occurred?</p> <p>4 A So I was not -- I didn't come into my</p> <p>5 current role until after that decision, and so I</p> <p>6 don't exactly know the answer to that question at</p> <p>7 the time the decision was made. I came into my</p> <p>8 role after that.</p> <p>9 Q Okay. Now during the time that you</p> <p>10 said in your declaration and you testified before</p> <p>11 Congress that the Calvillo Manriquez injunction</p> <p>12 prevented the 2017 partial relief methodology from</p> <p>13 being applied to any borrower, there were no</p> <p>14 borrower defense decisions mailed out to students;</p> <p>15 is that correct?</p> <p>16 A I don't know.</p> <p>17 Q You don't know either way if during</p> <p>18 that period there were any decisions sent out to</p> <p>19 students?</p> <p>20 MR. MERRITT: Objection: vague.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q Were there any decisions sent out to</p> <p>23 students on their borrower defense applications</p> <p>24 while the Calvillo Manriquez injunction presented</p> <p>25 step-two determinations from being made?</p>
Page 123 Page	<p>1 break and then we'll go on to the next exhibit.</p> <p>2 So one of my follow-up questions is the partial</p> <p>3 relief methodology that was developed for CCI</p> <p>4 students, at what point was it decided that that</p> <p>5 should apply to everyone?</p> <p>6 A Are you asking me about the -- the</p> <p>7 methodology in 2019 I was a part of developing or</p> <p>8 the 2017 methodology?</p> <p>9 Q Let's take the 2017 first. So that was</p> <p>10 first -- my understanding it says in your</p> <p>11 declaration that was originally developed for the</p> <p>12 CCI students in those particular windows, and at</p> <p>13 what point did that become the methodology that Ed</p> <p>14 wanted to use for students other than CCI</p> <p>15 students?</p> <p>16 A I -- I -- I don't know, and I -- yeah,</p> <p>17 I don't know when that decision would or would not</p> <p>18 have been made.</p> <p>19 Q Do you know if that decision was made?</p> <p>20 A You know, I don't recall it having been</p> <p>21 a final decision. I -- I -- it -- I don't recall</p> <p>22 because I -- yeah, I don't recall whether it was</p> <p>23 or was not a decision as made.</p> <p>24 Q Was there ever an effort to use a</p> <p>25 different methodology for non-CCI students when</p>	Page 125 Page	<p>1 A Do you mean final decisions, or would</p> <p>2 that include, for example, if somebody submitted</p> <p>3 an incomplete application and the borrower defense</p> <p>4 unit reached out to get more information?</p> <p>5 Q I'm asking about final decisions.</p> <p>6 A You know, I -- I -- I don't recall</p> <p>7 final decisions being made. I -- I can't say that</p> <p>8 absolutely no decision was ever issued, but I</p> <p>9 don't recall decisions continuing -- well, let me</p> <p>10 be clear. I don't know whether -- you know, I --</p> <p>11 whether or not decisions were being made. You</p> <p>12 know, I was told they were processing, but I don't</p> <p>13 have direct knowledge. But I also believe it is</p> <p>14 the case that final decisions were not being</p> <p>15 mailed -- you know, borrowers were not being told</p> <p>16 final decisions.</p> <p>17 So I think I want it clear as to -- you</p> <p>18 know, it's a little bit separate in our mind about</p> <p>19 the review of claims versus the notification of</p> <p>20 borrowers and I do not believe borrowers had been</p> <p>21 notified of final decisions.</p> <p>22 Q Did it concern you that borrowers were</p> <p>23 not being notified about final decisions?</p> <p>24 A I'm not sure what you mean.</p> <p>25 Q Were you -- was it something that you</p>

Page 126 Page	<p>1 thought about or had any concerns about, or did</p> <p>2 you -- it didn't occur to you that that would be a</p> <p>3 problem?</p> <p>4 MR. MERRITT: Objection as calling for</p> <p>5 privileged information.</p> <p>6 MS. O'GRADY: It's calling for</p> <p>7 privileged information in that -- on what basis</p> <p>8 are you making that objection?</p> <p>9 MR. MERRITT: Her thoughts and opinions</p> <p>10 on decision department policy at the time before</p> <p>11 final policy was established.</p> <p>12 MS. O'GRADY: So you're saying it's a</p> <p>13 deliberative process privilege whether or not she</p> <p>14 was concerned about any decisions going out or</p> <p>15 not?</p> <p>16 MR. MERRITT: Yes.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Ms. Jones, in your role did you have</p> <p>19 authority to ask FSA to make decisions on the</p> <p>20 merits -- to make step-one decisions?</p> <p>21 A Could you -- meaning?</p> <p>22 Q Well, we've -- we've talked about how</p> <p>23 you don't -- your role as -- your policy role did</p> <p>24 not involve step-one decisions. We talked a lot</p> <p>25 about that before break.</p>	Page 128 Page	<p>1 with Colleen.</p> <p>2 Q And when did you discuss the pace with</p> <p>3 Mr. Brown?</p> <p>4 A I believe -- I believe that after the</p> <p>5 methodology was approved, the secretary wanted</p> <p>6 regular updates on -- you know, on -- on how</p> <p>7 things were moving, and so --</p> <p>8 Q And are you talking about -- which</p> <p>9 methodology are you talking about?</p> <p>10 A The 20- -- I guess we'll call it the</p> <p>11 2019 methodology.</p> <p>12 Q So the 2019 partial relief methodology?</p> <p>13 A Correct. Once that had been approved</p> <p>14 and -- to say, you know, had -- had been told to</p> <p>15 apply that methodology, you know, she wanted</p> <p>16 regular updates on -- on -- you know, on how that</p> <p>17 was going. And so, yes, in that context, you</p> <p>18 know, I get regular updates from her and we</p> <p>19 discussed --</p> <p>20 Q And regular updates, what kind of</p> <p>21 information did that include?</p> <p>22 A Generally it included how many pending</p> <p>23 claims were there. Sometimes he would give</p> <p>24 updates on how many new claims had come in, and at</p> <p>25 some point he would report on, excuse me, how many</p>
Page 127 Page	<p>1 I'm wondering if you had the authority</p> <p>2 to say to Ms. Nevin or whoever else in her role</p> <p>3 the pace of step-one decisions needs to be</p> <p>4 increased, for example. You know, was that within</p> <p>5 your authority?</p> <p>6 A So it sounds to me like you're asking a</p> <p>7 couple of different things. It started to sound</p> <p>8 like you were asking me do I have the authority to</p> <p>9 tell them to make decisions, but then later --</p> <p>10 later it sounded like you were asking me if I have</p> <p>11 authority to establish a pace.</p> <p>12 Q So let's take both questions then. So</p> <p>13 do you have authority to tell them to make</p> <p>14 decisions and to send borrower -- borrower defense</p> <p>15 decisions?</p> <p>16 A No.</p> <p>17 Q Do you have authority to tell them the</p> <p>18 pace that they should be working at to process</p> <p>19 borrower defense decisions?</p> <p>20 A I don't have the authority to tell them</p> <p>21 the pace.</p> <p>22 Q Did you ever discuss the pace with</p> <p>23 Ms. Nevin?</p> <p>24 A I discussed the case with Mark Brown.</p> <p>25 I don't recall whether or not I discussed the pace</p>	Page 129 Page	<p>1 claims had been adjudicated, and by adjudication</p> <p>2 meaning how many claims had the attorneys reviewed</p> <p>3 for a determination on the merit, et cetera.</p> <p>4 Q Okay. So how many step-one</p> <p>5 determinations had been made as opposed to step</p> <p>6 two was included?</p> <p>7 A Correct. Now, there was a separate</p> <p>8 number for -- for, you know, processing, and I</p> <p>9 can't remember at what point that got added to the</p> <p>10 update, but at some point in time we also added to</p> <p>11 the reports, you know, the number of borrowers who</p> <p>12 had received their notification, but I just can't</p> <p>13 remember when that got added.</p> <p>14 Q And these were sent by Mark Brown to</p> <p>15 the secretary?</p> <p>16 A Some were sent from Mark Brown to me</p> <p>17 and then they were regularly also sent to the</p> <p>18 leadership team.</p> <p>19 Q And how regularly were these sent?</p> <p>20 A I can't remember if it was weekly or</p> <p>21 biweekly. I just can't remember. I think it was</p> <p>22 biweekly, but it may have been weekly.</p> <p>23 Q And were these, like, written memos, or</p> <p>24 were they PowerPoints?</p> <p>25 What format did they take?</p>

Page 130 Page	<p>1 A Generally it was an email. There may</p> <p>2 have at times been an attachment with a table, but</p> <p>3 I think generally it was an email, and -- and then</p> <p>4 ultimately I believe that the data warehouse at</p> <p>5 FSA added this as a public feature. I believe</p> <p>6 these data were then posted for public knowledge</p> <p>7 on the data warehouse.</p> <p>8 Q Okay. And when were these updates --</p> <p>9 when did they start getting sent?</p> <p>10 A I don't remember the exact date, but</p> <p>11 I -- I recall that it was after the December 2019</p> <p>12 implementation of the new methodology. So there</p> <p>13 may have been, you know, earlier updates from time</p> <p>14 to time on total numbers, but the regular updates</p> <p>15 were after the methodology had been approved and</p> <p>16 implemented.</p> <p>17 Q And how were the metrics used?</p> <p>18 A What do you mean by "how were the</p> <p>19 metrics used"?</p> <p>20 Q The information was reviewed by the</p> <p>21 secretary. What is your understanding of its</p> <p>22 purpose? Was the -- I'll ask that question. If</p> <p>23 you need clarification, I can add.</p> <p>24 A I mean, I think the purpose was</p> <p>25 twofold. You know, general information.</p>	Page 132 Page	<p>1 A I believe at that time the updates were</p> <p>2 about total number of claims. What I don't recall</p> <p>3 is whether or not those updates included numbers</p> <p>4 on adjudications. I just can't remember whether</p> <p>5 they were included at that time. I just -- I -- I</p> <p>6 can't remember.</p> <p>7 Q So you don't remember if updates had</p> <p>8 included whether or not any claims -- any</p> <p>9 decisions on the merits had been communicated to</p> <p>10 students?</p> <p>11 A I -- I -- you know, I just can't</p> <p>12 remember the specific, you know, updates that came</p> <p>13 through. You know, I just can't remember.</p> <p>14 Q But at that point before the 2019</p> <p>15 regulations were in effect and these updates</p> <p>16 began, had you talked to anyone about the delay?</p> <p>17 A What do you mean by "talked to anyone</p> <p>18 about the delay"?</p> <p>19 Q You know, were there any meetings or</p> <p>20 conversations you had about the fact that</p> <p>21 decisions were not being sent out?</p> <p>22 A Well, when I came into my role, you</p> <p>23 know, the -- the decision had been made that</p> <p>24 because the Northern District of California had</p> <p>25 concerns about the Privacy Act that we could not</p>
Page 131 Page	<p>1 Obviously, a policy decision had been made and</p> <p>2 people wanted to know if the process was moving.</p> <p>3 I believe that there -- there was a</p> <p>4 significant amount of hiring as well, and I think</p> <p>5 part of that was to, you know, evaluate, you know,</p> <p>6 the size of the team, you know, do you need more</p> <p>7 people; do you need fewer people.</p> <p>8 I'm not involved in personnel</p> <p>9 decisions, but, you know, I think part of that was</p> <p>10 also, you know, viewed by people to see if the</p> <p>11 team was large enough. I mean, the team expanded</p> <p>12 significantly during this time period.</p> <p>13 Q So you said at the start of that answer</p> <p>14 that people wanted to know the process was moving.</p> <p>15 What do you mean by that?</p> <p>16 A At a general level, you know, it's one</p> <p>17 thing to develop a policy, and it's another to</p> <p>18 make sure that those implementing it can do so.</p> <p>19 And, so, I think there was interest in</p> <p>20 making sure that it was a policy that -- you know,</p> <p>21 that operationally could be implemented.</p> <p>22 Q Prior to the -- prior to this time,</p> <p>23 around December 2019, when these -- when the</p> <p>24 partial relief methodology went into effect, had</p> <p>25 there been updates about progress or lack thereof?</p>	Page 133 Page	<p>1 apply that methodology; that we had to wait and</p> <p>2 find out whether or not it was going to be deemed</p> <p>3 that the use of Social Security Administration</p> <p>4 data was a violation of the Privacy Act.</p> <p>5 Q While you were waiting, were -- was</p> <p>6 another method being developed?</p> <p>7 A I started developing the team -- you</p> <p>8 know, I pulled together the team and we started</p> <p>9 working on that methodology in, you know, I think,</p> <p>10 that April, May, June time frame of 2019.</p> <p>11 Q I want to go back to the memos that</p> <p>12 updated the secretary on the progress. Do you</p> <p>13 know if those metrics were ever used to determine</p> <p>14 anyone's bonus?</p> <p>15 A I'm not involved in the determination</p> <p>16 of anyone's bonus, so I don't know.</p> <p>17 Q Do you know if those metrics were used</p> <p>18 to determine anyone's job performance rating or</p> <p>19 job performance review?</p> <p>20 MR. MERRITT: Objection to the scope of</p> <p>21 these questions.</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q Ms. Jones, I think you can still</p> <p>24 answer.</p> <p>25 MR. MERRITT: Go ahead.</p>

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<p>1 THE WITNESS: I would have to go back</p> <p>2 and look at Mark's performance review. I'd have</p> <p>3 to go back and look at Mark's performance review,</p> <p>4 but his performance review was done in December,</p> <p>5 and we didn't have approval on the methodology</p> <p>6 yet. His next performance review will be next</p> <p>7 month.</p> <p>8 BY MS. O'GRADY:</p> <p>9 Q And is the pace of decision making</p> <p>10 going to be considered in his performance review?</p> <p>11 A Federal Student Aid publishes their</p> <p>12 strategic plan, and the strategic plan I believe</p> <p>13 has as a metric, you know, resolving outstanding</p> <p>14 borrower defense claims. So I believe -- I'd have</p> <p>15 to go back and look at the strategic plan. I</p> <p>16 haven't looked at it recently because I haven't</p> <p>17 started Mark's review. But I do think the</p> <p>18 strategic plan includes as a goal, you know,</p> <p>19 coming up-to-date, you know, processing</p> <p>20 outstanding claims and, you know, eliminating the</p> <p>21 backlog.</p> <p>22 So, you know, to the actual pacing, per</p> <p>23 se, I don't know. But, yes, it is a goal in the</p> <p>24 strategic plan to revolve these outstanding cases.</p> <p>25 Q So to the extent that resolving the</p>	<p>1 topics? I mean, again, the extent to which the</p> <p>2 difficulty of reviewing borrower defense</p> <p>3 applications actually caused or justified</p> <p>4 Secretary's 18-month delay.</p> <p>5 MS. O'GRADY: Can we go off the record</p> <p>6 to talk about this?</p> <p>7 THE VIDEOGRAPHER: Do you agree to go</p> <p>8 off the record?</p> <p>9 MR. MERRITT: Sure.</p> <p>10 THE VIDEOGRAPHER: We're going off the</p> <p>11 record. The time is 18:08 UTC time.</p> <p>12 (Recess -- 1:08 p.m.)</p> <p>13 (After recess -- 1:13 p.m.)</p> <p>14 THE VIDEOGRAPHER: We're now back on</p> <p>15 the record. The time is 18:13 UTC time.</p> <p>16 MS. O'GRADY: Would the court reporter</p> <p>17 mind reading the question that was pending?</p> <p>18 THE COURT REPORTER: Can you guys hear</p> <p>19 me? Can you guys hear me?</p> <p>20 MS. O'GRADY: If that's not possible, I</p> <p>21 can try and rephrase.</p> <p>22 THE COURT REPORTER: I can type it in.</p> <p>23 MS. O'GRADY: Oh, we can get it typed.</p> <p>24 Thank you.</p> <p>25 So it looked we could get that typed</p>
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<p>1 backlog, I think you just said, is -- is part of</p> <p>2 the strategic plan and would be part of the</p> <p>3 performance review in a positive way, would a</p> <p>4 failure to eliminate the backlog be part of a</p> <p>5 performance review in a negative way?</p> <p>6 A I mean, I think you're asking me to</p> <p>7 speculate on somebody's performance review that</p> <p>8 is, you know, far more complicated than one issue.</p> <p>9 I can't --</p> <p>10 Q Well, I can go to the past in the --</p> <p>11 you know, for -- for several months until the 2019</p> <p>12 partial relief methodology went into place, there</p> <p>13 were no new borrower defense decisions made.</p> <p>14 Would that reflect negatively on</p> <p>15 anyone's job performance review?</p> <p>16 MR. MERRITT: Objection: beyond the</p> <p>17 scope.</p> <p>18 MS. O'GRADY: I disagree it's beyond</p> <p>19 the scope. We can have that discussion, but I</p> <p>20 think at this point, the witness can answer.</p> <p>21 MR. MERRITT: Which of the topics does</p> <p>22 this go to?</p> <p>23 MS. O'GRADY: I think it goes to</p> <p>24 pretext and the reason for delay.</p> <p>25 MR. MERRITT: Is that one of the three</p>	<p>1 in. I don't think we can, so I'll just move on.</p> <p>2 BY MS. O'GRADY:</p> <p>3 Q So, Ms. Jones, you testified that the</p> <p>4 metrics in the memo were being circulated</p> <p>5 regularly once the borrower defense decisions were</p> <p>6 restarted around December 2019; is that correct?</p> <p>7 A Okay. Correct.</p> <p>8 Q And I think you also testified that</p> <p>9 some of those -- those metrics were important</p> <p>10 because it -- I don't want to put words in your</p> <p>11 mouth. What did you testify about the importance</p> <p>12 of clearing the backlog?</p> <p>13 You did use that phrase.</p> <p>14 A Yeah, the importance of clearing the</p> <p>15 backlog is that we wanted to resolve the claims.</p> <p>16 We wanted to finalize them.</p> <p>17 Q And was that -- the importance of</p> <p>18 clearing the backlog, when you first came into</p> <p>19 your position, was that something you were aware</p> <p>20 of, the backlog of claims?</p> <p>21 A When I first came into my position, I</p> <p>22 was aware that a judge in California told us that</p> <p>23 the methodology for determining relief was</p> <p>24 potentially a violation of the Privacy Act.</p> <p>25 Q My question was, though, when you came</p>

Page 138 Page	<p>1 into your position, did you understand it to be</p> <p>2 important to clear that backlog? Not about what</p> <p>3 caused it, but did you understand that it was</p> <p>4 important to clear the backlog of claims?</p> <p>5 A Absolutely I understood it was</p> <p>6 important to clear out the backlog of claims, but</p> <p>7 we had been halted in our path by the judge of the</p> <p>8 Northern District of California.</p> <p>9 Q So throughout the time before the --</p> <p>10 before the methodology went into effect in</p> <p>11 December 2019 and the claim decisions restarted,</p> <p>12 was the backlog an ongoing concern of yours?</p> <p>13 MR. MERRITT: Again, objection. That's</p> <p>14 calling for mental impressions and deliberative</p> <p>15 privileged information.</p> <p>16 MS. O'GRADY: I'll rephrase.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Ms. Jones, what steps did you take to</p> <p>19 clear the backlog prior to the 2019 methodology</p> <p>20 going into effect in December of 2019?</p> <p>21 A The instructions that the borrower</p> <p>22 defense unit was operating under was that the</p> <p>23 Northern District of California had determined</p> <p>24 that we -- that the methodology was potentially a</p> <p>25 violation of the Privacy Act. Quite frankly, you</p>	Page 140 Page	<p>1 California enjoined the methodology.</p> <p>2 So you're asking me to speculate what</p> <p>3 could of, should of. At the end of the day, we</p> <p>4 hadn't completed adjudicating Corinthian claims</p> <p>5 when the judge enjoined the methodology.</p> <p>6 Q So when the injunction came down, it</p> <p>7 was -- you know, you essentially said pencils</p> <p>8 down; we'll just wait for a decision?</p> <p>9 A I didn't say pencils down.</p> <p>10 Q Your understanding was that meant</p> <p>11 because that was prior to your role, but your</p> <p>12 understanding was that since the injunction, it</p> <p>13 was pencils down on --</p> <p>14 A My understanding --</p> <p>15 Q -- on that methodology?</p> <p>16 A My understanding was that because the</p> <p>17 judge had ruled that this was potentially a</p> <p>18 violation of the Privacy Act, I -- you know, I</p> <p>19 don't think the department is in the practice of</p> <p>20 knowingly violating a law.</p> <p>21 So when this was in question, I -- I</p> <p>22 think that everybody was waiting for the judge to</p> <p>23 determine whether or not it was a violation of the</p> <p>24 Privacy Act.</p> <p>25 Q So when the new methodology was</p>
Page 139 Page	<p>1 know, the question that I asked is have we heard</p> <p>2 from the Northern District of California. I mean,</p> <p>3 the Northern District of California was the</p> <p>4 decision maker on this. And, yes, I would have</p> <p>5 loved for them to have issued a decision promptly.</p> <p>6 Q Are you aware that -- that the</p> <p>7 Department of Education argued in the Ninth</p> <p>8 Circuit that the methodology was only intended for</p> <p>9 Corinthian students and not for those who had</p> <p>10 attended schools other than Corinthian?</p> <p>11 A I'm not aware of the testimony one way</p> <p>12 or the other in that case.</p> <p>13 Q So you'd be surprised to know that it</p> <p>14 was Ed's position in that case that the</p> <p>15 methodology was only ever intended for Corinthian</p> <p>16 students?</p> <p>17 A I -- the -- I would not be surprised to</p> <p>18 know that the methodology was developed for</p> <p>19 Corinthian students. Those were the students that</p> <p>20 were at the center of that case. The question of</p> <p>21 whether or not that methodology would be applied</p> <p>22 to additional borrowers was a question that we</p> <p>23 didn't get to. I never got an answer to that</p> <p>24 question because before we finished adjudicating</p> <p>25 the Corinthian borrowers, the Northern District of</p>	Page 141 Page	<p>1 developed, was that developed with the express</p> <p>2 purpose of applying to all schools, not just</p> <p>3 Corinthian?</p> <p>4 A I -- I can't speak to what will</p> <p>5 ultimately be determined about the borrowers, you</p> <p>6 know, in -- in involve -- I can't predict what the</p> <p>7 district -- the district court in the --</p> <p>8 Q I'm not asking you about that. What I</p> <p>9 want to know is -- so now we have a new</p> <p>10 methodology --</p> <p>11 A Yes.</p> <p>12 Q -- not enjoined by the court.</p> <p>13 Is that new methodology for -- will</p> <p>14 that be applied to every single step-one</p> <p>15 determination? So a step-one determination is</p> <p>16 made. The borrower defense claim is granted. It</p> <p>17 goes to step two. And this new methodology is for</p> <p>18 every single student?</p> <p>19 A The new methodology is for every</p> <p>20 applicant; however, in the case that an applicant</p> <p>21 has already been awarded more, certainly you're</p> <p>22 not going to go back and apply the new methodology</p> <p>23 and tell them that they owe us money back, right.</p> <p>24 I mean, that -- that -- you know, we're not going</p> <p>25 to go back in time. But, yes, moving forward, the</p>

Page 142 Page	<p>1 new methodology is being applied to all -- all</p> <p>2 borrowers who submit a borrower defense claim.</p> <p>3 Q And that includes all borrowers who</p> <p>4 have submitted a borrower defense claim and a</p> <p>5 step-one determination hasn't yet been made?</p> <p>6 A That is correct.</p> <p>7 Q Okay. Let's go to the exhibit folder.</p> <p>8 We are going to go the file ECF number 56-3,</p> <p>9 Exhibit 5, 2019 regulations.</p> <p>10 A Okay.</p> <p>11 Q Okay. And this was Exhibit 5 to your</p> <p>12 declaration. And do you recall reviewing this in</p> <p>13 advance of today's deposition?</p> <p>14 A I did not review this exhibit prior to</p> <p>15 today.</p> <p>16 Q You've seen it before, though; correct?</p> <p>17 A Not in this format, but I've certainly</p> <p>18 seen the 2019 borrower defense final regulation.</p> <p>19 Q Okay. And who wrote this --</p> <p>20 A I don't have a Westlaw subscription, so</p> <p>21 I've never seen it in this format.</p> <p>22 Q Okay. Fair enough.</p> <p>23 So who wrote this document?</p> <p>24 MR. MERRITT: Objection: scope.</p> <p>25 MS. O'GRADY: Can the witness answer?</p>	Page 144 Page	<p>1 as well as any responses to comments from the</p> <p>2 interagency review.</p> <p>3 Q Okay. And we're going to look at</p> <p>4 page -- on the footer of the document, it's</p> <p>5 page 85. I think using the footers is the easiest</p> <p>6 way to navigate.</p> <p>7 And this is under the heading which is</p> <p>8 on the bottom of page 84, Summary of the major</p> <p>9 provisions of this regulatory action: For the</p> <p>10 direct loan program, the final regulations.</p> <p>11 I'm looking at the third bullet point</p> <p>12 on page 85.</p> <p>13 A Uh-huh.</p> <p>14 Q And would you read that for the record,</p> <p>15 that bullet point beginning, Provides schools and</p> <p>16 borrowers?</p> <p>17 A I must be in the wrong place.</p> <p>18 MR. MERRITT: It's the sixth page of</p> <p>19 the PDF if that's helpful.</p> <p>20 THE WITNESS: My scrolling feature is</p> <p>21 kind of bizarre.</p> <p>22 Okay. So I'm on page 85, and it</p> <p>23 appears to me as though the third bullet says,</p> <p>24 Provide schools and borrowers.</p> <p>25 Is that what you mean?</p>
Page 143 Page	<p>1 MR. MERRITT: Okay.</p> <p>2 MS. O'GRADY: I mean . . .</p> <p>3 THE WITNESS: A team of people wrote</p> <p>4 this document, and that team of people included</p> <p>5 individuals from our career staff from the Office</p> <p>6 of Postsecondary Ed, staff from the Office of</p> <p>7 General Counsel, my office was involved, staff</p> <p>8 from Office of Management and Budget, staff from</p> <p>9 the Domestic Policy Council, staff from the</p> <p>10 Department of Justice, staff from the Small</p> <p>11 Business Administration. All those regulations go</p> <p>12 through an interagency clearance process. Every</p> <p>13 one of those agencies is allowed to make a comment</p> <p>14 which we respond.</p> <p>15 So, collectively, that entire group is</p> <p>16 involved in writing a final regulation.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q And, Ms. Jones, what was your role in</p> <p>19 developing this?</p> <p>20 A My role in the final rule was as</p> <p>21 reviewer. So the public comments come in. They</p> <p>22 get bucketed by career staff. Career staff write</p> <p>23 the responses, and then the document goes through</p> <p>24 an internal review process which included my</p> <p>25 review. So I would have reviewed the final rule</p>	Page 145 Page	<p>1 BY MS. O'GRADY:</p> <p>2 Q Yes.</p> <p>3 A Okay. Provides schools and borrowers</p> <p>4 with opportunities to provide evidence and</p> <p>5 arguments when a defense to repayment application</p> <p>6 has been filed and to provide an opportunity for</p> <p>7 each side to respond to the other's submissions,</p> <p>8 so that the department can review a full record as</p> <p>9 part of the adjudication process.</p> <p>10 Q So can you walk me through the process</p> <p>11 of the school and borrowers providing evidence and</p> <p>12 what that means?</p> <p>13 A I can -- I can walk you through the</p> <p>14 policy. The process would have to be described by</p> <p>15 Colleen Nevin because that's --</p> <p>16 Q Okay.</p> <p>17 A -- her operation.</p> <p>18 Q Then please walk me through the policy.</p> <p>19 A The policy is that the borrower may</p> <p>20 allege misrepresentation by a school. At a policy</p> <p>21 level, the school would be notified and given an</p> <p>22 opportunity to respond. All of the documents,</p> <p>23 including the response by the institution as well</p> <p>24 as any evidence that the department is using to</p> <p>25 adjudicate, is made available to the borrower, and</p>

Page 146 Page	<p>1 the borrower gets the last word in the record</p> <p>2 before it is reviewed by the Office of General</p> <p>3 Counsel.</p> <p>4 So that is -- the policy directive is</p> <p>5 that everybody gets due process rights, but the</p> <p>6 borrower has the last word before the directive is</p> <p>7 reviewed.</p> <p>8 Q When you say due process rights, do you</p> <p>9 mean the school gets due process rights as well?</p> <p>10 A The school and the borrower. The</p> <p>11 borrower gets to respond to whatever the school</p> <p>12 submits.</p> <p>13 Q Okay. Is it your understanding --</p> <p>14 well, what is your understanding of the school's</p> <p>15 interest in the outcome of a borrower defense</p> <p>16 application?</p> <p>17 A I mean, you're -- you're asking me what</p> <p>18 a school's interest is in --</p> <p>19 Q Well, you said they're afforded due</p> <p>20 process. So I'm wondering as a policy matter in</p> <p>21 developing this policy what the reasoning behind</p> <p>22 giving the school what you're calling due process</p> <p>23 in this -- in this borrower defense application</p> <p>24 review is?</p> <p>25 Do they have -- if the borrower defense</p>	Page 148 Page	<p>1 know, loan forgiveness.</p> <p>2 Q How is that different from the 2016</p> <p>3 regulations?</p> <p>4 A So there are time limits that a</p> <p>5 borrower has to meet, so the time limits are</p> <p>6 different in the 2016 reg and the 2019 reg.</p> <p>7 Q That's -- okay.</p> <p>8 Okay. Now I'd like to go to page 98.</p> <p>9 So the footer, page 98.</p> <p>10 A Okay.</p> <p>11 Q And it's -- the paragraph at the bottom</p> <p>12 of page 98 that begins with, Discussion, could you</p> <p>13 read that for the record, please?</p> <p>14 A I'm sorry. My arrows are having me go</p> <p>15 whole pages.</p> <p>16 Okay. Discussion: The department</p> <p>17 thanks the commenters for their support of the</p> <p>18 regulations that require individuals to assert</p> <p>19 borrower defense claims. To an extent, we</p> <p>20 understand the commenters' concerns about, and</p> <p>21 have already become aware of the evidence of,</p> <p>22 outside actors attempting to personally gain from</p> <p>23 the bad acts of institutions as well as unfounded</p> <p>24 allegations.</p> <p>25 The evidence --</p>
Page 147 Page	<p>1 application is granted, for example, does the</p> <p>2 school have to pay any money?</p> <p>3 A It -- it depends. It depends on which</p> <p>4 regulation the loan is being adjudicated under.</p> <p>5 Q So if you could explain that further.</p> <p>6 A Yeah. So there are -- as I understand</p> <p>7 it, again, I'm not an attorney, but as I</p> <p>8 understand, there are certain statute of</p> <p>9 limitations imposed by state law, and so it could</p> <p>10 be that a borrower, you know, was -- made a claim</p> <p>11 but it -- it was outside of the statute of</p> <p>12 limitations in the state in which case, you know,</p> <p>13 the department would not be able to go to the</p> <p>14 school to, you know, get reimbursed.</p> <p>15 In the 2016 regulation, it was a</p> <p>16 two-step process whereby first, the department</p> <p>17 adjudicated the claim; and then second, the</p> <p>18 department made a decision about whether or not it</p> <p>19 would try to recover damages or money, whatever</p> <p>20 you call it, from the school.</p> <p>21 And in the 2019 regulation, the idea</p> <p>22 was to merge that process.</p> <p>23 So it is possible that the department</p> <p>24 could go back to the school to try to, you know,</p> <p>25 essentially bill them for loan -- loan -- you</p>	Page 149 Page	<p>1 Q Okay. You can stop right there.</p> <p>2 What is that sentence referring to?</p> <p>3 A I need to read the rest of the page for</p> <p>4 context if you can just --</p> <p>5 Q Okay. Sure. Take a minute to review</p> <p>6 it. That's fine.</p> <p>7 A (Witness reviews document.)</p> <p>8 Okay. So this was -- so this</p> <p>9 discussion was in response to comments that came</p> <p>10 from commenters, and what this is referring to is</p> <p>11 the department has unfortunately identified and</p> <p>12 has worked with other agencies. There are</p> <p>13 legitimate groups working to help borrowers submit</p> <p>14 claims, and that's great. There are also bad</p> <p>15 actors that are out there calling borrowers and</p> <p>16 saying, you know, for \$300, we'll guarantee you</p> <p>17 borrower defense relief, and we don't charge a</p> <p>18 borrower to submit an application.</p> <p>19 So we -- you know, there -- there are</p> <p>20 some of these organizations that are, you know,</p> <p>21 essentially charging borrowers a fee to file</p> <p>22 their -- you know, to file their claim, and</p> <p>23 they're benefiting financially from that process,</p> <p>24 and that's what this is referring to.</p> <p>25 Q Okay. So the -- so the groups that are</p>

<p style="text-align: right;">Page 150 Page</p> <p>1 charging borrowers to file their borrower defense 2 applications, I'm trying to understand the 3 connection between that and the -- the decision 4 here to disallow group claims entirely? 5 A Well, this is a -- 6 MR. MERRITT: Objection. What is the 7 connection to the scope of the discovery in this 8 case? 9 MS. O'GRADY: Well, I'd say the 10 connection to the scope of the discovery is I'm 11 trying to understand the development -- we haven't 12 got there yet, but I'm on the road to further 13 understanding the development of the denials, and 14 also point 3, the extent to which the secretary 15 has denied applications of students who attended 16 schools subject to findings of misconduct. 17 So I'm trying to understand the basis 18 for decisions and the basis for changes in the 19 regulations. 20 MR. MERRITT: Well, you're not asking 21 about basis for decisions. It's about statements 22 in the 2019 regulation. 23 MS. O'GRADY: That relate to the policy 24 of decisions. 25 MR. MERRITT: Okay. You can answer the</p>	<p style="text-align: right;">Page 152 Page</p> <p>1 So I'm asking about this regulation. 2 A So I think if you read the full reg, 3 what you will find in the preamble and the other 4 parts of the regulation -- and I haven't read this 5 in a long time so I can't identify the page. But 6 I think what we explained quite clearly in the 7 preamble and other parts of the reg is that we 8 believe every borrower needs to be evaluated as an 9 individual. We believe every borrower deserves 10 the right to have their claim adjudicated. We 11 also believe that only those borrowers who 12 suffered financial harm are entitled to relief. 13 That's in the 2016 reg as well. 14 So you have to do a person-by-person 15 adjudication to make the determination that there 16 was misrepresentation; that they relied upon that 17 misrepresentation; and that they suffered 18 financial harm. 19 Q Prior to this regulation, was there a 20 group adjudication process? 21 A There was a permissible group 22 adjudication process in the 2016 reg. 23 Q And had that been used? 24 A I -- I don't know. 25 Q Had -- have you ever looked or</p>
<p style="text-align: right;">Page 151 Page</p> <p>1 question. 2 THE WITNESS: This policy relates to 3 loans made after July 1st, 2020. This policy in 4 no way applies to the current outstanding claims, 5 with the rare exception of potentially a borrower 6 that has consolidated their loans since July 1, 7 2020. So these regulations do not apply to 8 pending BD claims except for that small -- 9 potential small group of consolidation loans or 10 new claims that have come in since July 1, 2020, 11 on new loans. 12 BY MS. O'GRADY: 13 Q I still -- I still want to understand 14 the connection between determining that a group 15 claim is frivolous and the fact that borrowers 16 have been duped into paying for a borrower defense 17 application when they don't have to. 18 A I -- I don't -- but this regulation has 19 nothing to do with pending claims -- currently 20 pending claims. 21 Q But I'm asking you about the reasoning 22 behind this regulation because I think it -- it -- 23 it speaks to the -- it speaks to the priorities 24 and the decision making of -- of the borrower 25 defense policy.</p>	<p style="text-align: right;">Page 153 Page</p> <p>1 considered the relative efficiency of a group 2 adjudication process and an individual 3 adjudication process? 4 A Are you asking me which is quicker? 5 Q I'm asking if you ever thought about 6 which was quicker or ever did any assessment of 7 which was quicker? 8 MR. MERRITT: Objection. Going into 9 her mental impressions and thoughts on the 10 development of policy. Deliberative privileged 11 material. 12 BY MS. O'GRADY: 13 Q I can ask a different question to get 14 at the same issue. 15 Whose decision would it have been to 16 invoke a group adjudication process? 17 A I don't know whose it would have been, 18 but I do know it would not have been mine. 19 Q Okay. Okay. Let's go to the page that 20 is 103 at the footer. 21 A 103? 22 Q Yes. 23 A Okay. 24 Q It's the third paragraph that starts 25 with, We acknowledge. If you can read that out</p>

Page 154 Page	<p>1 loud for the record?</p> <p>2 A We acknowledge that there is a risk</p> <p>3 that unsubstantiated claims could be filed in</p> <p>4 large numbers to target institutions for the</p> <p>5 purpose of damaging their reputations before the</p> <p>6 department can adjudicate the claims as</p> <p>7 unsubstantiated. Indeed, we are aware of firms</p> <p>8 and advocacy groups that are engaging in such</p> <p>9 coordinated efforts against certain institutions.</p> <p>10 Q So what are you referring to or what is</p> <p>11 this referring to here?</p> <p>12 MR. MERRITT: Objection to the scope.</p> <p>13 We're not here to litigate the 2019 regulation.</p> <p>14 MS. O'GRADY: No, but I think it goes</p> <p>15 to -- the 2019 regulations are based on -- based</p> <p>16 on policy views informed by what has happened and</p> <p>17 what is understood to have happened prior.</p> <p>18 So this is a -- I'm asking the witness</p> <p>19 about what this means. This is the basis for</p> <p>20 developing new regulations. So I'll ask my</p> <p>21 question. I think will be very much within the</p> <p>22 scope.</p> <p>23 BY MS. O'GRADY:</p> <p>24 Q What is the basis for the belief that</p> <p>25 there's a risk of unsubstantiated claims filed in</p>	Page 156 Page	<p>1 A I don't know what you mean by "the</p> <p>2 past." Could you -- what's your time frame?</p> <p>3 Q During your tenure at the Department of</p> <p>4 Ed.</p> <p>5 MR. MERRITT: I'm going to object to</p> <p>6 this line of questioning as not within the court's</p> <p>7 order.</p> <p>8 MS. O'GRADY: I think it is within the</p> <p>9 court's order based on the reason for the delay.</p> <p>10 MR. MERRITT: Again, at that level of</p> <p>11 generality, that's not --</p> <p>12 MS. O'GRADY: I'm not being very</p> <p>13 general. I'm pointing to a sentence in the 2019</p> <p>14 regs that these regulations are made based on a</p> <p>15 belief of a risk of unsubstantiated claims filed</p> <p>16 in large numbers. If that is a belief of the</p> <p>17 department as a whole, I think that's quite</p> <p>18 germane to whether or not the delay was caused by</p> <p>19 the difficulty of reviewing borrower defense</p> <p>20 applications.</p> <p>21 MR. MERRITT: I don't see how that's</p> <p>22 germane. I mean, it's going to -- as Diane said,</p> <p>23 the regulation was promulgated for a number of</p> <p>24 reasons, and your -- and this was included in the</p> <p>25 regulation, but it's not -- it doesn't apply to</p>
Page 155 Page	<p>1 large numbers?</p> <p>2 A You know, I -- again, I want to -- I</p> <p>3 want to reiterate, you know, this reg is hundreds</p> <p>4 of pages long, and there are lots of public</p> <p>5 comments. And, so, the answer or the response to</p> <p>6 one single comment is not the basis for a</p> <p>7 regulatory decision. It's hundreds of pages long</p> <p>8 because there are lots and --</p> <p>9 Q Okay.</p> <p>10 A -- lots of comments and considerations.</p> <p>11 So I think you're trying to ask me</p> <p>12 to --</p> <p>13 Q I can simplify the question.</p> <p>14 Do you believe that there is a risk of</p> <p>15 unsubstantiated claims that can be filed in large</p> <p>16 numbers?</p> <p>17 A There is always the risk that somebody</p> <p>18 would submit an application that would not qualify</p> <p>19 for borrower defense relief.</p> <p>20 Q Okay. One person or large numbers of</p> <p>21 people?</p> <p>22 A I think there could be large numbers of</p> <p>23 people.</p> <p>24 Q Do you think there have been large</p> <p>25 numbers in the past?</p>	Page 157 Page	<p>1 pending claims, as she said.</p> <p>2 MS. O'GRADY: I want to understand the</p> <p>3 reason for department policy and whether or not a</p> <p>4 belief in a risk of unsubstantiated claims that</p> <p>5 can be filed in large numbers is a basis for that</p> <p>6 policy as written in the regulation. It's a --</p> <p>7 MR. MERRITT: Are you asking her if</p> <p>8 it's a reason for the delay in this case or -- or</p> <p>9 whether it justified the 2019 regulation which is</p> <p>10 not at issue in this case?</p> <p>11 MS. O'GRADY: Well, I can -- I can ask</p> <p>12 the question about delay, but what I would like to</p> <p>13 know is if the witness, who's in charge of policy,</p> <p>14 agrees with this statement about the risk of</p> <p>15 unsubstantiated claims.</p> <p>16 MR. MERRITT: You can answer that</p> <p>17 question.</p> <p>18 THE WITNESS: Okay. First of all, I'm</p> <p>19 not in charge of policy. I have oversight</p> <p>20 responsibility over the policy-making process. I</p> <p>21 do not solely own it. It --</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q I didn't mean -- I didn't mean to</p> <p>24 misstate your responsibilities there, but if you</p> <p>25 could answer the question, do you -- do you agree</p>

Page 158 Page	<p>1 with this statement that there is a risk that</p> <p>2 unsubstantiated claims could be filled in large</p> <p>3 numbers to target institutions for the purpose of</p> <p>4 damaging their reputations?</p> <p>5 MR. MERRITT: Again, I'm going to</p> <p>6 object --</p> <p>7 THE WITNESS: I do.</p> <p>8 MR. MERRITT: -- and instruct not to</p> <p>9 answer as to enforce a limitation imposed by the</p> <p>10 court.</p> <p>11 MS. O'GRADY: Okay. Your witness just</p> <p>12 did answer, "I do." I don't know if that came on</p> <p>13 the record.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q On this topic of unsubstantiated</p> <p>16 claims, I'll ask specifically about the backlog.</p> <p>17 So I think we've talked about the backlog of about</p> <p>18 160,000 claims, and that was in the Congressional</p> <p>19 hearing testimony we went over earlier today.</p> <p>20 Of that backlog of 160,000 claims, is</p> <p>21 it your opinion that some number of those were</p> <p>22 unsubstantiated?</p> <p>23 A I don't understand why my opinion -- I</p> <p>24 don't review the claims, so I don't have a --</p> <p>25 Q I'm asking your opinion, not whether</p>	Page 160 Page	<p>1 percentage of claims look like that.</p> <p>2 BY MS. O'GRADY:</p> <p>3 Q In what context would you be informed</p> <p>4 of those claims?</p> <p>5 A There was a -- I -- I believe that</p> <p>6 there was -- I don't recall whether it was a</p> <p>7 Congressional letter or a question for the record</p> <p>8 following one of the secretary's hearings, but at</p> <p>9 one point in time this question came up. FSA</p> <p>10 answered it, and, you know, I saw that answer as</p> <p>11 it came through. But I cannot recall whether -- I</p> <p>12 can't remember why that answer was prepared.</p> <p>13 Q Okay. I want to go to the bottom of</p> <p>14 page 226. Okay. And at the bottom of 226 --</p> <p>15 A I'm not quite at 226.</p> <p>16 Q Okay.</p> <p>17 A I don't know what's going on with my</p> <p>18 scroll bar, but it's either too fast or too slow,</p> <p>19 so I'm not going there to . . .</p> <p>20 (Witness scrolls through document.)</p> <p>21 Okay. I'm on 226.</p> <p>22 Q Okay. And in the bottom in --</p> <p>23 beginning second paragraph up from the bottom, In</p> <p>24 addition, provisions in the 2016 final regulations</p> <p>25 enabled the secretary to initiate defense</p>
Page 159 Page	<p>1 you review the claims. I understand that.</p> <p>2 A Well, I can't formulate an opinion if I</p> <p>3 don't see the claims.</p> <p>4 Q Okay. So you have no opinion about</p> <p>5 what percentage of that backlog may have been, as</p> <p>6 it says here, unsubstantiated?</p> <p>7 That's the word used here.</p> <p>8 MR. MERRITT: Objection: speculative.</p> <p>9 You can answer her question.</p> <p>10 THE WITNESS: What I know is that the</p> <p>11 BD unit has provided us with examples of</p> <p>12 ineligible claims, and based on that, I am aware</p> <p>13 that some claims have come in saying they should</p> <p>14 get relief because their teacher didn't like them.</p> <p>15 And, again, you know, I don't review</p> <p>16 these claims, so I'm relying on what the BD unit</p> <p>17 tells me. But, you know, I am told there are</p> <p>18 claims that came in that said my teacher doesn't</p> <p>19 like me or I didn't like my teacher or, you know,</p> <p>20 they closed the cafeteria.</p> <p>21 So I am told that there are claims that</p> <p>22 come in with those kind of complaints that don't</p> <p>23 meet the standard for a borrower defense claim,</p> <p>24 but I am relying on what people are telling me. I</p> <p>25 don't review those claims, and I don't know what</p>	Page 161 Page	<p>1 repayment claims on behalf of entire classes of</p> <p>2 borrowers.</p> <p>3 And that's the group discharge process</p> <p>4 we were just talking about?</p> <p>5 A Uh-huh.</p> <p>6 Q The next sentence here, Initiating the</p> <p>7 group discharge process is extremely burdensome on</p> <p>8 the department and results in inefficiency and</p> <p>9 delays for individual borrowers.</p> <p>10 Can you explain why a group discharge</p> <p>11 process is extremely burdensome as opposed to an</p> <p>12 individual discharge process?</p> <p>13 A I -- I have to think about this.</p> <p>14 This -- this is in the -- I think this is in the</p> <p>15 portion of the reg that refers to the potential</p> <p>16 cost. I think it's in that section of the reg.</p> <p>17 So I need to put this in the context.</p> <p>18 So I believe what this is referring to</p> <p>19 is that under the 2016 reg, the group discharge</p> <p>20 process vaguely refers to a process that involves,</p> <p>21 you know, a special master of some sort, which is</p> <p>22 not a position that the department currently has.</p> <p>23 And when -- so -- so the 2016 reg talks</p> <p>24 about, you know, involving somebody like a special</p> <p>25 master or Office of Hearing and Appeals, you know,</p>

Page 162 Page	<p>1 some entity in the department to adjudicate these</p> <p>2 large claims. And that -- that is burdensome. We</p> <p>3 don't -- there isn't a special master.</p> <p>4 So when it comes to the individual</p> <p>5 borrowers, the borrower defense unit attorneys can</p> <p>6 do that adjudication. But I believe -- I'd have</p> <p>7 to go back and look at the 2016 rule, but I</p> <p>8 believe what this refers to is the process that</p> <p>9 had been -- I don't know if it was described in</p> <p>10 the reg or just described, but there was this</p> <p>11 process about engaging a special master in -- in</p> <p>12 these group claims.</p> <p>13 Q Okay. So your understanding of the</p> <p>14 change in 2019 is to remove the option of a group</p> <p>15 claim because then you won't need to appoint a</p> <p>16 special master?</p> <p>17 A No, I think you're mischaracterizing my</p> <p>18 statement.</p> <p>19 Q Okay. And I don't mean to be doing</p> <p>20 that.</p> <p>21 A Right.</p> <p>22 So you're asking me in particular what</p> <p>23 this sentence refers to. What this sentence is</p> <p>24 referring to is one of the reasons that we did not</p> <p>25 include a group discharge in the 2019 regulations.</p>	Page 164 Page	<p>1 is to prevent misrepresentation from happening in</p> <p>2 the first place because there is not just the</p> <p>3 financial element, there's a time element.</p> <p>4 So when you read that whole section,</p> <p>5 what we're referring to is our interest in</p> <p>6 preventing misrepresentation from the beginning.</p> <p>7 And as you read this reg, you will see that we</p> <p>8 have expanded consumer information through our</p> <p>9 college scorecard so that we are providing data to</p> <p>10 borrowers that reduces the potential for a school</p> <p>11 to commit misrepresentation.</p> <p>12 So when you read this whole section,</p> <p>13 what you will see is that what we're talking about</p> <p>14 is that an expanding college scorecard is the</p> <p>15 better approach. We want to prevent</p> <p>16 misrepresentation from ever happening.</p> <p>17 Q The borrower defense regulations are</p> <p>18 concerned with students who are alleging</p> <p>19 misrepresentation has occurred previously; right?</p> <p>20 A This is a prospective regulation that</p> <p>21 would be implemented after we had the expanded</p> <p>22 college scorecard.</p> <p>23 So we're talking about future, and we</p> <p>24 believe that because the college scorecard put</p> <p>25 these data out in the public before July 1, 2020,</p>
Page 163 Page	<p>1 One of the reasons is that it is a burdensome</p> <p>2 process. That's one of several reasons. And,</p> <p>3 yes, that is one of the reasons we describe in</p> <p>4 this document.</p> <p>5 Q Okay.</p> <p>6 A And to my knowledge, the 1995 reg also</p> <p>7 did not have a group discharge process. I'd have</p> <p>8 to go back and review, but I don't believe that</p> <p>9 was part of the '95 reg either.</p> <p>10 Q Okay. And then if we can go to</p> <p>11 page 90.</p> <p>12 A Okay.</p> <p>13 Q And at the bottom of page 90, that</p> <p>14 final paragraph, could you read the first sentence</p> <p>15 for the record starting with, We agree?</p> <p>16 A We agree that a borrower defense to</p> <p>17 repayment regulation that is poorly constructed</p> <p>18 under the statute may create a moral hazard by</p> <p>19 giving students an opportunity to complete their</p> <p>20 education and raise alleged misrepresentations to</p> <p>21 avoid paying for that education.</p> <p>22 Q And what does that sentence refer to?</p> <p>23 A I think you have to read three</p> <p>24 paragraphs ahead of that where what we explain is</p> <p>25 that the appropriate way to best serve borrowers</p>	Page 165 Page	<p>1 for future borrowers covered by this reg, we</p> <p>2 believed that stopping misrepresentation by the</p> <p>3 government publishing consistent data on all</p> <p>4 programs was the best way forward, and that's what</p> <p>5 this describes.</p> <p>6 Q So in this sentence, We agree that a</p> <p>7 borrower defense to repayment regulation that is</p> <p>8 poorly constructed, is that referring to previous</p> <p>9 regulations?</p> <p>10 A No, I think it says a borrower defense.</p> <p>11 We're talking about this regulation. If we didn't</p> <p>12 accurately and properly construct this regulation.</p> <p>13 Q And the result of not properly</p> <p>14 constructing this regulation is a moral hazard</p> <p>15 that gives students an opportunity to complete</p> <p>16 their education and raise alleged</p> <p>17 misrepresentations to avoid paying for that</p> <p>18 education.</p> <p>19 That's a risk that's created by a</p> <p>20 poorly constructed regulation?</p> <p>21 A It is a potential risk. That's what it</p> <p>22 says, that is a potential risk of a poorly</p> <p>23 constructed regulation.</p> <p>24 Q And that's a risk that the 2019</p> <p>25 regulations, in your view, are constructed to</p>

Page 166 Page	<p>1 mitigate?</p> <p>2 MR. MERRITT: Objection: scope and also</p> <p>3 privileged information, getting to her views of</p> <p>4 the regulation before the -- before it was</p> <p>5 published.</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q This sentence refers to a poorly</p> <p>8 constructed regulation. Is that regulation the</p> <p>9 2016 regulation?</p> <p>10 MR. MERRITT: Objection: asked and</p> <p>11 answered.</p> <p>12 MS. O'GRADY: I don't know if it was</p> <p>13 answered. I'm wondering if the witness would mind</p> <p>14 answering it again.</p> <p>15 THE WITNESS: It was a regulation, a</p> <p>16 poorly constructed -- a conceivable poorly</p> <p>17 constructed regulation.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q I'm really not trying to play games</p> <p>20 here. I want to understand if one of the reasons</p> <p>21 this 2019 regulation was written, as I'm reading</p> <p>22 from it directly, is that the previous regulation</p> <p>23 was considered poorly constructed creating a moral</p> <p>24 hazard.</p> <p>25 That's what the regulation says to</p>	Page 168 Page	<p>1 pages of this document were put in other</p> <p>2 PowerPoints, so, you know, I've seen information</p> <p>3 that's in this PowerPoint. I just -- I don't</p> <p>4 recall whether I've seen this specific PowerPoint.</p> <p>5 Q The memoranda you were talking about</p> <p>6 earlier that reported metrics to the secretary, is</p> <p>7 this the format that information was presented in</p> <p>8 or is this something different?</p> <p>9 A So this appears to me to be a periodic</p> <p>10 update that talks -- so this is not what I was</p> <p>11 referring to. What I was referring to is a tally,</p> <p>12 you know, just -- just numbers, not -- not pages</p> <p>13 of PowerPoints, but just, you know, numbers.</p> <p>14 Q Do you know who drafted this?</p> <p>15 A No, I don't know who drafts documents</p> <p>16 at FSA, but it appears to be an FSA document.</p> <p>17 Q And in what context would you have seen</p> <p>18 this information? Would it have been in a meeting</p> <p>19 or by email?</p> <p>20 A It may have been emailed to me, but I</p> <p>21 would have seen it in the context of a meeting.</p> <p>22 Q If we can go to the -- this is the</p> <p>23 second page of the PDF, and it helpfully has a two</p> <p>24 at the bottom left of the footer.</p> <p>25 A Oh, okay. I see that.</p>
Page 167 Page	<p>1 me --</p> <p>2 MR. MERRITT: Objection.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q -- and I want to clarify if I'm reading</p> <p>5 the sentence correctly.</p> <p>6 MR. MERRITT: Objection. That is not</p> <p>7 within the scope of what the court authorized as</p> <p>8 discovery.</p> <p>9 MS. O'GRADY: All right. We're going</p> <p>10 to go to the next exhibit which is in the folder</p> <p>11 as A09, Borrower Defense Repayment, so it should</p> <p>12 be one of the first files in the folder.</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q When you have that open, just let me</p> <p>15 know?</p> <p>16 A I have that open.</p> <p>17 Q Okay. Do you recognize this</p> <p>18 PowerPoint?</p> <p>19 A I don't -- I don't know if I recognize</p> <p>20 this PowerPoint, per se, but the information</p> <p>21 contained in this PowerPoint is information that</p> <p>22 I've seen in one format or another.</p> <p>23 Q Okay. And what are some of the other</p> <p>24 formats you might have seen it in?</p> <p>25 A Well, I mean, it could have been that</p>	Page 169 Page	<p>1 Q Okay. So this is one of the ones that</p> <p>2 is going to match the number on the document and</p> <p>3 the number in the PDF, which is always helpful.</p> <p>4 A Uh-huh.</p> <p>5 Q So on this heading, Of the nearly</p> <p>6 280,000 borrower defense applications received</p> <p>7 since 2015, that first bullet point, 57,000 have</p> <p>8 been adjudicated, processed and closed.</p> <p>9 I want to understand if that 57,000 --</p> <p>10 excuse me. Really what I want to ask about is the</p> <p>11 second bullet point, 38,700 have been adjudicated</p> <p>12 but have not yet been processed, and these were</p> <p>13 the words we were talking about earlier, the</p> <p>14 difference between adjudication and processing.</p> <p>15 So what does that mean?</p> <p>16 A I don't know in particular for those</p> <p>17 38,000 claims exactly what's the process they were</p> <p>18 in, so I can't speak to any particular claim in</p> <p>19 that group.</p> <p>20 But, in general, what it means is that</p> <p>21 the legal team in the borrower defense unit have</p> <p>22 reviewed the evidence and have made a</p> <p>23 determination -- let's just use the terminology on</p> <p>24 the merit of the claim. That may not be the right</p> <p>25 legal terminology, but I think you got what I</p>

Page 170 Page	<p>1 mean. They looked at the evidence to decide</p> <p>2 whether it's substantiated.</p> <p>3 I believe that when it has been</p> <p>4 adjudicated but not processed, that means the</p> <p>5 borrower hasn't yet been notified.</p> <p>6 Q Okay.</p> <p>7 A Right. So then -- yeah.</p> <p>8 Q And then the 27,700 in the next bullet</p> <p>9 point, those are approved applications that will</p> <p>10 be finalized when appropriate relief is</p> <p>11 determined.</p> <p>12 So that means they've gotten their</p> <p>13 step-one determination and are awaiting their step</p> <p>14 two; is that correct?</p> <p>15 A I believe that's what it means.</p> <p>16 Q And then it says, Nearly 11,000</p> <p>17 applications have been adjudicated as denied but</p> <p>18 have not yet been processed.</p> <p>19 So those are step-one denials not sent</p> <p>20 to borrowers?</p> <p>21 A I'm not sure.</p> <p>22 Q Of the approved applications awaiting</p> <p>23 their step-two determination, the 27,700, do you</p> <p>24 know what categories of borrowers those are, from</p> <p>25 what schools they came from?</p>	Page 172 Page	<p>1 this was an August PowerPoint.</p> <p>2 Q Yes.</p> <p>3 A So -- so the situation becomes further</p> <p>4 complicated during this time period because now</p> <p>5 we -- we no longer have an agreement with the</p> <p>6 Social Security Administration, and so we don't</p> <p>7 even have access to social security data.</p> <p>8 So -- so -- so we have, you know, the</p> <p>9 pending methodology for CCI claims, but now we're</p> <p>10 in a situation where the original method we had is</p> <p>11 enjoined. And further, if the California court</p> <p>12 decides we can use that methodology for non-CCI</p> <p>13 schools, we don't have access to even getting</p> <p>14 those data from the Social Security Administration</p> <p>15 anymore.</p> <p>16 So if this is -- if the August time</p> <p>17 frame is right in my mind, this has become further</p> <p>18 complicated because now, no matter what the judge</p> <p>19 says we don't have an agreement with social</p> <p>20 security.</p> <p>21 So, in other words, we don't have the</p> <p>22 ability to apply that methodology even if</p> <p>23 approved.</p> <p>24 Q Okay. And -- and at the same time, no</p> <p>25 methodology -- no alternative methodology was</p>
Page 171 Page	<p>1 A I don't.</p> <p>2 Q And who has to sign off on the grants,</p> <p>3 the approved applications?</p> <p>4 A Colleen Nevin. Or let me be clear, she</p> <p>5 may have delegated others on her team, so it would</p> <p>6 be Colleen Nevin or her designee. I don't know if</p> <p>7 she's authorized others to sign off. I'm unclear</p> <p>8 about that.</p> <p>9 Q Okay. And then on PowerPoint -- so on</p> <p>10 the footer and on the PDF 6, page 6.</p> <p>11 A Okay.</p> <p>12 Q So this -- the heading is, Why are BD</p> <p>13 applications on hold, and it says -- the second</p> <p>14 bullet point under approvals says, No relief</p> <p>15 methodology developed for non-CCI claims.</p> <p>16 A Yes.</p> <p>17 Q And that's what we've addressed before.</p> <p>18 That refers to there being no non-CCI methodology</p> <p>19 while the injunction was enforced; is that</p> <p>20 correct?</p> <p>21 I can ask more open ended if you want</p> <p>22 to just explain that bullet point.</p> <p>23 A I think it means a couple of things.</p> <p>24 It means that we had a methodology for CCI claims,</p> <p>25 and that has been enjoined. I believe -- I think</p>	Page 173 Page	<p>1 being developed?</p> <p>2 A Well, that -- so that's what's</p> <p>3 confusing about this because of the August time --</p> <p>4 Q It was August 31st, I believe.</p> <p>5 A Of what year?</p> <p>6 Q 2019.</p> <p>7 A Okay. So by then, we were in the</p> <p>8 process of developing a methodology but it had not</p> <p>9 yet been reviewed and approved, yes. We were in</p> <p>10 the hard work of -- of developing a methodology.</p> <p>11 Q Okay. So this bullet point, No relief</p> <p>12 methodology developed for non-CCI claims, then</p> <p>13 what does that mean?</p> <p>14 A I believe what it means is that we are</p> <p>15 still waiting for Corinthian borrowers for the</p> <p>16 California court to make a decision, and beyond</p> <p>17 that we now don't have access to social security</p> <p>18 data for claims beyond those Corinthian claims.</p> <p>19 Q Under the next heading, Denials, it</p> <p>20 says, Policy decision (spring 2018) to not issue</p> <p>21 denials until approvals also could be issued.</p> <p>22 What is that referring to?</p> <p>23 A So there had been a decision that was</p> <p>24 made that if -- if the department issued denials</p> <p>25 without at the same time issuing approvals,</p>

<p style="text-align: right;">Page 174 Page</p> <p>1 borrowers could be misinformed and believe that we 2 would not be approving any claims, and there was a 3 concern that that would have a chilling effect on 4 borrowers.</p> <p>5 So a decision had been made in -- in -- 6 that we would not issue denials if we were not 7 also issuing approvals.</p> <p>8 Q Who made that decision?</p> <p>9 A I do not know. I was in meetings about 10 that, but I don't -- I can't tell you who actually 11 made that decision.</p> <p>12 Q You don't remember?</p> <p>13 A I don't even know if I was in a meeting 14 where the final decision was made. That 15 decision -- you know, I -- I think the original 16 decision was made before I was in my role. I 17 think it was revisited from time to time, but I 18 don't believe I was involved in the -- in the 19 making of that initial decision.</p> <p>20 Q Uh-huh.</p> <p>21 A I don't recall.</p> <p>22 Q And your understanding, you said, was 23 that you didn't want to have a chilling effect on 24 borrowers. What do you mean by that?</p> <p>25 A I think the concern was that if the</p>	<p style="text-align: right;">Page 176 Page</p> <p>1 to decide between no decisions or just denials?</p> <p>2 MR. MERRITT: Objection: calling for 3 privileged information about the deliberations 4 leading to the decision to not do denials.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q I can move on. You don't have to 7 answer that.</p> <p>8 Okay. Next bullet point is, No 9 processing systems available from summer 2018 to 10 present due to platform development and migration.</p> <p>11 Now, what is that referring to?</p> <p>12 A I believe that was referring to the 13 development of a system to replace Excel 14 spreadsheets as the BD unit's mechanism for 15 managing claims.</p> <p>16 Q So when the processing systems were 17 unavailable, were claims still being adjudicated?</p> <p>18 A I don't know.</p> <p>19 Q Would Colleen Nevin know?</p> <p>20 A Yes, I believe she would be the one to 21 know.</p> <p>22 Q Okay. Then issuance of decide -- 23 denial note -- excuse me.</p> <p>24 Issuance of denial decision scheduled 25 to resume by mid September. What is that</p>
<p style="text-align: right;">Page 175 Page</p> <p>1 only decisions being issued were denials, that 2 that could be misrepresented by the media to make 3 borrowers believe that we were not going to 4 approve valid claims and the chilling effect would 5 be that, you know, if somebody has a valid claim, 6 they could have been discouraged from filing them.</p> <p>7 We did not want -- I mean, you know, at 8 no point in time did anybody want somebody with a 9 valid claim to not submit it.</p> <p>10 Q And whether or not a claim is valid is 11 a step-one determination after they apply; 12 correct?</p> <p>13 A That's correct.</p> <p>14 Q So -- so it was determined as a matter 15 of policy that it was better to issue no decisions 16 rather than deny -- rather than send out denials 17 of any claims?</p> <p>18 A I -- I believe that's the decision that 19 was made in spring of 2018.</p> <p>20 Q Was there ever a discussion about 21 sending out approvals so that -- I mean, it seems 22 to me the choice was to either not issue denials, 23 as it says here, until approvals could be issued.</p> <p>24 Was there a discussion about increasing 25 the pacing of approvals so that you wouldn't have</p>	<p style="text-align: right;">Page 177 Page</p> <p>1 referring to?</p> <p>2 A I didn't write this slide, and so I'm 3 not quite sure what -- what this refers to.</p> <p>4 Q So at this point in your role, were you 5 not keeping tabs on the pace of decisions being 6 made?</p> <p>7 A In -- in the August time frame, we were 8 still waiting for the California court to rule on 9 the methodology, and so at this point in time, we 10 were still hopeful that there would be a 11 determination, at least for the Corinthian 12 borrowers, about a methodology. So at -- at this 13 point in time, we're still waiting for the court.</p> <p>14 Now, by August, we, the working group, 15 had come up with some potential methods to use for 16 adjudicating future claims, but it had not yet 17 been approved.</p> <p>18 So I think --</p> <p>19 Q Okay.</p> <p>20 A You know, this may -- whoops, I'm 21 sorry. This is the time period where we had 22 developed some options. They weren't yet applied. 23 And in the meantime, there was still the hope that 24 the California court would rule at least for the 25 Corinthian borrowers.</p>

<p style="text-align: right;">Page 178 Page</p> <p>1 Q Regarding the policy decision in spring 2 2018 not to issue denials until approvals could 3 also be issued, I understand that you didn't 4 initially make that decision because it was before 5 your time? 6 A Right. 7 Q Could you have reversed it? 8 A No. 9 Q Why not? 10 A Because now there's litigation 11 involved. 12 Q Say there wasn't litigation involved. 13 A Yeah, you're asking me to speculate on 14 the circumstance. 15 Q Well, I guess -- so the decision not to 16 issue any denials until approvals could also be 17 issued, that's actually not related to litigation; 18 right? 19 That was a decision you said made 20 because you didn't want to give borrowers the 21 wrong idea; right? 22 A Correct. Initially, but I think the 23 department position was they didn't want to give 24 borrowers the wrong idea. 25 Q So that decision? Could you reverse</p>	<p style="text-align: right;">Page 180 Page</p> <p>1 A That's what I'm trying to tell you. 2 Because there's litigation involved. Even if 3 litigation didn't involve denials, there's now 4 litigation around borrower defense. So I'm not -- 5 I'm not a lawyer and I -- 6 Q What litigation? Are you talking about 7 something different than Calvillo, the Calvillo 8 Manriquez case? 9 A No. At this point, Manriquez was the 10 litigation we were waiting. Yeah, I mean, that -- 11 Q So Calvillo Manriquez, though, was 12 about applying a certain partial relief 13 methodology that violated the Privacy Act. 14 These denials are totally separate. 15 These are not -- they have nothing to do with that 16 partial relief methodology. 17 A What I'm saying is I'm not an attorney. 18 I'm not involved in that case. I don't know what 19 the court said. I don't know -- 20 Q So it would -- so you thought the 21 Calvillo Manriquez injunction meant that no 22 decisions could be issued at all, denial or 23 grants? 24 A No, I'm saying that once litigation was 25 involved, those decisions were out of my hands.</p>
<p style="text-align: right;">Page 179 Page</p> <p>1 that decision? 2 A So, I mean, you're asking me to tell 3 you what I think might have happened had the world 4 been different and we had -- 5 Q No, no, no. In the exact world the way 6 it is, if you had wanted to, could you have said, 7 everybody, we're going to send out those denials 8 even though we're not sending out any grants? 9 A No. 10 Q Why not? 11 A Because now that there is litigation 12 involved -- 13 Q But the denials, there's no litigation. 14 They've been denied. There's no partial relief at 15 issue. They're waiting there. They've been 16 denied. They're ready to go out. 17 There's a policy decision not to send 18 them out because we don't want to spook borrowers 19 and have them think everything is being denied, I 20 have that right; right? 21 A Yes. 22 Q So could you have said, we're not doing 23 that; we're going to send out these details? 24 A No, I could not have done that. 25 Q Why?</p>	<p style="text-align: right;">Page 181 Page</p> <p>1 Q In whose hands were they put? 2 A It would have been a group decision. 3 Q By who? 4 A It would have involved input from, you 5 know, our attorneys. It would have involved input 6 from Office of the Secretary. You know, FSA and I 7 would have had, you know, a seat at the table. 8 But I -- 9 Q I really want to understand -- 10 MR. MERRITT: Maggie, would you mind if 11 we took a short break right now? 12 MS. O'GRADY: Can I just finish -- 13 MS. BERMAN: Yeah. You can do a 14 question or two more. I was just thinking we've 15 been going for -- 16 MS. O'GRADY: Sure. I'm almost done 17 with this -- 18 MS. BERMAN: We've been going for more 19 than an hour and a half now. 20 MS. O'GRADY: Can I just finish this 21 exhibit? 22 MR. MERRITT: Yeah. Is it a lot more 23 questions? 24 MS. O'GRADY: No. I really want to pin 25 this down and I think there's just a couple of</p>

Page 182 Page	<p>1 more questions, yeah.</p> <p>2 MR. MERRITT: Okay.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q So I just -- it sounds to me, and</p> <p>5 correct me if I'm wrong -- I really want to</p> <p>6 understand -- that your position, your</p> <p>7 understanding of the state of things at this point</p> <p>8 was that the injunction in Calvillo Manriquez</p> <p>9 prevented FSA from issuing any borrower defense</p> <p>10 decisions?</p> <p>11 MR. MERRITT: Objection. It's a</p> <p>12 mischaracterization of her testimony.</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q Okay. Please -- please correct me if I</p> <p>15 misstated that.</p> <p>16 A You misstated that.</p> <p>17 Q Okay. So what was your understanding</p> <p>18 of how Calvillo Manriquez affected FSA's ability</p> <p>19 to send out borrower defense decisions?</p> <p>20 A What I -- what I'm trying to explain to</p> <p>21 you is that because there was pending litigation,</p> <p>22 whether a particular decision was related to that</p> <p>23 litigation or not, because there's pending</p> <p>24 litigation around borrower defense, I am not a</p> <p>25 senior enough official to have decision-making</p>	Page 184 Page	<p>1 there's denials ready to go out, why couldn't they</p> <p>2 have gone out?</p> <p>3 MR. MERRITT: Objection: asked and</p> <p>4 answered.</p> <p>5 MS. O'GRADY: It has indeed been asked.</p> <p>6 MR. MERRITT: And it's been answered.</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q Okay. I'll ask again. So you said you</p> <p>9 could not have reversed that decision because of</p> <p>10 the litigation?</p> <p>11 A That's not exactly what I said.</p> <p>12 Q Okay. And I -- I apologize. I know</p> <p>13 this is getting redundant and back and forth and I</p> <p>14 really just want to make it clear. I don't mean</p> <p>15 to -- to be -- to be so repetitive.</p> <p>16 I really do want to understand is there</p> <p>17 a person or a number of people, and can you</p> <p>18 identify them, who could have decided to begin</p> <p>19 issuing those denials rather than deciding not to</p> <p>20 issue them until approvals could also be issued?</p> <p>21 A It would be speculative, right. I</p> <p>22 mean, there are any number of people, but because</p> <p>23 I don't believe exactly who made each decision, it</p> <p>24 would be speculative on my part.</p> <p>25 Q So who made the decision not to issue</p>
Page 183 Page	<p>1 authority.</p> <p>2 Q What was -- so who would have</p> <p>3 decision-making authority to -- if not you?</p> <p>4 A I think that's what I'm trying to tell</p> <p>5 you is that I -- I -- I -- there's lots of people</p> <p>6 who could have it. I don't know who made all the</p> <p>7 decisions, but I do know it wasn't me.</p> <p>8 Q The policy decision not to issue</p> <p>9 denials until approvals could also be issued, is</p> <p>10 it your understanding that began immediately with</p> <p>11 the Calvillo injunction?</p> <p>12 A I don't know the precise timing.</p> <p>13 Q Okay. Because I -- so -- and I really</p> <p>14 want to get to the bottom of this. I didn't think</p> <p>15 they were related because I'm reading this bullet</p> <p>16 point and you explained that it was about not</p> <p>17 wanting to give borrowers the wrong idea. And</p> <p>18 then we have the Calvillo Manriquez injunction</p> <p>19 that prevents the application of a certain partial</p> <p>20 methodology towards a number of CCI students.</p> <p>21 So -- so the approvals have been paused</p> <p>22 because the approvals demand -- you know, the</p> <p>23 approvals need that step-two determination of the</p> <p>24 partial relief that's been enjoined, but the</p> <p>25 denials don't need to involve step two, and if</p>	Page 185 Page	<p>1 denials until approvals could also be issued?</p> <p>2 A I do not know.</p> <p>3 Q You were just told of that decision and</p> <p>4 went along with it. Okay.</p> <p>5 A I was told that was the decision.</p> <p>6 MS. O'GRADY: Okay. I think we'll take</p> <p>7 a break now. Thank you for those extra few</p> <p>8 minutes.</p> <p>9 THE WITNESS: Uh-huh.</p> <p>10 MS. O'GRADY: How long do we want the</p> <p>11 break to be? Charlie --</p> <p>12 THE VIDEOGRAPHER: Hold on one second.</p> <p>13 The time is 19:24 UTC time.</p> <p>14 (Recess -- 2:24 p.m.)</p> <p>15 (After recess -- 2:43 p.m.)</p> <p>16 THE VIDEOGRAPHER: Okay. We're now</p> <p>17 back on the record. The time is 19:43 UTC time.</p> <p>18 MS. O'GRADY: For the record, I'm just</p> <p>19 going to state the designations on the last two</p> <p>20 exhibits. So file name ECF NO 56-3, Exhibit 5,</p> <p>21 2019 regulations which is a long PDF file is</p> <p>22 Exhibit 11.</p> <p>23 (Jones Deposition Exhibit 11 was marked</p> <p>24 for identification and attached to the</p> <p>25 transcript.)</p>

Page 186 Page	<p>1 MS. O'GRADY: And file name</p> <p>2 A09-Borrower Defense to Repayment FSA PowerPoint</p> <p>3 to the Secretary is marked as Exhibit 12.</p> <p>4 (Jones Deposition Exhibit 12 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q Okay. And now we are going to go back</p> <p>9 to Exhibit 2, your declaration. And this time</p> <p>10 we're going to look at paragraph 26.</p> <p>11 A Okay. I found it. Twenty-six?</p> <p>12 Q Yes.</p> <p>13 So the bottom of this page, middle of</p> <p>14 the paragraph, it states, The department has been</p> <p>15 working to develop documents to provide a more</p> <p>16 robust explanation for borrowers whose claims are</p> <p>17 denied.</p> <p>18 A Yeah. I must be in the wrong place.</p> <p>19 Where are you again?</p> <p>20 Q I am at the bottom of page 10, the end</p> <p>21 of paragraph 26 that begins on that page.</p> <p>22 A Ah, okay. I'm there now.</p> <p>23 Q Okay. So -- so here you write, The</p> <p>24 department has been working to develop documents</p> <p>25 to provide a more robust explanation for borrowers</p>	Page 188 Page	<p>1 A Yes.</p> <p>2 Q Okay. So the document -- the document</p> <p>3 here is referring to a template denial notice?</p> <p>4 A Yes.</p> <p>5 Q And then on the next page -- well, it's</p> <p>6 the continuing page of paragraph 26, which is</p> <p>7 page 11. So at the top it begins, Once these</p> <p>8 documents are developed, the department needs to</p> <p>9 work with each of its servicers to put the process</p> <p>10 of loan relief and borrower notification in</p> <p>11 process, which requires contract updates with each</p> <p>12 of the federal student aid loan servicers that</p> <p>13 service direct loans.</p> <p>14 So that's what you were referring to</p> <p>15 just now, the contractors doing the merge?</p> <p>16 A Right. So every time we ask a servicer</p> <p>17 to do anything, notify a borrower, create a new</p> <p>18 letter, anything, it's a change order and an</p> <p>19 additional fee that has to be negotiated.</p> <p>20 Q So that includes sending a denial</p> <p>21 letter?</p> <p>22 A It is my understanding that the</p> <p>23 servicers issued -- issued all the letters, but</p> <p>24 you'd have to check with Colleen Nevin. She would</p> <p>25 know better than I.</p>
Page 187 Page	<p>1 whose claims are denied.</p> <p>2 And what documents is that sentence</p> <p>3 referring to?</p> <p>4 A (Witness reviews document.)</p> <p>5 I believe this is referring to the</p> <p>6 letter that the servicer would send to the</p> <p>7 borrower following a decision.</p> <p>8 Q And the servicer meaning what?</p> <p>9 A So federal student aid does much of its</p> <p>10 operational business through contract servicers,</p> <p>11 and so the servicers would be the entities that</p> <p>12 would actually send the letter to the borrower.</p> <p>13 Q Does FSA draft the letter?</p> <p>14 A FSA creates the template and the</p> <p>15 information to fill the servicer. It is my</p> <p>16 understanding that the servicer or some other</p> <p>17 contractor does the merge file. That's my</p> <p>18 understanding. I haven't -- I -- I don't work in</p> <p>19 the systems.</p> <p>20 Q Right.</p> <p>21 A My understanding is that a servicer or</p> <p>22 a contractor does the merge.</p> <p>23 Q And by doing the merge, you mean puts</p> <p>24 the information about a certain borrower into the</p> <p>25 template provided by FSA?</p>	Page 189 Page	<p>1 Q When you say "servicer," you mean --</p> <p>2 what is a servicer? That's different from a loan</p> <p>3 servicer?</p> <p>4 A It is a loan servicer.</p> <p>5 Q So you're referring to loan servicers,</p> <p>6 okay.</p> <p>7 A And -- and -- and, you know -- yes.</p> <p>8 Simply stated yes, we're talking about loan</p> <p>9 servicers here.</p> <p>10 Q So the next sentence, it says, It takes</p> <p>11 longer to develop decision letters that provide an</p> <p>12 explanation for each borrower of why their claim</p> <p>13 was denied, but we believe this investment of time</p> <p>14 is important so that borrowers understand the</p> <p>15 basis for the decision, which is vital to</p> <p>16 instilling confidence in the process.</p> <p>17 So in this paragraph, you've said the</p> <p>18 departments are working to develop these</p> <p>19 documents -- these denial letters.</p> <p>20 Is that process complete? Has the</p> <p>21 department done so?</p> <p>22 A The department has developed denial</p> <p>23 letters that cover the -- that cover the -- the</p> <p>24 kinds of situations we have seen so far, but it is</p> <p>25 always possible that some new category arises and</p>

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1 a new letter has to be developed.
 2 So I can't say that this is the full
 3 and complete final census, but the attempt was to
 4 develop letters that -- that could be used to
 5 communicate regardless of the school the borrower
 6 attended.
 7 Q Okay. And then the next sentence is,
 8 This has taken longer than we hoped but the
 9 notices are finished and we are now working with
 10 our contracting officials and loan services to
 11 enter these notices into servicer systems.
 12 So this has taken longer than we hoped.
 13 How long did you hope it would take to develop
 14 these letters?
 15 A Our -- I can't remember what -- I can't
 16 remember what I hoped. I -- I just know that, you
 17 know, it -- it took what felt like a long time.
 18 Q And what are the factors that made it
 19 take what felt like a long time?
 20 A The complexity -- the complexity of the
 21 situation.
 22 Q And what do you mean by that?
 23 A For example, there are some borrowers
 24 who have loans that will be adjudicated under all
 25 three regulations. How do you -- you know, we

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1 were trying to figure out what's the right way to
 2 manage. Do we send one letter for all three
 3 adjudications? Do we separate them into three
 4 separate adjudications?
 5 So it -- it gets complicated. There's
 6 a -- you know, when borrowers consolidate loans,
 7 they don't always understand that they've reset,
 8 you know, the clock, right. So there are -- is
 9 it -- the student loan program is a very
 10 complicated program, and there's just a lot of
 11 complexity around the potential combinations.
 12 Q Okay.
 13 A We have borrowers who, you know, left
 14 the program and came back or maybe, you know,
 15 completed one degree and now they're back for a
 16 second.
 17 So it's just a complicated --
 18 Q With respect to the letters that were
 19 being developed, how do the letters reflect those
 20 complications?
 21 A We had to decide, for example, whether
 22 the letter should have a fill in the blank. So
 23 let's say a borrower had loans adjudicated under
 24 the '95 regs and the 2016 regs, meaning under the
 25 state standard and under the federal standard.

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1 The complexity was do we try in one
 2 letter to explain well, these loans were
 3 adjudicated under California state law, blah,
 4 blah, blah, but these loans were adjudicated under
 5 a federal standard. And the question was is it
 6 better to try and do that all in one letter?
 7 Should we send two letters, one for each set of
 8 adjudications?
 9 So it becomes complicated in deciding
 10 what -- what content.
 11 In addition, because for Corinthian
 12 borrowers a decision had been made that all of
 13 those borrowers would get a minimum of 10 percent
 14 relief if they were part of the class, we had to
 15 have letters that explained the 10 percent to
 16 Corinthian borrowers, but that 10 percent had not
 17 been -- it was not part of a policy for other
 18 schools. It just hadn't -- hadn't, you know,
 19 gotten there yet.
 20 Q So the denial letters that identify or
 21 that are dealing with loans that you say are under
 22 different regulations, has that letter been
 23 developed?
 24 A I believe that the letter has been
 25 developed for under the state standard. And let

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1 me think about if it's been developed for
 2 the regs -- and -- under the federal standard.
 3 You know, the longer I recall seeing
 4 was to respond under the state standard, which is
 5 more complicated than the federal standard, I
 6 don't recall whether I've seen a federal standard
 7 letter yet.
 8 Q Okay. So and when you say a letter
 9 under the state standard, you're referring to a
 10 letter under the '95 regulations?
 11 A Correct.
 12 Q Okay. And that's -- okay.
 13 So besides -- and I think my question a
 14 couple of questions ago was, you know, what are
 15 some of the factors that made the process of
 16 developing this letter -- this denial template
 17 take longer than you had hoped, and you said one
 18 of them was having to do with a letter under the
 19 state standard and the federal standard.
 20 Is that right?
 21 A More than one. That was one example.
 22 Q Yeah. So my next question is what are
 23 some other factors besides that one?
 24 A Some other factors are -- and this gets
 25 very weedy, but the name of the school that the

Page 194 Page	<p>1 borrower attended may not be the name of the</p> <p>2 school officially in our records.</p> <p>3 Q And what bearing would that have on the</p> <p>4 letter itself?</p> <p>5 A So the borrower may have submitted a</p> <p>6 letter saying, you know, I went to school A, and</p> <p>7 we had to figure out how to send a letter back</p> <p>8 using school A because that school is actually</p> <p>9 listed in our records as school B, but the</p> <p>10 borrower might not have known that.</p> <p>11 So how do you communicate to a</p> <p>12 borrower -- so we either had to, you know,</p> <p>13 communicate to the borrower why this looks to be a</p> <p>14 different name, or they had to have a system</p> <p>15 adjustment.</p> <p>16 Q Is that a -- is that a new problem,</p> <p>17 though? I mean, this is -- I guess I'm asking</p> <p>18 about the development of these letters that are</p> <p>19 providing, as you say in paragraph 26, a more</p> <p>20 robust explanation.</p> <p>21 So is the -- making sure the school</p> <p>22 names match something that is a challenge to</p> <p>23 develop a letter that provides a more robust</p> <p>24 explanation?</p> <p>25 A I would say that that is the case, but</p>	Page 196 Page	<p>1 MS. O'GRADY: Okay. So the next</p> <p>2 exhibit is in the folder as ECF number 116,</p> <p>3 Defendants Post-CMC Filing.</p> <p>4 THE WITNESS: Can you give me the</p> <p>5 number? ECF?</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q Sure. ECF number 116.</p> <p>8 A Ah, okay.</p> <p>9 MS. O'GRADY: Okay. And this exhibit</p> <p>10 will be marked as Exhibit 13.</p> <p>11 (Jones Deposition Exhibit 13 was marked</p> <p>12 for identification and attached to the</p> <p>13 transcript.)</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q Ms. Jones, have you ever seen this</p> <p>16 filing before? You may not have.</p> <p>17 A (Witness reviews document.)</p> <p>18 I don't recall having seen this</p> <p>19 document before.</p> <p>20 Q Okay. Well, I would like to talk about</p> <p>21 some much the attachments which I think you</p> <p>22 probably have seen. So I can represent to you</p> <p>23 that this document was filed by defendants in this</p> <p>24 case as a response to the judge -- a judge's</p> <p>25 question about denial notices.</p>
Page 195 Page	<p>1 I don't think that was the primary reason for the</p> <p>2 statement. I think the primary reason for this</p> <p>3 statement was the complexity of the many different</p> <p>4 situations a borrower could be in.</p> <p>5 Q Okay. And, so, what are some of those</p> <p>6 situations?</p> <p>7 A You know, again, if the borrower -- so</p> <p>8 depending upon how the state standard was decided,</p> <p>9 you know, the -- the borrower could get one</p> <p>10 decision under a state standard but his or her</p> <p>11 friend could get a different decision under a</p> <p>12 different state standard.</p> <p>13 So one of the areas of complexity is</p> <p>14 explaining to the borrower, or at least listing</p> <p>15 for the borrower the state standard under which</p> <p>16 the claim was adjudicated.</p> <p>17 Q So the effort to provide these decision</p> <p>18 letters that provide, quote, an explanation for</p> <p>19 each borrower why their claim was denied, is to</p> <p>20 include the state standard used to adjudicate</p> <p>21 their claim?</p> <p>22 A It should notify that -- the borrower</p> <p>23 of the state standard.</p> <p>24 Q And does it?</p> <p>25 A It is supposed to.</p>	Page 197 Page	<p>1 And, so, if you go to PDF -- let's</p> <p>2 see --</p> <p>3 A Oh, so, you know, so may -- I do</p> <p>4 remember seeing these exhibits as -- as part of my</p> <p>5 review. So may -- maybe -- maybe this will -- I</p> <p>6 can't remember if we're talking --</p> <p>7 Q We're just going to talk about the</p> <p>8 exhibits anyway.</p> <p>9 A Okay.</p> <p>10 Q So if we go to PDF -- so page 7 -- PDF</p> <p>11 page 7 should be where exhibit A starts?</p> <p>12 A Yes. Okay. I'm at exhibit A.</p> <p>13 Q Okay. So this -- and if it's all right</p> <p>14 with you, I'm going to refer to these as form</p> <p>15 denial A because I -- I think that's what it is.</p> <p>16 A (Witness nods head.)</p> <p>17 Q So -- so can you tell me what exhibit A</p> <p>18 is just so I'm clear that we're on -- that</p> <p>19 we're -- what we're both looking at?</p> <p>20 A Okay. Let me -- let me look at this.</p> <p>21 (Witness reviews document.)</p> <p>22 Q So maybe an efficient way to do this is</p> <p>23 in the court filing on PDF page 3, there is kind</p> <p>24 of a short index identifying what each of these</p> <p>25 denial notices are. And on the bottom of page 2,</p>

Page 198 Page	<p>1 it says, a sample attached as exhibit A is for</p> <p>2 Corinthian borrowers to assert only job placement</p> <p>3 rate claims but who do not meet the eligibility</p> <p>4 criteria for such a claim, and that that's</p> <p>5 Exhibit -- that's Form Denial Notice A. Does</p> <p>6 that -- that seems accurate to you, this is Form</p> <p>7 Denial Notice A?</p> <p>8 A It does. I've scrolled through the</p> <p>9 letter to where it says borrower defense claims</p> <p>10 based on CCI job placement. So that comports with</p> <p>11 that.</p> <p>12 Q So is this one of the letters developed</p> <p>13 as we were just talking in the paragraphs of your</p> <p>14 declaration that talk about developing a letter</p> <p>15 with more information for borrowers about why</p> <p>16 their claims were denied?</p> <p>17 A (Witness reviews document.)</p> <p>18 Yes. I can't say that this is</p> <p>19 precisely the version that I saw, but, you know,</p> <p>20 this comports with the kind of letter that -- that</p> <p>21 I reviewed.</p> <p>22 Q Okay. And -- and I just want to make</p> <p>23 sure that we're both on the same page about each</p> <p>24 one of these letters. So again, on the bottom of</p> <p>25 page 2 of the court filing, it identifies exhibit</p>	Page 200 Page	<p>1 Q Okay. And is this form letter, perhaps</p> <p>2 without the Covid paragraph, something that you</p> <p>3 reviewed and approved?</p> <p>4 A (Witness reviews document.)</p> <p>5 So the part that looks different to me</p> <p>6 which may or may not be different -- it's just my</p> <p>7 memory -- is the way the allegations are listed.</p> <p>8 I don't know if in the version that I saw, you</p> <p>9 know, it had the template for multiple</p> <p>10 allegations. The one that I saw may have just had</p> <p>11 a placeholder.</p> <p>12 So I don't know if I've seen it</p> <p>13 precisely laid out this way, you know, the way</p> <p>14 allegation one was in the middle of the page. The</p> <p>15 version I saw may have just had a placeholder.</p> <p>16 Q Okay.</p> <p>17 A But in general, this is.</p> <p>18 Q In general, yes. That's helpful.</p> <p>19 Let's look at the last one which is D,</p> <p>20 and on the bottom of page 2, exhibit D is</p> <p>21 identified as a letter for, quote, non-Corinthian</p> <p>22 borrowers who attended schools for which the</p> <p>23 department does have common evidence in its</p> <p>24 possession, and then that's going to be exhibit D.</p> <p>25 A On this one, I don't recall whether I</p>
Page 199 Page	<p>1 B, which I'll call Form Denial B, as a denial</p> <p>2 letter for Corinthian borrowers who assert other</p> <p>3 claims in addition to job placement rate claims?</p> <p>4 A And as I scroll through, I want to</p> <p>5 make. Clear when I saw this document as part of</p> <p>6 the review process, it did not have the COVID-19</p> <p>7 notes, so that's applicable --</p> <p>8 Q Okay.</p> <p>9 A -- of something that's been added that</p> <p>10 was -- I didn't review that. That wasn't in the</p> <p>11 original document.</p> <p>12 Q So at what point did you see Form</p> <p>13 Denial A?</p> <p>14 A It would have been in the time frame</p> <p>15 of, you know, about this time last year.</p> <p>16 Q So this is right around when you wrote</p> <p>17 your declaration saying that the process of</p> <p>18 developing those letters is complete?</p> <p>19 A (Witness nods head.)</p> <p>20 Q Okay. Now, let's look at exhibit C</p> <p>21 which is, quote, non-Corinthian borrowers who</p> <p>22 attended schools for which the department does not</p> <p>23 have any common evidence in its possession.</p> <p>24 A Okay. I'm scrolling down to C. Okay.</p> <p>25 I'm at C.</p>	Page 201 Page	<p>1 reviewed this particular document. I -- I don't</p> <p>2 recall whether this was just based on a template</p> <p>3 that I had already reviewed and this was just a</p> <p>4 derivative of it or whether I saw this one de</p> <p>5 novo. I just can't remember.</p> <p>6 Q Okay. So as between C and D, you</p> <p>7 remember reviewing C but with potentially a more</p> <p>8 general placeholder under Allegation. But D,</p> <p>9 you're not sure you've seen?</p> <p>10 A Let me look at it again and . . .</p> <p>11 (Witness reviews document.)</p> <p>12 This does look familiar to me.</p> <p>13 Q So I'll just -- my understanding is</p> <p>14 that these four denial letters are the result of</p> <p>15 the efforts you describe in your declaration in</p> <p>16 paragraph 26 of developing documents to provide a</p> <p>17 more robust explanation for borrowers whose claims</p> <p>18 are denied.</p> <p>19 And is that -- do I have that right?</p> <p>20 A You do. I mean, again, there could</p> <p>21 have been final editorial changes or format</p> <p>22 changes after I saw them, but, yes, my memory</p> <p>23 is -- this is the kind of thing we were</p> <p>24 discussing, and this document looks very similar</p> <p>25 to what I reviewed.</p>

Page 202 Page	<p>1 Q Are you the person who would give final</p> <p>2 sign-off on the use of these templates?</p> <p>3 A No.</p> <p>4 Q Who is that person?</p> <p>5 A Again, I -- I don't -- I don't know who</p> <p>6 actually signs off on these. I mean, there's a</p> <p>7 departmental process, and I -- I can't tell you</p> <p>8 who the final signer is on -- on this document.</p> <p>9 Q Would the secretary review these?</p> <p>10 A I don't -- I don't know. I don't know</p> <p>11 if the secretary would -- would review this</p> <p>12 document. It -- it's possible, but I don't know.</p> <p>13 Q And what was your involvement in</p> <p>14 drafting these?</p> <p>15 A As -- as -- you know, it was an editing</p> <p>16 role. I -- it would have been an editing role in</p> <p>17 response to somebody else's document.</p> <p>18 Q Okay. Now, I want to look at -- well,</p> <p>19 first -- first I'll ask, so C is for</p> <p>20 non-Corinthian borrowers for schools that do not</p> <p>21 have common evidence. And D is for non-Corinthian</p> <p>22 borrowers who went to school that do have common</p> <p>23 evidence.</p> <p>24 What is meant by "common evidence"?</p> <p>25 A You'd have to ask Colleen Nevin, but I</p>	Page 204 Page	<p>1 A I think it was A. It might have been</p> <p>2 B. But let's go up to A and look.</p> <p>3 (Witness reviews document.)</p> <p>4 So A -- so for the Corinthian</p> <p>5 borrowers, they were all adjudicated under the</p> <p>6 California state law, so that's why this letter</p> <p>7 says California in the template.</p> <p>8 Q Right. On page 2 in the template.</p> <p>9 Okay.</p> <p>10 A But in --</p> <p>11 Q And then --</p> <p>12 A -- in the others, the attorney in the,</p> <p>13 you know, decision/reason or whatever, that's</p> <p>14 where -- that's where they can state which</p> <p>15 standard was used for the adjudication.</p> <p>16 Q Okay. And on the template, where do</p> <p>17 they insert the state law?</p> <p>18 A So in template B, for example, where it</p> <p>19 says, Review recommendation reason, right, the</p> <p>20 reason would be potentially dependent upon the</p> <p>21 state law so -- so that -- that is -- that's</p> <p>22 where -- I think that's the place where the</p> <p>23 attorney would insert it.</p> <p>24 Q Okay. And, so, that review</p> <p>25 recommendation reason, that's also in -- that's</p>
Page 203 Page	<p>1 think that means -- well, I think you should ask</p> <p>2 Colleen Nevin, but I -- I think it means to</p> <p>3 distinguish between evidence provided by the</p> <p>4 student versus evidence that the department may</p> <p>5 have in its possession, but you'd need to check</p> <p>6 with her for the specific terminology.</p> <p>7 Q Well, let's look at the paragraph</p> <p>8 applicable law, and that is -- on exhibit D, it is</p> <p>9 the first page, middle, and it says, For direct</p> <p>10 loans first disbursed prior to July 1st, 2017, a</p> <p>11 borrower may be eligible for a discharge</p> <p>12 (forgiveness) of part of all of one or more direct</p> <p>13 loans if the borrower's school engaged in acts or</p> <p>14 omissions that would give rise to a cause of</p> <p>15 action against the school under applicable state</p> <p>16 law.</p> <p>17 A Uh-huh.</p> <p>18 Q So is there more information about</p> <p>19 which state law is being applied for these</p> <p>20 adjudications in these letters?</p> <p>21 A Well, you know, if you go up to A</p> <p>22 for -- I -- I can scroll through this one, but if</p> <p>23 you go up through A, there's actually a place</p> <p>24 where it would state the state law standard.</p> <p>25 Q Okay. Let's look at that in A.</p>	Page 205 Page	<p>1 also under the allegation template in C and D.</p> <p>2 And, so, your understanding is that's</p> <p>3 where an attorney would write what state law they</p> <p>4 were applying?</p> <p>5 A That's my understanding.</p> <p>6 Q Okay. And that's true for -- I'm</p> <p>7 looking at template C, and also let's look at</p> <p>8 template D, allegation type, so that</p> <p>9 recommendation reason portion is where they would</p> <p>10 insert the state law.</p> <p>11 So when you reviewed these letters, is</p> <p>12 that your understanding of what would happen?</p> <p>13 A Yes.</p> <p>14 Q I have a -- I want to go back to the</p> <p>15 common evidence question. If several borrowers</p> <p>16 said the same thing, would that be considered</p> <p>17 common evidence or individual evidence?</p> <p>18 A I don't know. You'd have to ask</p> <p>19 Colleen. I don't know how they review evidence.</p> <p>20 Q And your understanding of the meaning</p> <p>21 of common evidence as being something that the --</p> <p>22 that the department has, if they had in their</p> <p>23 possession, you know, a whole group of borrowers</p> <p>24 making the same allegation, would that -- would</p> <p>25 that be included just in your definition as you</p>

Page 206 Page	<p>1 understand it?</p> <p>2 A I guess in my mind the differentiation</p> <p>3 is does the department have the evidence from some</p> <p>4 source other than the borrower or does the</p> <p>5 borrower provide the evidence.</p> <p>6 Now, Colleen's group may have, you</p> <p>7 know, subcategories of definitions when it -- I</p> <p>8 just think about it in terms of did the borrower</p> <p>9 submit the evidence or is the evidence somewhere</p> <p>10 else.</p> <p>11 Q Okay. If -- if borrower A from school</p> <p>12 X submitted evidence about -- for themselves, but</p> <p>13 the department has on file evidence about the same</p> <p>14 exact thing from borrowers B through Z of school</p> <p>15 X, is the evidence of those borrowers B through Z</p> <p>16 held by the department as common evidence?</p> <p>17 A I don't know. That would be a</p> <p>18 determination Colleen and her team would make.</p> <p>19 Q Okay. All right. The next exhibit is</p> <p>20 in the folder as ECF number -- this one is labeled</p> <p>21 confusingly. It's ECF number, ECF number 108-08</p> <p>22 Daniel Deegan AFF?</p> <p>23 A Okay.</p> <p>24 Q And have you ever seen this before?</p> <p>25 A (Witness reviews document.)</p>	Page 208 Page	<p>1 A (Witness reviews document.) Okay.</p> <p>2 Q Okay. So we were just talking about</p> <p>3 the state law that a claim is adjudicated under,</p> <p>4 and do you see that anywhere in this document?</p> <p>5 A I don't see it in this document, but</p> <p>6 I -- it is -- there are some determinations that</p> <p>7 are based on state law, and then there are other</p> <p>8 situations where state law wouldn't apply. So,</p> <p>9 for example, the borrower didn't have a loan, but</p> <p>10 it --</p> <p>11 Q Okay. But is this one of those</p> <p>12 situations as you understand it?</p> <p>13 A So I don't know because I haven't seen</p> <p>14 case -- I don't know what he alleges and I don't</p> <p>15 know --</p> <p>16 Q Okay. Well, let's go to on -- the</p> <p>17 first page, which is PDF page 9 of this letter,</p> <p>18 applicable law, and it says the same text was in</p> <p>19 the template, For direct loans first disbursed</p> <p>20 prior to July 1st, 2017, et cetera, against the</p> <p>21 school under applicable state law.</p> <p>22 A Right.</p> <p>23 Q So that matches the template?</p> <p>24 A Yes.</p> <p>25 Q And then where you had expected the</p>
Page 207 Page	<p>1 I don't recall seeing this before.</p> <p>2 Since it's redacted, I guess it's possible it was</p> <p>3 in the documents --</p> <p>4 Q There are some -- I can just let you</p> <p>5 know, there are some redactions just for personal</p> <p>6 information.</p> <p>7 So this is an affidavit filed in this</p> <p>8 case by one of the named plaintiffs, and the</p> <p>9 reason I'm using it as an exhibit today is I'd</p> <p>10 like to look at an example of a denial letter that</p> <p>11 appears to me to be using the templates that we</p> <p>12 just looked at.</p> <p>13 So if we can go to -- it's -- well,</p> <p>14 let's start at PDF page 9. I'm actually -- here,</p> <p>15 let me -- I'm going to have to open this up, too,</p> <p>16 just to make sure I'm in the right PDF. So --</p> <p>17 pardon me. Let's say -- yeah, in PDF page 9, and</p> <p>18 this is an email. Daniel Deegan is the borrower.</p> <p>19 It's dated May 7th, 2020. We've redacted out for</p> <p>20 personal reasons the borrower defense application.</p> <p>21 So if you want to just familiarize</p> <p>22 yourself with the next few pages, which is -- this</p> <p>23 is the denial letter he received, I'd just like to</p> <p>24 ask some questions about it in light of the</p> <p>25 template that we just saw.</p>	Page 209 Page	<p>1 state law to appear was under the allegations</p> <p>2 listed, so let's look at page 10 of this PDF. It</p> <p>3 has, Allegation one, employment prospects. You</p> <p>4 allege Keller Graduate School of Management</p> <p>5 engaged in misconduct related to employment</p> <p>6 prospects. This allegation fails for the</p> <p>7 following reasons, insufficient evidence.</p> <p>8 And there is no state law listed there;</p> <p>9 correct?</p> <p>10 A There -- there is not, but I also don't</p> <p>11 know what the borrower submitted.</p> <p>12 Q Okay. Let's -- we can go back to that.</p> <p>13 The borrower's written application is exhibit A,</p> <p>14 and that begins on PDF 4. So this is an email</p> <p>15 sent to the borrower defense repayment address on</p> <p>16 November 1st, 2016.</p> <p>17 So I -- I guess -- I'm wondering what</p> <p>18 you expect to see in the application that would</p> <p>19 make defining a state law in the denial</p> <p>20 unnecessary or impossible?</p> <p>21 A No, again, I -- I don't know the state</p> <p>22 law standard, so it's --</p> <p>23 Q Right.</p> <p>24 But I just want to establish that this</p> <p>25 denial that he received doesn't include one. I</p>

<p style="text-align: right;">Page 210 Page</p> <p>1 just want to make sure I'm not missing it.</p> <p>2 A Yeah, I agree that this denial doesn't</p> <p>3 include one, but I don't know why.</p> <p>4 Q You don't know why.</p> <p>5 Do you have any idea as to why it might</p> <p>6 not include one?</p> <p>7 A You know, again, I could speculate, but</p> <p>8 I didn't review the --</p> <p>9 Q Speculate away.</p> <p>10 A You know, if -- if -- and I don't -- I</p> <p>11 haven't read -- so, I mean, if -- if the student</p> <p>12 actually didn't have a loan.</p> <p>13 Q If he didn't have a loan, would he</p> <p>14 receive that form denial D template, or would</p> <p>15 there be a different kind of notice he would</p> <p>16 receive saying that you don't even have a loan?</p> <p>17 A I can't remember which template would</p> <p>18 be used for I don't have a loan. I'm just giving</p> <p>19 you an example of where there could be a denial</p> <p>20 that doesn't involve the state standard and it</p> <p>21 would be because it doesn't involve -- you know,</p> <p>22 it doesn't meet the federal standard, doesn't have</p> <p>23 a loan or, you know --</p> <p>24 Q So it would be -- is it your view that</p> <p>25 it would be an unusual case for a denial notice</p>	<p style="text-align: right;">Page 212 Page</p> <p>1 standard would be applied. I mean, as the</p> <p>2 template says, the temp- -- and his letter</p> <p>3 actually says, For direct loans first disbursed</p> <p>4 prior to July 1st, 2017, a borrower may be</p> <p>5 eligible for a discharge, et cetera, for a cause</p> <p>6 of action under -- against the school under</p> <p>7 applicable state law.</p> <p>8 So given that statement of applicable</p> <p>9 law, that's saying we're going to apply the state</p> <p>10 law. And, so, when state law is going to be</p> <p>11 applied, your expectation would be that the</p> <p>12 borrower would be told the law of which state is</p> <p>13 being applied?</p> <p>14 MR. MERRITT: Objection: speculative.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q When a borrower receives a denial</p> <p>17 notice that gives this notice about what law</p> <p>18 applies, is it your expectation that the letter</p> <p>19 would include which law applies?</p> <p>20 MR. MERRITT: Objection: speculative.</p> <p>21 MS. O'GRADY: I'm really just asking</p> <p>22 about what the template -- how the template is</p> <p>23 used and how the witness expects the template to</p> <p>24 be used. I do think it's already on the record so</p> <p>25 I can move on.</p>
<p style="text-align: right;">Page 211 Page</p> <p>1 based on form denial D to not include the state</p> <p>2 standard used?</p> <p>3 A I don't know what's usual or not usual</p> <p>4 because I don't do the adjudication. I --</p> <p>5 Q Right.</p> <p>6 A -- don't --</p> <p>7 Q But when we were talking about the</p> <p>8 template just now, your expectation was that it</p> <p>9 would include the specific state standard when it</p> <p>10 was sent out?</p> <p>11 A If the decision was based on the state</p> <p>12 standard.</p> <p>13 Q Okay. And under what circumstances</p> <p>14 could a decision not be based on a state standard?</p> <p>15 A If it doesn't meet the federal</p> <p>16 standard, the application was incomplete, no</p> <p>17 evidence was submitted, no claim of</p> <p>18 misrepresentation was made, those are some</p> <p>19 examples I can think of. But, again, I don't</p> <p>20 adjudicate claims. I can't imagine all the</p> <p>21 examples because I haven't seen them.</p> <p>22 Q Okay. But a standard application, say,</p> <p>23 that alleges misrepresentation, the person has a</p> <p>24 loan.</p> <p>25 It's your expectation that a state</p>	<p style="text-align: right;">Page 213 Page</p> <p>1 MR. MERRITT: You have her prior</p> <p>2 answers, but --</p> <p>3 MS. O'GRADY: Okay.</p> <p>4 MR. MERRITT: But if you'd like to</p> <p>5 clarify that answer, you can.</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q When you said one of the reasons it</p> <p>8 might not include a state law statement was that</p> <p>9 it didn't meet the federal standard, what did you</p> <p>10 mean by that?</p> <p>11 A To be applicable, it has to meet, you</p> <p>12 know, the federal definition, meaning it has to be</p> <p>13 a direct loan. It has to be a federal loan. It</p> <p>14 has to be, you know, associated within enrollment,</p> <p>15 and --</p> <p>16 Q Okay. So this threshold --</p> <p>17 A Yeah, threshold.</p> <p>18 Q -- determinations, okay.</p> <p>19 A And there has to be evidence against</p> <p>20 which to make the determination. I mean, I think</p> <p>21 that's implicit.</p> <p>22 Q Right.</p> <p>23 A You know, there has to be evidence to</p> <p>24 evaluate.</p> <p>25 Q So we're in agreement that this denial</p>

Page 214 Page	<p>1 letter that Mr. Deegan received is based on that</p> <p>2 form D template. I think that's --</p> <p>3 A It appears that's --</p> <p>4 Q It appears to be.</p> <p>5 But this one does not include a mention</p> <p>6 of which state law applies?</p> <p>7 A I would agree.</p> <p>8 Q Would it surprise you to know that</p> <p>9 thousands of these denial letters that have been</p> <p>10 sent, none include which state law applies?</p> <p>11 MR. MERRITT: Objection: Speculative.</p> <p>12 MS. O'GRADY: I don't think that's</p> <p>13 speculative, and I would like to know if the</p> <p>14 witness would be surprised to learn that.</p> <p>15 MR. MERRITT: She stated her -- that</p> <p>16 show doesn't have the files before her for each</p> <p>17 and every application.</p> <p>18 MS. O'GRADY: No, but I'm not asking</p> <p>19 her to look at each and every application. I want</p> <p>20 to know if that would be a surprise.</p> <p>21 MR. MERRITT: Go ahead.</p> <p>22 THE WITNESS: It would -- you know, I'd</p> <p>23 have to know more of the specifics.</p> <p>24 BY MS. O'GRADY:</p> <p>25 Q But again, going back to the template</p>	Page 216 Page	<p>1 Does this also include the common</p> <p>2 evidence that Ed would have for certain schools?</p> <p>3 A You know, again that would be something</p> <p>4 you'd have to ask the BD attorneys. I don't know</p> <p>5 how they look at evidence, so I -- I can't answer</p> <p>6 your question.</p> <p>7 Q Okay. You had said that no state law</p> <p>8 would have to be applied for a borrower who did</p> <p>9 not submit any evidence for their claim. What</p> <p>10 denial letter would they get, what form?</p> <p>11 A You know, I -- I -- I don't know off</p> <p>12 the top of my head. I don't -- I don't know.</p> <p>13 Q Okay. We're going to look at the next</p> <p>14 exhibit which is file name ECF number 129-1,</p> <p>15 Connor Declaration, Plaintiffs' Motion to Enforce.</p> <p>16 (Jones Deposition Exhibit 14 was marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 THE WITNESS: All right. Okay. I have</p> <p>20 it open.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q Okay. So this is kind of a bulky</p> <p>23 document and I can -- it is a document that was</p> <p>24 submitted to the court that includes an affidavit</p> <p>25 from another one of the named plaintiffs. And</p>
Page 215 Page	<p>1 of form D, the intention of form D was to tell</p> <p>2 borrowers what state law applied; right?</p> <p>3 A That was the intent.</p> <p>4 Q And when you wrote in your declaration</p> <p>5 that you were developing documents so that, quote,</p> <p>6 borrowers would understand the basis for the</p> <p>7 decision, part of that basis is which state law</p> <p>8 would apply; right?</p> <p>9 A If it -- if the state law is at this --</p> <p>10 is the subject of the review and the decision,</p> <p>11 right. If the state law is the source of the</p> <p>12 determination.</p> <p>13 Q And other sources of determination</p> <p>14 would be you don't have a loan not meeting those</p> <p>15 threshold requirements of even being adjudicated;</p> <p>16 correct?</p> <p>17 A Or you provided no evidence.</p> <p>18 Q Okay. Let's -- on Mr. Deegan's denial,</p> <p>19 let's go to PDF page 10, and it says there, Why</p> <p>20 was my application determined to be ineligible.</p> <p>21 And it says, Ed reviewed your borrower</p> <p>22 defense claims based on any evidence submitted by</p> <p>23 you in support of your application, your loan data</p> <p>24 from National Student Loan Data System and</p> <p>25 evidence provided by other borrowers.</p>	Page 217 Page	<p>1 like the previous one we just looked at, I'd like</p> <p>2 to look at her denial letter.</p> <p>3 So if you scroll ahead, it's PDF</p> <p>4 page 24 that that document begins.</p> <p>5 A Okay.</p> <p>6 MS. O'GRADY: And, for the record, this</p> <p>7 is Exhibit 15. And the previous Daniel Deegan</p> <p>8 affidavit that we just looked at is Exhibit 14.</p> <p>9 (Jones Deposition Exhibit 15 was marked</p> <p>10 for identification and attached to the</p> <p>11 transcript.)</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q Okay. It's actually page 27 of the PDF</p> <p>14 it begins. I apologize. So like Mr. Deegan's</p> <p>15 that we just looked at, this is Ms. Sweet's</p> <p>16 borrower defense application. And the personal</p> <p>17 information is redacted, but nothing besides that.</p> <p>18 A (Witness reviews document.)</p> <p>19 Q And if you can take a -- take a look at</p> <p>20 the information she provides, she provides</p> <p>21 narrative information about her experience at</p> <p>22 Brooks.</p> <p>23 A And, so, I'm recused from -- from any</p> <p>24 matter -- I have voluntarily recused myself from</p> <p>25 any matter pertaining to a school that was owned</p>

Page 218 Page	<p>1 or operated by Career Education Corporation, so</p> <p>2 I'm recused from this one.</p> <p>3 Q Okay. So how does that affect your --</p> <p>4 how does that affect your role more generally?</p> <p>5 A I don't review -- I don't review -- I</p> <p>6 don't make determinations, so --</p> <p>7 Q Okay. You had a role in reviewing the</p> <p>8 borrower defense denial templates we just looked</p> <p>9 at, though; correct?</p> <p>10 A Yeah, the generic template.</p> <p>11 Q And some of those do go out to students</p> <p>12 who attended the ECC schools?</p> <p>13 A That's not how the recusal process</p> <p>14 works. The recusal process at the Department of</p> <p>15 Ed is based on particular matters for a particular</p> <p>16 institution.</p> <p>17 Q How long has this voluntary recusal</p> <p>18 been in place?</p> <p>19 A I voluntarily recused myself from the</p> <p>20 particular matters with the particular</p> <p>21 institutions related to CEC from the day I</p> <p>22 returned to the department.</p> <p>23 Q And is there documentation of the</p> <p>24 recusal?</p> <p>25 A Our -- our ethics -- I'm sure our</p>	Page 220 Page	<p>1 with the name of an institution -- and, in fact,</p> <p>2 that includes -- you know, I have asked Mark to</p> <p>3 mask the names, right, so I don't -- I don't get</p> <p>4 statistics that would delineate the CEC schools or</p> <p>5 outcomes.</p> <p>6 Q So he -- he you ask Mark to mask the</p> <p>7 names when you receive, you know, like a list of</p> <p>8 pending applications so you don't know how many</p> <p>9 are from CEC schools?</p> <p>10 A Correct. He sent -- after he sent the</p> <p>11 first one, I sent an email back saying please</p> <p>12 don't send me a list with the names of schools.</p> <p>13 Q So I want to understand how this works.</p> <p>14 So he'll redact out all the names of all the</p> <p>15 schools, then, or else you'd know that it was CEC;</p> <p>16 right?</p> <p>17 A He's just stopped sending me the list</p> <p>18 with the school names.</p> <p>19 Q So you get a list but no school names,</p> <p>20 or you get no list?</p> <p>21 A I get the roll-up numbers.</p> <p>22 Q Okay. So how else does this voluntary</p> <p>23 recusal affect -- affect your role?</p> <p>24 MR. MERRITT: Objection. She's</p> <p>25 explained the basis of the recusal, and at this</p>
Page 219 Page	<p>1 ethics officer would have that. I mean --</p> <p>2 Q And how -- so how -- how broad is it?</p> <p>3 I mean, you're recusing yourself from reviewing</p> <p>4 this denial letter for a Brooks student.</p> <p>5 A Right. I would not --</p> <p>6 Q How else would it affect your job?</p> <p>7 A I would not make -- I would not issue a</p> <p>8 decision on any matter regarding an institution</p> <p>9 owned and operated by CEC.</p> <p>10 Q So can you explain further what that --</p> <p>11 what that means operationally for your</p> <p>12 policy-making role or any kind of review that you</p> <p>13 do of -- of policies that might affect CEC?</p> <p>14 A That's not how recusals work. Recusals</p> <p>15 are not -- I mean, you know, I worked at Princeton</p> <p>16 and Community College of Baltimore County. I</p> <p>17 don't -- you know, my recusal doesn't mean that I</p> <p>18 can't look at any matter that might have an impact</p> <p>19 on Ivy League colleges. It's particular.</p> <p>20 So anything -- so in particular, I</p> <p>21 would not look at something about a student who</p> <p>22 attended Brooks Institute. I mean, first of all,</p> <p>23 I wouldn't look at these anyway because I don't</p> <p>24 adjudicate the decisions. I don't review the</p> <p>25 decisions. But as a practice, anything that comes</p>	Page 221 Page	<p>1 point it's getting beyond the scope of what the</p> <p>2 court ordered.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q Well, I want to understand if this</p> <p>5 recusal affects in any way your decision to sign</p> <p>6 off on -- or decision to sign off or not sign off</p> <p>7 on decisions.</p> <p>8 We talked a lot about the decision not</p> <p>9 to send denials. I want to understand the full</p> <p>10 scope of it.</p> <p>11 MR. MERRITT: She's answered the</p> <p>12 question.</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q Okay. So nothing else to add?</p> <p>15 A (Witness shakes head.)</p> <p>16 Q Okay. When you were developing your</p> <p>17 partial -- working on developing the partial</p> <p>18 relief methodology that went into effect in</p> <p>19 December 2019, was that -- did you consider CEC</p> <p>20 schools during that, or were you also --</p> <p>21 A There were no -- there were no data on</p> <p>22 CEC schools, no. We looked at the methodology</p> <p>23 based on the data available, which at that point</p> <p>24 in time was Corinthian and ITT.</p> <p>25 Q And no -- and no other schools?</p>

Page 222 Page	<p>1 A No other schools had data available</p> <p>2 when we --</p> <p>3 Q So if there were no other schools of</p> <p>4 data available, how was that methodology going to</p> <p>5 be used for schools other than Corinthian and ITT?</p> <p>6 A By methodology, what I mean is the</p> <p>7 methodology requires earnings tables to be</p> <p>8 developed, and at the time that we were developing</p> <p>9 the methodologies, the FSA team had earnings</p> <p>10 tables only for Corinthian and ITT.</p> <p>11 Q And why is that?</p> <p>12 A Because it takes time --</p> <p>13 MR. MERRITT: Objection to the scope of</p> <p>14 the questioning.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q Well, I -- I am going back a couple of</p> <p>17 topics, but I do want to understand that the</p> <p>18 partial relief methodology that was -- that was --</p> <p>19 you've testified you were not able to use because</p> <p>20 of the Calvillo Manriquez injunction was for all</p> <p>21 schools, not just CCI and Corinthian; correct?</p> <p>22 MR. MERRITT: Objection. It calls for</p> <p>23 speculation.</p> <p>24 Go ahead, Diane.</p> <p>25 THE WITNESS: You keep mixing the 2017</p>	Page 224 Page	<p>1 that relies on earnings data, and the data tables</p> <p>2 under which I -- I and the team developed the 2019</p> <p>3 methodology, the data tables had been developed</p> <p>4 only for Corinthian and ITT.</p> <p>5 Q Okay. So if we can go back to your</p> <p>6 declaration, which is Exhibit 2?</p> <p>7 A Okay.</p> <p>8 Q And this is when you say that the</p> <p>9 department has had to address a number of</p> <p>10 challenges in developing a new methodology</p> <p>11 including identification of an accurate, reliable</p> <p>12 and accessible source of earnings data that would</p> <p>13 not raise concerns about privacy.</p> <p>14 A Yes.</p> <p>15 Q So were you able to identify that</p> <p>16 source of earnings data?</p> <p>17 A Ultimately, yes.</p> <p>18 Q And when did that identification</p> <p>19 process begin?</p> <p>20 A I can't remember the exact timeline.</p> <p>21 The college developed the college scorecard, and</p> <p>22 in that process was able to get earnings data from</p> <p>23 the IRS. And, so, once that had happened, we</p> <p>24 identified that as a potential data source because</p> <p>25 it was being published in the college scorecard.</p>
Page 223 Page	<p>1 and the 2019 methodology. I wasn't involved in</p> <p>2 the 2017 methodology, so I don't know what they</p> <p>3 looked at or -- I wasn't --</p> <p>4 BY MS. O'GRADY:</p> <p>5 Q But you were involved in the -- the not</p> <p>6 being able to apply it because it was enjoined. I</p> <p>7 mean, that was -- that happened during your</p> <p>8 tenure, the --</p> <p>9 A But it wasn't my decision.</p> <p>10 Q Right. But you testified that that's</p> <p>11 why -- I mean, before Congress and in your</p> <p>12 declaration you explained. I'm asking you about</p> <p>13 it because you said, you know, we were not going</p> <p>14 to apply that methodology because it was enjoined</p> <p>15 by the Calvillo Manriquez court?</p> <p>16 A That was the decision that the</p> <p>17 department had made. Yes, the methodology was</p> <p>18 enjoined and until the court issued a final</p> <p>19 bulleting, yeah, it was enjoined.</p> <p>20 Q Okay. It wasn't because you didn't</p> <p>21 have data for other schools; it was because it was</p> <p>22 enjoined?</p> <p>23 A So on the 2017 methodology, yes. You</p> <p>24 were asking me about the 2019 methodology that I</p> <p>25 was developing, and what I'm telling you there is</p>	Page 225 Page	<p>1 Q But you recused yourself from looking</p> <p>2 at the data for CEC schools?</p> <p>3 A There was no data for CEC schools.</p> <p>4 Q What do you mean there was no data for</p> <p>5 CEC schools?</p> <p>6 A If you're talking about the development</p> <p>7 of the methodology, there were no data tables on</p> <p>8 earnings for CEC schools.</p> <p>9 Q Why?</p> <p>10 A Because they hadn't gotten to it yet.</p> <p>11 Q They just hadn't gotten to it yet?</p> <p>12 A They just hadn't gotten to it.</p> <p>13 Q Because it was delayed or they just --</p> <p>14 they had a list of schools they just hadn't gotten</p> <p>15 there?</p> <p>16 A I think you don't understand how</p> <p>17 complicated it is to make these data tables.</p> <p>18 Q What was the order of schools to make</p> <p>19 the data tables for? Was there a priority of</p> <p>20 schools?</p> <p>21 A Yes, Corinthian and then --</p> <p>22 Corinthian and then ITT?</p> <p>23 A Yes.</p> <p>24 Q And then, was the order of schools</p> <p>25 based on how many borrower defense applications</p>

Page 226 Page	<p>1 had been filed against that school?</p> <p>2 A That wasn't my decision to make. Other</p> <p>3 than Corinthian and ITT, it was up to the borrower</p> <p>4 defense unit to determine how they were going to</p> <p>5 move through the remaining schools.</p> <p>6 Q Okay. At this point, have they moved</p> <p>7 through those remaining schools?</p> <p>8 A I don't know.</p> <p>9 Q So it's possible that there are groups</p> <p>10 of schools for which step-two determinations are</p> <p>11 still not possible because the earnings data</p> <p>12 haven't been gathered yet?</p> <p>13 A It's possible.</p> <p>14 Q Do you know how many schools that might</p> <p>15 be true for?</p> <p>16 A To my knowledge, I've only seen one</p> <p>17 other earnings data table, so I don't -- I haven't</p> <p>18 seen the complete set. I've only seen one other</p> <p>19 earnings data table in the --</p> <p>20 Q What's -- what's the one other you've</p> <p>21 seen?</p> <p>22 A It was for a school group called EDMC.</p> <p>23 Q Okay. So at this point, the only</p> <p>24 schools you know for sure can have step-two</p> <p>25 determinations made for them are Corinthian, ITT</p>	Page 228 Page	<p>1 A I don't really have an expectation, and</p> <p>2 it's all a matter of timing.</p> <p>3 Q What do you mean by that?</p> <p>4 A I mean, I don't suspect they're going</p> <p>5 to have data tables for every school by</p> <p>6 January 20th.</p> <p>7 Q Yeah.</p> <p>8 And that is the end of your tenure, you</p> <p>9 suspect?</p> <p>10 A I suspect.</p> <p>11 Q And who is sending you the data? Is</p> <p>12 that coming from FSA?</p> <p>13 A Yes.</p> <p>14 Q Who specifically?</p> <p>15 A It comes either from Mark Brown or it</p> <p>16 comes from Ian Foss.</p> <p>17 Q Okay.</p> <p>18 MS. O'GRADY: Can we take a five-minute</p> <p>19 break? Is that okay?</p> <p>20 MR. MERRITT: Yes.</p> <p>21 MS. O'GRADY: We can all use one, I</p> <p>22 suspect. Okay. We'll be back here at 3:50, 3:51.</p> <p>23 THE VIDEOGRAPHER: We are going off the</p> <p>24 record. The time is 20:46 UTC time.</p> <p>25 (Recess -- 3:46 p.m.)</p>
Page 227 Page	<p>1 and EDMC schools?</p> <p>2 A Those are the only schools for whom</p> <p>3 I've seen data tables. It could be they have them</p> <p>4 for other schools and they haven't shared them</p> <p>5 with me.</p> <p>6 Q Okay. Is that likely that you wouldn't</p> <p>7 see them if they existed?</p> <p>8 A I certainly wouldn't see it if it</p> <p>9 existed for a CEC school.</p> <p>10 Q Okay. But other schools you would?</p> <p>11 A Potentially.</p> <p>12 Q How did you come upon seeing the EDMC</p> <p>13 data?</p> <p>14 A I can't remember. I can't remember</p> <p>15 if -- if I saw it because I asked to see it or</p> <p>16 whether it was sent to me because it was the next</p> <p>17 school in line. I -- I can't remember what</p> <p>18 started the chain, but they -- they did send me</p> <p>19 the EDMC data table.</p> <p>20 Q Okay. And after you sent -- and when</p> <p>21 was -- when was that?</p> <p>22 A That was recently.</p> <p>23 Q Okay. And is it your expectation that</p> <p>24 you'll be sent the data for other schools besides</p> <p>25 CEC?</p>	Page 229 Page	<p>1 (After recess -- 3:56 p.m.)</p> <p>2 THE VIDEOGRAPHER: Okay. We're now</p> <p>3 back on the record. The time is 20:56 UTC time.</p> <p>4 BY MS. O'GRADY:</p> <p>5 Q Okay. Ms. Jones, I'm wondering if in</p> <p>6 your time at the Department of Ed you've been</p> <p>7 involved in discussions about the sale of the loan</p> <p>8 portfolio.</p> <p>9 A I'm -- I'm sorry. Could you -- I'm not</p> <p>10 sure what you're asking me.</p> <p>11 Q Have you been involved in any</p> <p>12 discussions about the overall valuation of the</p> <p>13 loan portfolio?</p> <p>14 A I have been involved in conversations</p> <p>15 about the valuation, but that's not the sale of</p> <p>16 the portfolio. That's the valuation of the</p> <p>17 portfolio.</p> <p>18 Q Right.</p> <p>19 And those conversations, what was --</p> <p>20 what was the purpose of them?</p> <p>21 MR. MERRITT: Objection: both scope and</p> <p>22 potentially calling for privileged information.</p> <p>23 MS. O'GRADY: We can use a document as</p> <p>24 a starting off point if that would be easier.</p> <p>25 Let's go to -- the document is -- the</p>

Page 230 Page	<p>1 document title is Article, Trump administration</p> <p>2 hires McKinsey to evaluate student-loan portfolio.</p> <p>3 And let's mark this as Exhibit 16.</p> <p>4 (Jones Deposition Exhibit 16 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q And have you seen this article?</p> <p>9 A No.</p> <p>10 Q Are you aware of McKinsey's analysis?</p> <p>11 A Yes.</p> <p>12 Q And is that what you're referring to,</p> <p>13 discussion about valuation?</p> <p>14 A You know, I -- I think valuation is</p> <p>15 probably the wrong word. The determination was</p> <p>16 to, you know, correctly identify the level of risk</p> <p>17 in the portfolio, so I think -- I think valuation</p> <p>18 is the wrong term. But the idea is that we need</p> <p>19 to project what the cost of managing the loan</p> <p>20 program and what the cost of the loan program with</p> <p>21 gains are going to be to the taxpayer, and so this</p> <p>22 was a method to determine either the cost or the</p> <p>23 source of revenue that the loan portfolio would be</p> <p>24 to the taxpayer.</p> <p>25 Q And has a conclusion been reached?</p>	Page 232 Page	<p>1 of the witness to narrow the -- to try to, you</p> <p>2 know --</p> <p>3 MR. MERRITT: I mean, I'm inclined to</p> <p>4 say this is all beyond the scope of the -- what's</p> <p>5 been authorized. I mean, if you think this is</p> <p>6 going to be a short line of questioning --</p> <p>7 MS. O'GRADY: I can -- I can make it</p> <p>8 short. Let me -- I'm going to ask --</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q If I can ask you, Ms. Jones, in your</p> <p>11 policy role at the Department of Ed in evaluating</p> <p>12 or in determining policy regarding borrower</p> <p>13 defense, did you consider the valuation of the</p> <p>14 overall portfolio?</p> <p>15 A No.</p> <p>16 Q And is -- is the likelihood of</p> <p>17 default -- has that been considered when you've</p> <p>18 had a policy role regarding borrower defense?</p> <p>19 A Meaning?</p> <p>20 Q The population of borrowers who filed</p> <p>21 borrower defense claims, their likelihood of</p> <p>22 default, have you evaluated that in your position?</p> <p>23 A No. I mean, I will say none of them</p> <p>24 are at risk of default because when they file a</p> <p>25 claim, they're in forbearance. But, you know,</p>
Page 231 Page	<p>1 MR. MERRITT: Objection to scope. I'm</p> <p>2 just going to ask what is the relevance to this</p> <p>3 line of questioning?</p> <p>4 MS. O'GRADY: I think discussions about</p> <p>5 the valuation of the loan portfolio go into, you</p> <p>6 know, the reasons for policy handling borrower</p> <p>7 defense claims, whether or not there's a concern</p> <p>8 about the cost of granting those claims and the</p> <p>9 reasons for delaying decisions.</p> <p>10 MR. MERRITT: I don't think that goes</p> <p>11 to the extent to which the difficulty of reviewing</p> <p>12 borrower defense applications actually caused or</p> <p>13 justified the Secretary's 18-month delay.</p> <p>14 MS. O'GRADY: Well, I think it goes to,</p> <p>15 you know, the -- the loan portfolio includes</p> <p>16 claims that are borrower defense claims, so the</p> <p>17 decision on those borrower defense claims affects</p> <p>18 the valuation of the portfolio and vice versa. I</p> <p>19 think those policies are intertwined.</p> <p>20 MR. MERRITT: But that's not a topic</p> <p>21 the court authorized discovery on.</p> <p>22 MS. O'GRADY: The policy of Brown's</p> <p>23 cancellation of student debt and cancellation of</p> <p>24 loans based on borrower defense applications,</p> <p>25 specifically -- I mean, can I ask a few questions</p>	Page 233 Page	<p>1 there is no analysis because they can't default</p> <p>2 while they're in forbearance.</p> <p>3 Q That's true. I suppose I'm asking,</p> <p>4 though, you know, outside the forbearance granted</p> <p>5 by having filed a borrower defense application, is</p> <p>6 the population of borrowers who file borrower</p> <p>7 defense applications their likelihood of default</p> <p>8 once they are denied and back in repayment, has</p> <p>9 that been a consideration that you've taken into</p> <p>10 account in your role?</p> <p>11 A No.</p> <p>12 MS. O'GRADY: Okay. The next -- the</p> <p>13 next document is in the folder as Article, DeVos</p> <p>14 orders partial loan relief. And this I'm going to</p> <p>15 mark as Exhibit 17 to this deposition.</p> <p>16 (Jones Deposition Exhibit 17 was marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 BY MS. O'GRADY:</p> <p>20 Q This is an article from December 6th,</p> <p>21 2019. And have you seen this article before?</p> <p>22 A Probably.</p> <p>23 Q Okay. Okay. And then in the middle of</p> <p>24 this second page it says, DeVos in recent weeks</p> <p>25 directed the Education Department to carry out a</p>

Page 234 Page	<p>1 new policy that will provide partial loan</p> <p>2 forgiveness to many borrowers whom the agency</p> <p>3 determines were duped or cheated by their</p> <p>4 colleges, according to an internal memo obtained</p> <p>5 by POLITICO.</p> <p>6 Is this referring to the -- the partial</p> <p>7 relief methodology that went into effect in</p> <p>8 December of 2019 that we've been discussing today?</p> <p>9 MR. MERRITT: Objection: speculative.</p> <p>10 MS. O'GRADY: How so?</p> <p>11 MR. MERRITT: Well, I mean, you're</p> <p>12 asking her to state what the intent of the</p> <p>13 article -- the POLITICO article was.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q Well, is there -- besides the partial</p> <p>16 relief methodology that went into effect in</p> <p>17 December of 2019 that we've discussed today, was</p> <p>18 there another new policy that Secretary DeVos</p> <p>19 directed the Education Department to carry out in</p> <p>20 December 2019?</p> <p>21 MR. MERRITT: You can answer the</p> <p>22 question.</p> <p>23 THE WITNESS: Oh, okay.</p> <p>24 I am not aware of another -- of a</p> <p>25 different methodology or a different policy.</p>	Page 236 Page	<p>1 articles. I'm not really sure -- yeah, I mean,</p> <p>2 it's another POLITICO story. I don't know -- I</p> <p>3 don't know how to answer the question.</p> <p>4 Q Okay. So do you recall -- if Secretary</p> <p>5 DeVos sent a memo in November 2019 that directed</p> <p>6 the Education Department to carry out a new policy</p> <p>7 that would provide partial loan forgiveness, you</p> <p>8 would have seen such a memo; right?</p> <p>9 A Yes.</p> <p>10 Q And as far as you know, there was no</p> <p>11 other policy in December 2019 that she would have</p> <p>12 been circulating a memo about besides the one</p> <p>13 we've been discussing today that was the partial</p> <p>14 relief policy that went into effect in December of</p> <p>15 2019; right?</p> <p>16 A I -- I don't believe there were other</p> <p>17 memos.</p> <p>18 Q Okay. And then if we go to PDF page 5</p> <p>19 of this article -- actually, I'm sorry, Ms. Jones.</p> <p>20 Let's just -- I want to just stay actually on this</p> <p>21 first page for a moment.</p> <p>22 A Uh-huh.</p> <p>23 Q The bottom paragraph, it says that the</p> <p>24 memo, quote, Instructs department officials to</p> <p>25 resume issuing decisions on some of the roughly</p>
Page 235 Page	<p>1 BY MS. O'GRADY:</p> <p>2 Q Okay. The next paragraph, The memo,</p> <p>3 which was signed by DeVos in mid-November and</p> <p>4 hasn't been reported previously, have you seen</p> <p>5 that memorandum?</p> <p>6 MS. O'GRADY: Objection, again -- I</p> <p>7 mean, it's speculative.</p> <p>8 BY MS. O'GRADY:</p> <p>9 Q Okay. Ms. Jones, have you seen any</p> <p>10 memorandum --</p> <p>11 MR. MERRITT: You can answer.</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q -- signed by DeVos in mid-November</p> <p>14 regarding this subject matter?</p> <p>15 A I want to be clear. Are you asking me</p> <p>16 if I have seen a memo -- asking if I have seen a</p> <p>17 memo --</p> <p>18 Q So this part of the article is</p> <p>19 discussing a memo signed by Betsy DeVos in</p> <p>20 mid-November to carry out a new policy that would</p> <p>21 provide partial loan forgiveness.</p> <p>22 I'm just wondering if that -- if you've</p> <p>23 seen such a memo.</p> <p>24 A I mean, again, you know, I don't -- I</p> <p>25 don't know -- Michael Stratford writes lots of</p>	Page 237 Page	<p>1 225,000 [verbatim] pending applications filed by</p> <p>2 borrowers seeking debt relief based on their</p> <p>3 colleges' alleged misconduct.</p> <p>4 Do you recall a memo instructing</p> <p>5 department officials to resume issuing decisions?</p> <p>6 A Yes. I don't know if that's the memo</p> <p>7 that Michael Stratford is referring to, but, yes,</p> <p>8 I have.</p> <p>9 Q Okay. You've seen a memo like that?</p> <p>10 A Yes.</p> <p>11 MS. O'GRADY: Okay. I would just say</p> <p>12 to counsel, I don't believe we have that memo and</p> <p>13 we would like it produced.</p> <p>14 MR. MERRITT: Okay.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q Ms. Jones, what was -- what do you</p> <p>17 remember about the content of that -- of that memo</p> <p>18 instructing officials to resume issuing decisions?</p> <p>19 A All right. I recall that it described</p> <p>20 the methodology. It -- it described options that</p> <p>21 the team had come up with and it included a</p> <p>22 recommendation for the option that the group found</p> <p>23 to be the most scientifically rigorous, defensible</p> <p>24 methodology.</p> <p>25 Q And when you say "group," what group</p>

Page 238 Page	<p>1 are you referring to?</p> <p>2 A This is the group I told you about</p> <p>3 earlier that was primarily my -- myself, Michael</p> <p>4 Brickman from my office, Ian Foss. I think by</p> <p>5 this time Jeff Appel had died, so I think he was</p> <p>6 no longer involved. Or, actually, he might not</p> <p>7 have died yet, but in think he was maybe in the</p> <p>8 hospital. I can't remember the timeline.</p> <p>9 And then there were various</p> <p>10 representatives of the Office of General Counsel.</p> <p>11 Q Okay.</p> <p>12 A And potentially Robin Minor and other</p> <p>13 FSA staff, you know, they came in and out.</p> <p>14 Q And to the extent the memo instructs</p> <p>15 department officials to resume issuing decisions,</p> <p>16 what officials would that have been instructing?</p> <p>17 A FSA.</p> <p>18 Q FSA officials, so that's Colleen Nevin?</p> <p>19 A The BD team, I mean Mark --</p> <p>20 Q Okay.</p> <p>21 A -- and whoever his team was.</p> <p>22 Q Okay. And implicit in an instruction</p> <p>23 to resume issuing decisions is that the decisions</p> <p>24 have not been ongoing; correct?</p> <p>25 A I -- I -- I think -- you know, again,</p>	Page 240 Page	<p>1 a memo. It did lay out the options. It included</p> <p>2 the recommendations --</p> <p>3 Q Okay.</p> <p>4 A -- as it was prepared by Mark, myself</p> <p>5 and our teams.</p> <p>6 MR. MERRITT: And, Diane, if you need</p> <p>7 to read the whole article, please take the time to</p> <p>8 do that.</p> <p>9 MS. O'GRADY: Counsel, I will just say</p> <p>10 I don't believe we have this memo. To the extent</p> <p>11 it is the same or differently from the one we just</p> <p>12 addressed, I ask that it be produced.</p> <p>13 MR. MERRITT: Noted.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q So, Ms. Jones, in the next paragraph</p> <p>16 that we just looked at, it says, The memo says the</p> <p>17 department believes that it should determine that</p> <p>18 a defrauded borrower was harmed financially by a</p> <p>19 college's misconduct, quote, only when the</p> <p>20 earnings imputed to the borrower are significantly</p> <p>21 different than the median wages of other borrowers</p> <p>22 who attended similar programs across the country.</p> <p>23 I understand you can't check that</p> <p>24 quotation because you don't have the memo in front</p> <p>25 of you, but is that statement generally accurate</p>
Page 239 Page	<p>1 there were no notices being issued, but it is --</p> <p>2 it is my understanding that the unit was</p> <p>3 continuing to review data and claims. So, you</p> <p>4 know, again, I think we need to be careful about</p> <p>5 our terminology, but I think I've already said</p> <p>6 that, yes, the department made the decision to not</p> <p>7 issue denials after the California court ruling.</p> <p>8 I think I said that a while ago.</p> <p>9 Q Okay. Let's go to PDF page 5 of this</p> <p>10 article. So the top paragraph here says, The</p> <p>11 ten-page memo was prepared by Diane Auer Jones, a</p> <p>12 top advisor on education issues -- my apologies if</p> <p>13 I did not pronounce your name correctly -- and</p> <p>14 Mark Brown who leads the department's Office of</p> <p>15 Federal Student Aid.</p> <p>16 Is this correct that the memo that</p> <p>17 we're talking about was written by you or is this</p> <p>18 a different memo?</p> <p>19 A Again, you know, there is a memo that</p> <p>20 was prepared by Mark and myself and the teams, and</p> <p>21 that memo laid out the options for the secretary.</p> <p>22 Whether or not that's the document Michael</p> <p>23 Stratford is referring to, I do not know. He</p> <p>24 doesn't leave a picture of the document.</p> <p>25 But, yes, as I said earlier, there was</p>	Page 241 Page	<p>1 to what the policy was?</p> <p>2 A I'm -- I'm trying to find that place in</p> <p>3 the --</p> <p>4 Q Oh, my apologies. So it's PDF page 5,</p> <p>5 and it's the second full paragraph.</p> <p>6 A I don't think we would have stated it</p> <p>7 the way that it is stated in POLITICO, but it is</p> <p>8 true that we used earnings from -- as the</p> <p>9 indicator of financial harm.</p> <p>10 Q And the comparator of other programs,</p> <p>11 what -- how are -- how are comparator programs</p> <p>12 identified?</p> <p>13 A This is something that federal student</p> <p>14 aid does through the use of a Classification of</p> <p>15 Instructional Program code, a CIP code.</p> <p>16 Q I have a question regard -- not</p> <p>17 regarding this article, necessarily. If a</p> <p>18 step-one determination for a borrower's</p> <p>19 application is a grant, and then under the partial</p> <p>20 relief methodology they are given 0 percent</p> <p>21 relief, is your understanding that is then an</p> <p>22 approval of a claim or a denial of a claim?</p> <p>23 A We use a two-part process. There is an</p> <p>24 adjudication to determine the merit based on a</p> <p>25 review of the evidence, and then there is the</p>

Page 242 Page	<p>1 second part which is described in the 2016</p> <p>2 borrower defense reg. It's a two-part test, I</p> <p>3 should say, defined in the 2016 reg: Did</p> <p>4 misrepresentation occur and was there reliance on</p> <p>5 that information and financial harm.</p> <p>6 The attorneys in BD, you know, review</p> <p>7 the evidence, and then the second part of that</p> <p>8 two-part test is this methodology which is used to</p> <p>9 determine financial harm.</p> <p>10 Yes, that is the -- that two-step</p> <p>11 process is described in the 2016 BD reg.</p> <p>12 Q So step one is misrepresentation plus</p> <p>13 reliance, and step two is financial harm?</p> <p>14 A Well, I know we've used step one and</p> <p>15 step two in a different context, I think, earlier.</p> <p>16 Q Is that a -- oh, was it in a different</p> <p>17 context?</p> <p>18 A I don't know. I can't even remember.</p> <p>19 But I would say that it is a two-part test.</p> <p>20 Q Okay. I just -- I want to understand</p> <p>21 whether or not in your view if someone is -- their</p> <p>22 claim is adjudicated on the merits, which I'm</p> <p>23 considering and you have in your declaration as</p> <p>24 being a step-one determination, yes, their claim</p> <p>25 has merit.</p>	Page 244 Page	<p>1 provided or whether they would have grouped them</p> <p>2 with denied. You'd have to ask FSA.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q So in your role, you didn't provide any</p> <p>5 guidance about the 0 percent partial relief result</p> <p>6 being --</p> <p>7 A Not --</p> <p>8 Q -- approval or denial?</p> <p>9 A No.</p> <p>10 Q Okay. I'm going to go back to your</p> <p>11 declaration once again. That's Exhibit 2. And</p> <p>12 we'll go to paragraph 24.</p> <p>13 A Okay. Paragraph 24.</p> <p>14 Q And this is a topic we've touched on</p> <p>15 today already. I want to hone in on the -- the</p> <p>16 evidence. Evidence submitted by the borrower or</p> <p>17 otherwise available to the department in</p> <p>18 accordance with the applicable standard.</p> <p>19 So that evidence includes information</p> <p>20 from schools; correct?</p> <p>21 A I don't adjudicate the claims, so you'd</p> <p>22 have to ask Colleen. I -- I --</p> <p>23 Q As a matter of policy when we were</p> <p>24 discussing the 2019 regulations, we discussed your</p> <p>25 belief that schools should be afforded due process</p>
Page 243 Page	<p>1 But then they go to step two and based</p> <p>2 on the partial relief formula, they are given</p> <p>3 0 percent relief.</p> <p>4 Do you still consider that a -- an</p> <p>5 approval of a borrower defense claim?</p> <p>6 A I don't think we use the words</p> <p>7 "approval". I think we used the words "eligible"</p> <p>8 or "ineligible" for a claim, and that borrower</p> <p>9 would be notified that they received 0 percent</p> <p>10 relief.</p> <p>11 Q Well, on the -- let's say for example</p> <p>12 on the pie chart in that PowerPoint we were</p> <p>13 looking at, which would be -- that's Exhibit 12 of</p> <p>14 this deposition, and the file is A09. PDF page 2,</p> <p>15 here's the pie chart. So approved -- the two</p> <p>16 green ones, approved relief pending and approved</p> <p>17 relief provided, if someone had a step-one</p> <p>18 determination that they were approved but they got</p> <p>19 0 percent, would they be in those green pies or</p> <p>20 would they be in the denied pie slice?</p> <p>21 A Let me look at this table.</p> <p>22 MR. MERRITT: Take your time, Diane.</p> <p>23 THE WITNESS: (Reviews document.)</p> <p>24 I don't know -- I don't know whether</p> <p>25 FSA would have grouped them as approved relief</p>	Page 245 Page	<p>1 regarding these claims; right?</p> <p>2 A Uh-huh.</p> <p>3 Q So as a policy matter, how are schools</p> <p>4 given the opportunity to present evidence?</p> <p>5 A You know, again, that's the 2019</p> <p>6 regulation that applies to loans starting on</p> <p>7 July 1, 2020. I don't believe the borrower</p> <p>8 defense unit had started adjudicating claims that</p> <p>9 came in on loans issued after July 1, 2020, so I</p> <p>10 can't answer that question.</p> <p>11 Q So at this point, are schools given the</p> <p>12 opportunity to present evidence?</p> <p>13 A I -- you mean on the Corinthian claims?</p> <p>14 Q On any borrower defense application.</p> <p>15 A Well, Corinthian and ITT are closed. I</p> <p>16 don't think there's anybody who can respond on</p> <p>17 behalf of the institution.</p> <p>18 Q But under the -- there is -- I mean,</p> <p>19 there is -- we had discussed before that under the</p> <p>20 2016 regulations also there is an option, at</p> <p>21 least, to notice -- to give schools notice when</p> <p>22 the borrower defense application has been filed;</p> <p>23 correct?</p> <p>24 A That's correct, but there has to be a</p> <p>25 school to notice. And in the case of ITT and</p>

Page 246 Page	<p>1 Corinthian, there is no school to notice.</p> <p>2 Q So what about the other schools that</p> <p>3 borrower defense applications have been filed for?</p> <p>4 A So to my knowledge, the borrower</p> <p>5 defense unit has started notifying other</p> <p>6 institutions of pending claims, and it is</p> <p>7 possible, you know, that those schools are</p> <p>8 providing information.</p> <p>9 Q And when you say "starting," do you</p> <p>10 mean that began recently?</p> <p>11 A Recently meaning sometime in the past</p> <p>12 year? Yes. Recently -- I can't remember exactly</p> <p>13 when it --</p> <p>14 Q Sometime in the past year?</p> <p>15 A Yeah.</p> <p>16 Q Have you -- has -- the time that</p> <p>17 notifying a school and awaiting a response for</p> <p>18 them takes, has that factored into decisions about</p> <p>19 the -- you know, general policy in your role?</p> <p>20 A No.</p> <p>21 Q Under the 2019 regulations when those</p> <p>22 were being crafted, did the -- did the amount of</p> <p>23 time to solicit and then consider information from</p> <p>24 the school -- was that considered in drafting</p> <p>25 those regulations?</p>	Page 248 Page	<p>1 department adjudicating a claim and then notify --</p> <p>2 and then only after making a decision if they have</p> <p>3 given relief, then they can issue a demand to the</p> <p>4 institution to provide certain documents, and that</p> <p>5 is to determine whether or not the department can</p> <p>6 recover financial losses from the school.</p> <p>7 Q The first step is separated from the</p> <p>8 recovery of any financial losses; correct?</p> <p>9 A That is -- yes, that is how the -- the</p> <p>10 regs -- those two things appear in two different</p> <p>11 sections, yes.</p> <p>12 Q Okay. And that's your understanding of</p> <p>13 the 2016 regulations?</p> <p>14 A What is my understanding?</p> <p>15 Q What -- that's your understanding of</p> <p>16 it, what you just explained about the -- the</p> <p>17 two-step process?</p> <p>18 A Right. My -- my -- just to be clear,</p> <p>19 my understanding is that they notify the</p> <p>20 institution. The institution may or may not</p> <p>21 submit. The department issues the decision. And</p> <p>22 then if the department has forgiven the loan, step</p> <p>23 two is then the department can demand evidence</p> <p>24 because this is when they would engage in</p> <p>25 reclaiming the financial losses from the school.</p>
Page 247 Page	<p>1 MR. MERRITT: Objection: scope. It's</p> <p>2 going to the merits of the 2019 regulation.</p> <p>3 MS. O'GRADY: I think what's in the</p> <p>4 2019 regulation affects the policy priorities of</p> <p>5 the department which are at issue in terms of why</p> <p>6 there is delay.</p> <p>7 MR. MERRITT: But are not at issue in</p> <p>8 that level of generality in the court's discovery</p> <p>9 order.</p> <p>10 MS. O'GRADY: We have a disagreement</p> <p>11 about that.</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q I want to get at the difference between</p> <p>14 the 2016 and 2019 regulations concerning notice to</p> <p>15 schools. In the 2019 regulations it is mandatory</p> <p>16 that schools be noticed and given a chance to</p> <p>17 submit evidence; is that right?</p> <p>18 A It is mandatory that they be noticed.</p> <p>19 It is not mandatory that the schools submit</p> <p>20 evidence.</p> <p>21 Q Under the 2016 regulations, what is</p> <p>22 different about -- about the school's opportunity</p> <p>23 to provide evidence?</p> <p>24 A So, under the 2016 regs, it is a</p> <p>25 two-step process. The 2016 reg anticipates the</p>	Page 249 Page	<p>1 Q Under the 2016 regulations, are</p> <p>2 students notified -- when a student's claim is</p> <p>3 denied, is the student notified of what evidence</p> <p>4 the school provided?</p> <p>5 A To my knowledge, that is not a</p> <p>6 requirement of the 2016 reg. That is a</p> <p>7 requirement of the 2019 reg. I said to my</p> <p>8 recollection. I meant to my recollection.</p> <p>9 MS. O'GRADY: Okay. The next document</p> <p>10 is in the folder, Oversight committee press</p> <p>11 release. There are two files that begin with</p> <p>12 oversight committee, so the first one we're going</p> <p>13 to look at is press release.</p> <p>14 MR. MERRITT: Counsel, for the record,</p> <p>15 this is going to be Exhibit 18?</p> <p>16 MS. O'GRADY: Yes, thank you. This</p> <p>17 will be 18.</p> <p>18 (Jones Deposition Exhibit 18 was marked</p> <p>19 for identification and attached to the</p> <p>20 transcript.)</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q Okay. And, Ms. Jones, do you recognize</p> <p>23 this document?</p> <p>24 A I -- I've never read this before. I've</p> <p>25 never seen this before.</p>

<p style="text-align: right;">Page 250 Page</p> <p>1 Q All right. Well, you can take a minute 2 to familiarize yourself with it. I can just state 3 what I know it to be which is a press release from 4 the House Committee on Oversight and Reform on 5 October 27th, 2020, regarding the -- a Web tool 6 for borrower defense. So if you want to just take 7 a minute to flip through it, that would be fine. 8 A (Witness reviews document.) Okay. 9 I've read it. 10 Q So are you familiar with the Web tool 11 that this press release is discussing? 12 A I am. 13 Q And this press release refers to 14 allegations made by a whistleblower about you and 15 the Web tool. 16 Are these accurate statements? 17 A Some are; some aren't. I did not call 18 for the tool to be stopped. I did not know the 19 development of the tool was stopped. So 20 allegations that I called for the development of 21 the tool to be stopped are patently false. And -- 22 Q And what were -- 23 A But -- 24 Q Sorry. Go on. 25 A When you get to the part of the article</p>	<p style="text-align: right;">Page 252 Page</p> <p>1 A Some. 2 Q And what were they? 3 A Schools that say they would provide 4 career placement services and career -- and career 5 services staff and then didn't; schools that said 6 the program could be completed in a certain amount 7 of time and then they didn't offer classes in 8 certain semesters which forced the extension. 9 And I'm paraphrasing here. These 10 aren't my exact words. 11 Schools that lied to the accreditor or 12 other third parties about their rankings for 13 selectivity; schools that misrepresented faculty 14 credentials. 15 Those are the ones I can think of off 16 the top of my head. 17 Q And those examples you just gave off 18 the top of your head, are those examples of what 19 you would consider, you know, valid borrower 20 defense claims? 21 A So this form is to implement the 2019 22 regulation, and, yes, those are -- those would 23 constitute misrepresentation under the definition 24 in the 2019 regulation. 25 Q Okay. Would they also constitute</p>
<p style="text-align: right;">Page 251 Page</p> <p>1 that quotes the contract official, what I learned 2 after the fact -- this was information that I 3 learned recently -- I had no idea that the 4 contract officer had made a change to the 5 contract. 6 But what happened is that the form is 7 linked to a -- a custom -- a customer -- 8 Salesforce, customer management system, I guess. 9 Q Okay. 10 A And, so, the form is linked to the 11 cus- -- yeah, to Salesforce, and what I didn't 12 realize is in the development of the form, I did 13 not believe -- I believed that more explanation 14 was required and additional examples of potential 15 misrepresentation were required. And I say to add 16 those. 17 Q Okay. So can you -- can you explain 18 more about that? Why did you think that 19 additional examples of misrepresentations were 20 needed? 21 A So that borrowers would understand -- 22 have more examples of the kinds of things that 23 constitute misrepresentation. 24 Q Did you provide them with the examples 25 that you thought would be appropriate to add?</p>	<p style="text-align: right;">Page 253 Page</p> <p>1 misrepresentation under the definition of the 2016 2 regulation? 3 A You know, I don't -- there are some 4 additional -- so I think there are some additional 5 kinds of misrepresentation covered by the 2016 reg 6 that would not be in that list. 7 Q Okay. So there's a narrower subset of 8 2019 than there would be for 2016? 9 A For example, breach of contract is 10 included in the 2016 reg and not in the 2019 reg. 11 Q Okay. And your -- your goal with 12 adding these additional explanations into the Web 13 site -- the Web tool was to provide more 14 information about what's available under the 2019 15 regulation? 16 A That's correct. It's a smart tool, and 17 so what happens is when the borrower applies, the 18 system identifies when they took their loan and 19 then serves up the appropriate questions based on 20 what that borrower -- based on the regulation 21 under which the claim would be adjudicated. 22 Q Okay. 23 A It's a smart form. 24 Q So if a borrower took out their 25 application before the 2017 cut-off date for the</p>

Page 254 Page	<p>1 2016 regulations, then they would be -- excuse me,</p> <p>2 not the 2017 cut-off date, the 2020 cut-off date</p> <p>3 for the 2019 regulations, they would get put into</p> <p>4 the examples that you were adding that are fewer</p> <p>5 than the examples for those under the 2016</p> <p>6 regulation?</p> <p>7 A Well, no, the list is -- we've expanded</p> <p>8 the list for the 2019 regulation.</p> <p>9 Q So there are more claims available</p> <p>10 under the 2019 regulation than under the 2016</p> <p>11 regulation?</p> <p>12 A There's more information about the</p> <p>13 claims available.</p> <p>14 Q Okay. So for 2019, there are fewer</p> <p>15 claims available but more information about them.</p> <p>16 And for the 2016, there are more claims available</p> <p>17 but less information about them?</p> <p>18 A I don't know anything about the number</p> <p>19 of claims. I mean, that's to be determined. But</p> <p>20 the definition of misrepresentation under the 2019</p> <p>21 reg does not include breach of contract, and the</p> <p>22 definition of misrepresentation under the 2016</p> <p>23 rule does include breach of contract.</p> <p>24 What I'm talking about with regard to</p> <p>25 the tool is giving more examples to borrowers of</p>	Page 256 Page	<p>1 applicant under the state law standard. I don't</p> <p>2 know. I don't know how the smart tool works for</p> <p>3 them.</p> <p>4 Q So this Web tool, who developed it</p> <p>5 initially?</p> <p>6 MR. MERRITT: Object on scope. I'm</p> <p>7 going to ask which topic is this -- all of this</p> <p>8 relevant to on the Web tool?</p> <p>9 MS. O'GRADY: I would say it's relevant</p> <p>10 to the reasons for delay because the delay to the</p> <p>11 extent it's ongoing I think it's appropriate for</p> <p>12 the reasons for it currently.</p> <p>13 MR. MERRITT: So that's not a topic.</p> <p>14 The extent to which the difficulty of reviewing</p> <p>15 borrower defense applications actually caused or</p> <p>16 justified the 18-month delay that has now ended is</p> <p>17 what the topic is, so I don't think that's --</p> <p>18 MS. O'GRADY: I think it's relevant to</p> <p>19 discuss, though, how they're currently being</p> <p>20 reviewed since this is the -- the evolution of how</p> <p>21 they were reviewed, the evolution of the denial</p> <p>22 notices, I would argue it's all part of the same</p> <p>23 story, or I'm trying to understand if it is, for</p> <p>24 the reasons behind the developments that occurred</p> <p>25 after the 18-month delay shed light on the reason</p>
Page 255 Page	<p>1 the kinds of things that constitute</p> <p>2 misrepresentation. They would be covered under</p> <p>3 the 2016 reg, but the department had not provided</p> <p>4 those examples in -- in the past to borrowers.</p> <p>5 Q Okay. So the smart tool, when you put</p> <p>6 in your -- your date of loan disbursement -- I</p> <p>7 mean, people -- most people are still going to be</p> <p>8 under the 2016 regulations; right?</p> <p>9 A Well, you don't put in your date. You</p> <p>10 put in your social security number or your FSA ID</p> <p>11 number and then --</p> <p>12 Q Okay.</p> <p>13 A -- NSLDS, which is our loan system,</p> <p>14 serves it up.</p> <p>15 Q Thank you. That's helpful.</p> <p>16 So still for most people, it's going to</p> <p>17 be under the 2016 regulations. Did you add any</p> <p>18 examples or suggest adding any examples for the</p> <p>19 2016 regulations?</p> <p>20 A Yes. Because it's a smart form, this</p> <p>21 list of examples that I listed would show up for</p> <p>22 both a borrower applying under 2014 and a borrower</p> <p>23 applying under 2019.</p> <p>24 Q Okay.</p> <p>25 A I don't know what would happen for an</p>	Page 257 Page	<p>1 for that 18-month delay.</p> <p>2 MR. MERRITT: Well, I guess, like, to</p> <p>3 the extent the court authorized discovery to the</p> <p>4 post-18-month delay would be for the development</p> <p>5 used in the form denial letters which you've</p> <p>6 discussed. And the extent to which the secretary</p> <p>7 has denied applications to students, pertaining to</p> <p>8 school, subject to findings of misconduct, and I'm</p> <p>9 not seeing how this line of questioning is</p> <p>10 relevant to any of those topics.</p> <p>11 MS. O'GRADY: I think part of it,</p> <p>12 though, is about systems generally so some of the</p> <p>13 delay and some of the reasons given for the delay</p> <p>14 in the past had been the need to develop systems.</p> <p>15 My understanding is this computer program is one</p> <p>16 of those systems.</p> <p>17 So I can ask -- I can ask more</p> <p>18 questions about the past development of this</p> <p>19 computer system and -- and when it began. I'm</p> <p>20 happy to go there. I was going to get there. And</p> <p>21 I think that falls squarely within the reasons --</p> <p>22 MR. MERRITT: I mean I disagree that</p> <p>23 the development of systems is something the court</p> <p>24 authorized discovery into. You know, we've gone</p> <p>25 into this a little bit. I think at some point</p>

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<p>1 soon, though, we would need to close off this line</p> <p>2 of questioning that appear to be beyond the scope</p> <p>3 of the discovery order.</p> <p>4 MS. O'GRADY: Well, I can -- I can, as</p> <p>5 a show of good faith, wrap up quickly. That's</p> <p>6 helpful.</p> <p>7 MR. MERRITT: I thank you for your</p> <p>8 explanation, too. Thank you.</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q So is -- we had talked earlier today</p> <p>11 about your role and -- at -- your role and FSA's</p> <p>12 role and, you know, the difference between what</p> <p>13 happens at FSA.</p> <p>14 And can you -- can you shed some light</p> <p>15 for me on your involvement with this Web tool</p> <p>16 given that it's an FSA process?</p> <p>17 A Right. So perhaps that's why I didn't</p> <p>18 realize that a contract had been let or that this</p> <p>19 was linked to Salesforce or that a change order</p> <p>20 was required. That's all operational. I had no</p> <p>21 idea.</p> <p>22 My role was -- and -- and, by the way,</p> <p>23 I -- I haven't actually seen the tool. What we've</p> <p>24 been working with is a list of data elements. So</p> <p>25 there was a list of data elements, and that was</p>	<p>1 I don't know if it was phase two or three -- phase</p> <p>2 three, but it was one of the phases of the digital</p> <p>3 customer care.</p> <p>4 So this is part of the digital customer</p> <p>5 care effort which is about our Web interface with</p> <p>6 borrowers. It is my understanding that somehow</p> <p>7 this information gets communicated to Salesforce</p> <p>8 and that Salesforce may be one of the systems that</p> <p>9 the BD unit will use to manage claims.</p> <p>10 Now, I don't know enough about</p> <p>11 Salesforce to be able to tell you how, but my --</p> <p>12 my current understanding -- and, again, I had no</p> <p>13 idea that this form was linked to Salesforce until</p> <p>14 recently, but as I understand it, Salesforce is</p> <p>15 the connection between the digital customer care</p> <p>16 environment, which is where this tool was</p> <p>17 developed, and getting information to the borrower</p> <p>18 defense team's management system with Salesforce</p> <p>19 being, I presume, their manage -- new management</p> <p>20 system.</p> <p>21 Q Okay. You were saying that when you</p> <p>22 had given those suggestions for additional</p> <p>23 examples of misrepresentation, it's -- it's a</p> <p>24 process where a person puts in their social</p> <p>25 security number, other identifying information,</p>
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<p>1 sent to me for review to make sure that it was</p> <p>2 consistent with the 2019 reg.</p> <p>3 And then after I did my review, I was</p> <p>4 told that it's a smart form that would be used for</p> <p>5 2016 and 2019, so subsequent reviews took into</p> <p>6 account the policy in the 2016 reg and the 2019</p> <p>7 reg in reviewing the element list.</p> <p>8 Q Is it your understanding that this Web</p> <p>9 tool was developed -- you know, before you had</p> <p>10 said that the borrower defense applications were</p> <p>11 kept on a spreadsheet. Is this Web tool part of</p> <p>12 the development beyond that spreadsheet?</p> <p>13 A To my knowledge, this is part of the</p> <p>14 development of the FSA's digital customer care</p> <p>15 environment. So the digital customer care</p> <p>16 environment is the way in which borrower's</p> <p>17 interact with their loans. And over the period of</p> <p>18 the last year or so, we have launched a new Web</p> <p>19 site that gives borrowers new access to</p> <p>20 information about their loans, ways to make a</p> <p>21 payment online, a mobile app, a public service</p> <p>22 loan forgiveness tool, so that they can more</p> <p>23 easily identify if they work for a qualifying</p> <p>24 employer.</p> <p>25 And the development of this tool was --</p>	<p>1 and then they're -- their claim is assessed under</p> <p>2 the appropriate standard.</p> <p>3 A They are served up questions that</p> <p>4 relate to the standard under which they're being</p> <p>5 reviewed.</p> <p>6 Q Okay. And, so, for the 2019</p> <p>7 regulations, that's the federal standard we</p> <p>8 discussed?</p> <p>9 A (Witness nods head.)</p> <p>10 Q And then 2016, it would be the</p> <p>11 appropriate state law standard; is that right?</p> <p>12 A No, that's a federal standard as well.</p> <p>13 Q And for 1995, it would be under the</p> <p>14 appropriate state law standard?</p> <p>15 A Correct. And that's why I don't know</p> <p>16 how this form interacts with those borrowers.</p> <p>17 Q Okay. Is it your understanding that</p> <p>18 after a borrower puts their information in the</p> <p>19 system, then it's adjudicated by the FSA team; is</p> <p>20 that right?</p> <p>21 A Well, this is a new system, and so I --</p> <p>22 I -- I don't know whether or not borrowers have</p> <p>23 put their information. So are you asking me</p> <p>24 prospectively or are you asking me about currently</p> <p>25 pending claims that have come through this tool?</p>

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1 Q Well, I -- I -- I'm trying to hone in
2 on this -- the question, and you're absolutely
3 right that was not clear. I'm trying to hone in
4 on the question of which standard is being used,
5 and -- through this tool how individuals who are
6 adjudicating the claims, what they are using to
7 assess which standard is appropriate?

8 A So they're using the date of the loan.
9 So let's say Diane Jones has two loans, and one
10 was issued on July 2nd, 2017, and one was issued
11 on July 1st, 1999 -- I'm just making this up --
12 actually, I'm going to use a different set of
13 dates because I don't have the explanation on the
14 '95 borrowers.

15 Q That's okay. I see where you're going
16 with that, and I think that does clarify something
17 for me.

18 But what I want to get to is once
19 it's -- it's determined by the system that it's
20 not going to be assessed under a federal standard;
21 that it needs -- a state law standard needs to be
22 applied, what happens to the application then?

23 A I -- I don't know. I -- I -- I don't
24 know that the -- I don't know how this tool works.
25 You know, I -- my -- for pre-2016 borrowers.

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1 Q Okay. And for -- okay. Is this tool
2 up and running right now to your knowledge?

3 A This tool was launched on November 8th.
4 It is my understanding that there was a technical
5 issue and -- and so for a -- a temporary period of
6 time it had to be taken down, and I don't --
7 haven't actually looked today, so I don't know if
8 it's back up. But it was launched on
9 November 8th, and it was operational maybe until a
10 couple of days ago when -- when this problem was
11 identified.

12 Q Okay. So --

13 A And -- and I want to be clear that
14 even -- that we still have the other application.
15 So there are other ways -- this is only one way
16 for a borrower to apply. There are other ways.
17 So the other ways still exist for a borrower to
18 apply. This was one of several.

19 Q One second. Just bear with me.

20 MS. O'GRADY: Okay. The next exhibit,
21 which will be Exhibit 19, is in the folder as ECF
22 number 145.

23 (Jones Deposition Exhibit 19 was marked
24 for identification and attached to the
25 transcript.)

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1 THE WITNESS: I want to make one other
2 point about the tool, which is that the element
3 list for the tool went through two rounds of
4 public comment, so the element list is publicly
5 available. It's been through two rounds of public
6 comment.

7 Okay. What exhibit now?

8 BY MS. O'GRADY:
9 Q ECF number 145, Defendants fraud list.
10 And that is Exhibit 19 for this deposition.

11 THE WITNESS: I'm going to turn my
12 light on. Now that it's darker outside, I feel
13 like I'm in a spotlight.

14 BY MS. O'GRADY:
15 Q Okay. Do you have that open?
16 A I do.
17 Q And do you recognize this filing? I
18 primarily would like to ask you about the list
19 attached to the declaration of Mark Brown.
20 A I have not seen this list.
21 Q Okay. That -- with that understanding,
22 I would still like to ask you a few things about
23 it and answer to the extent you can.
24 I can represent to you that this is a
25 filing in respect defendants need in response to

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1 the judge's questions about claims -- borrower
2 defense claims that had been denied where
3 Department of Education has in its possession
4 evidence of wrongdoing. So I will not ask you
5 about CEC given our discussion about your
6 voluntary recusal. So we can just take the first
7 column. So that would be PDF page -- well, if
8 you've already scrolled down to see the exhibit
9 which is the rotated Excel spreadsheet?

10 A I have.

11 Q Okay. Let's look at the first one.

12 A The Excel spreadsheet -- I'm just
13 looking at a data table.

14 Q Data table, that's it. It says 145-2
15 up above and number -- it's page 1 on the bottom
16 and it's a rotated layout; right?

17 A Yeah.

18 Q Okay. So we're at the same place. So
19 column one, School ownership group (school name),
20 this is the Apollo Group (University of Phoenix).
21 Column two, Categories of applications determined
22 not to be within the scope of the common evidence
23 listed in column three.

24 I want to ask you -- you can finish
25 reading the column names -- if you're familiar

Page 266 Page	<p>1 with the difference between column two and column</p> <p>2 three as a -- as a general policy matter?</p> <p>3 MR. MERRITT: I would also say, if you</p> <p>4 haven't -- if you're not familiar with the</p> <p>5 document, there is a description in the</p> <p>6 declaration if you want to take the chance to look</p> <p>7 at that as well.</p> <p>8 THE WITNESS: Okay.</p> <p>9 (Reviews document.)</p> <p>10 So, yeah, I have a high-level</p> <p>11 understanding of --</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q Okay. Please share that high-level</p> <p>14 understanding with me.</p> <p>15 A Yeah, I think this is -- as I explained</p> <p>16 earlier, that there are applications where the</p> <p>17 borrower has to submit evidence because we -- you</p> <p>18 know, the -- the department doesn't have -- well,</p> <p>19 any borrower has the opportunity to submit</p> <p>20 evidence. I want that to be clear. Any borrower</p> <p>21 can submit evidence. But there are some borrowers</p> <p>22 for whom the only evidence the department has is</p> <p>23 what the borrower submitted, and there are other</p> <p>24 borrowers that regardless of what they submitted,</p> <p>25 the department has in its possession from one</p>	Page 268 Page	<p>1 approved?</p> <p>2 Q Yes.</p> <p>3 A It's possible depending on what the</p> <p>4 borrower's claim is, allegation is.</p> <p>5 Q And the converse of that, is it</p> <p>6 possible for the borrower's claim to be approved</p> <p>7 if the borrower is the only source of evidence</p> <p>8 against the school?</p> <p>9 A It is possible.</p> <p>10 Q And looking here at column two,</p> <p>11 Categories of applications determined not to be</p> <p>12 within the scope of common evidence listed in</p> <p>13 column three, if a borrower falls into that</p> <p>14 category, what happens to their application?</p> <p>15 A I don't know. These would be the</p> <p>16 decisions that are made by the BD team, and so</p> <p>17 I -- I don't know.</p> <p>18 Q And what is your understanding of what</p> <p>19 column three means, All other applications are</p> <p>20 pending further review of common evidence?</p> <p>21 A My understanding is that the department</p> <p>22 is in possession of evidence that they are</p> <p>23 reviewing, I believe.</p> <p>24 Q And what policy governs how they review</p> <p>25 that evidence?</p>
Page 267 Page	<p>1 channel or another evidence to use to adjudicate</p> <p>2 the claim.</p> <p>3 Q And borrowers in both of those</p> <p>4 categories -- or I should say either of those</p> <p>5 categories, is it possible for their claim to be</p> <p>6 approved?</p> <p>7 A So are you asking me if -- if a --</p> <p>8 regardless of who supplies the evidence, if the</p> <p>9 evidence is there and sufficient, can that</p> <p>10 borrower's claim be approved; is that what you're</p> <p>11 asking me?</p> <p>12 Q We can break it down into two. So one,</p> <p>13 a borrower who has submitted no evidence</p> <p>14 individually but who attended a school during a</p> <p>15 time period for which there is abundance evidence</p> <p>16 that the department has, could that borrower's</p> <p>17 claim be granted?</p> <p>18 A So if you're asking me in the</p> <p>19 theoretical world, yes, but I -- but I don't know</p> <p>20 how each one of these falls into the category. So</p> <p>21 I just want to make sure --</p> <p>22 Q That's fine.</p> <p>23 A Right. So are you asking me if the</p> <p>24 department has evidence that the borrower</p> <p>25 submitted nothing, could that borrower still be</p>	Page 269 Page	<p>1 A So that's a legal determination. So it</p> <p>2 is -- it is a legal determination about whether or</p> <p>3 not the claim meets the definition of</p> <p>4 misrepresentation and meets the preponderance of</p> <p>5 the evidence standard. It's not a policy</p> <p>6 decision. It's a legal decision.</p> <p>7 Q When you say it's a legal decision and</p> <p>8 not a policy decision, do you mean that there's --</p> <p>9 there's no discretion to make a different</p> <p>10 decision?</p> <p>11 A By whom?</p> <p>12 Q By -- well, by anyone in the</p> <p>13 department. I would say the secretary, but by</p> <p>14 anyone in the department.</p> <p>15 I'm wondering really what -- what the</p> <p>16 effect of -- when you characterize something as a</p> <p>17 legal question or a legal decision, what the</p> <p>18 effect of that is.</p> <p>19 A So that means that it is not in the</p> <p>20 hands of a policy person. So it means that</p> <p>21 whatever the BD attorneys decide on a legal basis,</p> <p>22 they have the expertise to judge the evidence and</p> <p>23 make a decision on the merits. It is possible</p> <p>24 that they engage with, you know, other attorneys</p> <p>25 at the department. You know, there are career</p>

<p style="text-align: right;">Page 270 Page</p> <p>1 attorneys that have been involved in -- in BD, so 2 it is possible they engage. But on a particular 3 decision, it is strictly a legal decision meaning 4 that nobody else in the department knows what it 5 is, knows that it's happening and can weigh in on 6 it.</p> <p>7 Q How has it been determined that no one 8 else in the department can weigh in on it?</p> <p>9 A It's been determined because none of us 10 know it's happening.</p> <p>11 Q My question is why is that? I mean, 12 so -- so that is --</p> <p>13 A Because it's an operations matter based 14 on legal decisions.</p> <p>15 Q Is there a policy that has made that 16 determination?</p> <p>17 A Well, I mean, there are policies about 18 who has access to FSA's data systems, and those 19 data systems are limited to certain employees 20 within FSA. There are all kinds of security 21 protocols. I don't have access to FSA's data 22 systems, and many people who work at FSA don't 23 have access. There's --</p> <p>24 Q What about people --</p> <p>25 A -- a protocol (indiscernible)</p>	<p style="text-align: right;">Page 272 Page</p> <p>1 secretary in the evaluation of evidence and 2 perhaps he was qualified, and perhaps that's what 3 that administration elected to do.</p> <p>4 Q Is it your view that engaging with the 5 under secretary in -- in that manner was 6 inappropriate?</p> <p>7 A It was their decision to make.</p> <p>8 Q So that's what I'm getting at. So it 9 was their decision to make, so it was someone's 10 decision at some point to not do that under the 11 administration that you've served under.</p> <p>12 A I -- I mean --</p> <p>13 Q It's not a -- I'm just saying it's not 14 your lack of involvement; it's not a foregone 15 conclusion; is that fair?</p> <p>16 A Well, it certainly should be because 17 I'm not trained as a lawyer. It should be a 18 foregone conclusion. I have no capacity, 19 training, capability to in any way look at 20 evidence and make a legal determination. I can't 21 do that.</p> <p>22 Q In the previous administration 23 regarding your predecessor who reviewed or signed 24 off on borrower defense decisions on a group 25 basis, when was that process stopped?</p>
<p style="text-align: right;">Page 271 Page</p> <p>1 information involved, and so there is a particular 2 clearance that somebody has to go through to have 3 access to this data system.</p> <p>4 Q What about people in the Office of the 5 General Counsel? Did any of those individuals 6 have policy roles?</p> <p>7 A They -- they don't have policy-making 8 roles, no. They advise us on legal 9 interpretations.</p> <p>10 Q What I'm trying to understand is is how 11 it became determined that the adjudication of 12 borrower defense applications is purely a legal 13 matter which you have no involvement with as -- as 14 you have said today.</p> <p>15 A Because it's a legal matter. I mean, 16 it's about the evaluation of evidence. I mean -- 17 I mean, frankly, you know, the prior 18 administration established that. The prior 19 administration established that there would be a 20 separate unit, first with a special master and 21 later with the BD unit. They made the 22 determination that there would be a BD unit that 23 would review and adjudicate these claims.</p> <p>24 Now, it is true that the prior 25 administration's BD unit chose to engage the under</p>	<p style="text-align: right;">Page 273 Page</p> <p>1 A Well, I -- you know, I -- I mean, 2 you've seen -- you've seen the dates on the memos. 3 I think the most recent memo was January 9th of 4 whatever that was, 2017.</p> <p>5 Q Meaning --</p> <p>6 A That's the most recent document I've 7 seen where the under secretary was involved in the 8 evaluation of evidence.</p> <p>9 Q And at that point, is it your view that 10 that was improper?</p> <p>11 MR. MERRITT: Objection, in it calls 12 for speculation.</p> <p>13 THE WITNESS: Yeah. I don't know his 14 background. I mean, I --</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q But if he was -- I mean, your sense -- 17 you've said a few times today you're not a lawyer 18 so you can't make this determination.</p> <p>19 So if he's not a lawyer, is it your 20 understanding that his involvement was 21 inappropriate?</p> <p>22 MR. MERRITT: Objection. Same reason.</p> <p>23 MS. O'GRADY: You don't have to answer 24 that.</p> <p>25 MR. MERRITT: I mean, it also goes to</p>

Page 274 Page	<p>1 the scope, too, the relevance of that line of</p> <p>2 questioning.</p> <p>3 MS. O'GRADY: We can move on.</p> <p>4 I want to go off the record for a very</p> <p>5 short break, and I would also ask how much time we</p> <p>6 have left.</p> <p>7 THE VIDEOGRAPHER: Going off the</p> <p>8 record. The time is 22:01 UTC time.</p> <p>9 (Recess -- 5:01 p.m.)</p> <p>10 (After recess -- 5:09 p.m.)</p> <p>11 THE VIDEOGRAPHER: All right. We're</p> <p>12 now back on the record. The time is 22:09 UTC</p> <p>13 time.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q Okay. Ms. Jones, I want to move to the</p> <p>16 topic of reconsideration. What is your</p> <p>17 understanding of the reconsideration process?</p> <p>18 A When a borrower wishes to have their</p> <p>19 claim reviewed, they can submit a reconsideration</p> <p>20 application. It's my understanding that they can</p> <p>21 submit a request for review. I believe they have</p> <p>22 the option to submit additional evidence to</p> <p>23 support the claim. And I believe if they have a</p> <p>24 new allegation, they're instructed to start a new</p> <p>25 claim.</p>	Page 276 Page	<p>1 A I don't know. I'm not involved in the</p> <p>2 review of evidence. I think this would go -- you</p> <p>3 know, again, this is a legal question of how do</p> <p>4 you review evidence.</p> <p>5 Q So you have no policy opinion about the</p> <p>6 reconsideration process?</p> <p>7 MR. MERRITT: Objection to the opinion.</p> <p>8 BY MS. O'GRADY:</p> <p>9 Q Have you ever been involved in setting</p> <p>10 policy regarding reconsideration?</p> <p>11 A There -- there was -- so there was a</p> <p>12 policy question that arose out of legal review of</p> <p>13 reconsideration, and that policy question came to</p> <p>14 me.</p> <p>15 Q What question was that?</p> <p>16 A The policy question is -- basically I</p> <p>17 think I mentioned earlier that programs are</p> <p>18 identified by a Classification of Instructional</p> <p>19 Program code, a CIP code. And the institution</p> <p>20 gets to pick the CIP code when they register the</p> <p>21 program with the department. So in our records,</p> <p>22 we have programs listed by CIP codes. But</p> <p>23 sometimes institutions call their program</p> <p>24 something different than the name affiliated with</p> <p>25 the CIP code.</p>
Page 275 Page	<p>1 That's my understanding of that</p> <p>2 process.</p> <p>3 Q Okay. If we could go to the exhibit</p> <p>4 marked 14 in this deposition, which is ECF number</p> <p>5 ECF number 108-08, Daniel Deegan affidavit?</p> <p>6 A Okay.</p> <p>7 Q Okay. And then if you scroll to PDF</p> <p>8 11, we're again within the denial Mr. Deegan</p> <p>9 received which was based on the form D template.</p> <p>10 A Uh-huh.</p> <p>11 Q In the middle of that page, the</p> <p>12 question, What if I do not agree with this</p> <p>13 decision.</p> <p>14 So you'll want to just take a moment to</p> <p>15 read that over.</p> <p>16 A (Witness reviews document.)</p> <p>17 Q I specifically want to ask about point</p> <p>18 two -- well, point one and point two, which</p> <p>19 allegations you believe that Ed incorrectly</p> <p>20 decided, and why you believe that Ed incorrectly</p> <p>21 decided your borrower defense to repayment</p> <p>22 application.</p> <p>23 What's your understanding of what</p> <p>24 information a borrower would have to provide to</p> <p>25 successfully answer either of those questions?</p>	Page 277 Page	<p>1 And so the question that came to me is,</p> <p>2 you know, what if a borrower is saying that they</p> <p>3 were given relief based on one program name but</p> <p>4 they really enrolled in a different program.</p> <p>5 Q Okay. So your only policy involvement</p> <p>6 with reconsideration was about program name</p> <p>7 reconciliation essentially?</p> <p>8 A I mean, but that's the kind of policy</p> <p>9 question --</p> <p>10 Q Right.</p> <p>11 A -- that would come to me.</p> <p>12 Q So when you were involved in reviewing</p> <p>13 the form denial letters A through D that we looked</p> <p>14 at before, had you been involved in reviewing the</p> <p>15 sections about reconsideration of those denial</p> <p>16 letters?</p> <p>17 A You know, I -- I don't remember -- I</p> <p>18 mean, I think there were instructions included in</p> <p>19 those original letters.</p> <p>20 Q What do you mean by "instructions"?</p> <p>21 A I mean, this language of "if you</p> <p>22 disagree" looks familiar to me, so I can't</p> <p>23 remember exactly what it said, but I believe this</p> <p>24 language about if you disagree with this decision,</p> <p>25 you may ask Ed to reconsider your application.</p>

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1 Q Okay. So at some point, you signed off
2 on this text or something very similar to it?

3 A Yeah. I can't remember if it listed
4 those three points, but -- but, yeah, I mean,
5 there was instructions for reconsideration.

6 Q Okay. And when you were reviewing the
7 form denial letters, did you think about or
8 consider whether or not they would provide enough
9 information for a borrower to seek
10 reconsideration?

11 MR. MERRITT: Objection: calling for
12 privileged information.

13 MS. O'GRADY: Do you mean deliberative
14 process privilege?

15 MR. MERRITT: I mean you're asking her
16 what she thought, you know, about the review of
17 the letters before they were final.

18 BY MS. O'GRADY:

19 Q On this final letter, do you believe
20 there's enough information for a borrower to
21 request reconsideration?

22 A I believe that there is -- yeah, I
23 believe there is enough information about a
24 borrower that they can request and how they would
25 go about it, like address it in an email or, you

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1 know --

2 Q Yes. In terms of logistics, the email
3 address is there and the fact of the
4 reconsideration process has been described?

5 A Yes.

6 Q In terms of the substance in point two,
7 Why you believe that Ed incorrectly decided your
8 borrower defense to repayment application, what
9 information in this denial letter could a borrower
10 use to answer that question?

11 A And that's the part of this that I -- I
12 don't have the expertise. I -- you know, those
13 particular questions were developed by the BD
14 unit.

15 Q Let me ask it a different way. So if
16 you could put yourself in the shoes of the
17 borrower because the borrower is -- I can tell you
18 this borrower and probably most borrowers are not
19 themselves lawyers either. How do they determine
20 what information to include to answer the
21 question, Why you believe that Ed incorrectly
22 decided your borrower defense to repayment
23 application?

24 MR. MERRITT: Objection: speculative.

25 BY MS. O'GRADY:

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1 Q I'm looking at this particular
2 document. So what information in this document
3 could a borrower point to to say, Ed, you got it
4 wrong, because?

5 A I mean, I think they would explain why
6 they think we got it wrong.

7 Q And what specifically -- how would that
8 explanation be different than their initial
9 application? You know, what -- what other --
10 what -- why do you believe that Ed incorrectly
11 decided your borrower defense to repayment
12 application?

13 A I mean, you know, again, I think a
14 borrower would give an explanation, and the -- the
15 one that I'm aware of is, you know, borrowers who
16 wrote in and said, you know, you assigned relief
17 because you said I was in this program but, you
18 know, the college called it this other program,
19 and -- and -- and that's different on the table.

20 Q So the one example you can think of is
21 a -- is, again, a problem with the -- again,
22 properly identifying what program or what school
23 somebody went to.

24 If a borrower has included information
25 about a number of allegations and then this denial

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1 letter, for example, if we just scroll up to
2 page 10 of the PDF, Allegation one, employment
3 prospects: You allege that Keller Graduate School
4 of Management engaged in misconduct related to
5 employment prospects. This allegation fails for
6 the following reasons: Insufficient evidence.

7 Your claim for relief on this basis is
8 therefore denied.

9 What basis -- how would a borrower
10 interpret that paragraph? I mean, I think you put
11 yourself -- well, that's my question.

12 How should a borrower interpret that
13 paragraph?

14 A Because I don't know what the borrower
15 submitted originally, I -- I don't know. I don't
16 know what was in the borrower's original
17 application.

18 Q When you signed off on the initial form
19 denial letters, I think at one point you had said
20 this is the spot, you know, for the following
21 reasons, and that's where you had expected there
22 to be information about the state law standard
23 applied.

24 That's right? You testified about that
25 earlier today; correct?

Page 282 Page	<p>1 A I said that when -- yes, in the section</p> <p>2 where the attorneys explain -- I can't remember</p> <p>3 the words, but, right, that little bracketed place</p> <p>4 that you would be evaluating evidence based on the</p> <p>5 state standard.</p> <p>6 Q And here the only words in that</p> <p>7 bracketed place, which I think was recommendation</p> <p>8 reason, is the -- are the words "insufficient</p> <p>9 evidence."</p> <p>10 Is that -- when you first looked at the</p> <p>11 template, is -- you know what, let me just take a</p> <p>12 moment. Let's look at the template. My question</p> <p>13 is about the template.</p> <p>14 So we're going to go to Exhibit</p> <p>15 Number 13 of this deposition, and the file is ECF</p> <p>16 number 116, Defendants Post-CMC Filing.</p> <p>17 And this, as you'll recall, have the</p> <p>18 attachment of these form letters. Let's go all</p> <p>19 the way down --</p> <p>20 A I'm still looking for it.</p> <p>21 Q Oh, sure. Sorry about that.</p> <p>22 A (Witness reviews document.)</p> <p>23 Okay. I -- I have it. Which form do</p> <p>24 you want me to look at?</p> <p>25 Q Okay. So I want to go all the way to</p>	Page 284 Page	<p>1 MR. MERRITT: Well, it's still going to</p> <p>2 what her thoughts and impressions were at the time</p> <p>3 which is deliberative information, what you're</p> <p>4 asking her now.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q Did you discuss -- when these were</p> <p>7 finalized, did you discuss what review</p> <p>8 recommendation reason meant?</p> <p>9 MR. MERRITT: You can answer that.</p> <p>10 THE WITNESS: I -- I -- I don't -- I</p> <p>11 don't know what date they were considered to be</p> <p>12 finalized, but, yes, I was engaged in</p> <p>13 conversations about what I believed that meant.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q And I'm not asking about the</p> <p>16 deliberation of the different drafts. I'm asking</p> <p>17 what your understanding of this template means</p> <p>18 right here? What is the review recommendation</p> <p>19 reason?</p> <p>20 A I had to defer to the expertise of the</p> <p>21 lawyers. I -- I -- I don't write legal text, so,</p> <p>22 you know, the expectation was that lawyers would</p> <p>23 make a decision and that information would be</p> <p>24 provided.</p> <p>25 Q But in your declaration -- we can go</p>
Page 283 Page	<p>1 PDF page 23, and this is the form D denial</p> <p>2 template.</p> <p>3 A Okay.</p> <p>4 Q And there in the highlighted -- it's</p> <p>5 the highlighted text is what a reviewing attorney</p> <p>6 would insert; correct?</p> <p>7 A It -- it would -- it would be what they</p> <p>8 would enter into their work papers.</p> <p>9 Q Okay. And we discussed before how your</p> <p>10 expectation was that the highlighted text of</p> <p>11 review recommendation reason would include the</p> <p>12 state law standard.</p> <p>13 And my question now is did you expect</p> <p>14 any other information to be within those brackets</p> <p>15 review recommendation reason?</p> <p>16 What other information did you think</p> <p>17 when you reviewed this template would be included</p> <p>18 there?</p> <p>19 MR. MERRITT: Objection. It's calling</p> <p>20 for privileged and deliberative information.</p> <p>21 MS. O'GRADY: Well, I think the witness</p> <p>22 has already testified about her expectation that</p> <p>23 the state law standard would be included here, and</p> <p>24 I want to know her -- when she signed off on the</p> <p>25 form D template what she was signing off on.</p>	Page 285 Page	<p>1 back to Exhibit 2 of your declaration which is</p> <p>2 your declaration, I should say. We'll go back</p> <p>3 to -- it's PDF page 10 of Exhibit 2, the bottom of</p> <p>4 paragraph 26. And you write here, The department</p> <p>5 has been working to develop documents to provide a</p> <p>6 more robust explanation for borrowers whose claims</p> <p>7 are denied.</p> <p>8 Is this template the result of that</p> <p>9 effort to develop documents to provide a more</p> <p>10 robust explanation?</p> <p>11 A The development of these templates is</p> <p>12 what I was referring to when I said that the</p> <p>13 department was developing documents.</p> <p>14 Q Did you ever, before today, review a</p> <p>15 form D denial notice as it was provided to a</p> <p>16 borrower?</p> <p>17 A No. The servicers send those.</p> <p>18 Q So you've seen the template, but you</p> <p>19 have never before today seen what it looked like</p> <p>20 to a borrower receiving it?</p> <p>21 A I -- I believe that there was one</p> <p>22 letter that I saw that came in. When I asked Mark</p> <p>23 about it, he told me that the letter that I saw</p> <p>24 was not a typical letter. So I've only seen --</p> <p>25 Q Which letter was that? Do you recall?</p>

Page 286 Page	<p>1 A It was -- it was a letter that -- that</p> <p>2 said, you know, fill in the blank, basically. I</p> <p>3 mean, it -- you know, it was the letter that had</p> <p>4 the highlighted insert here. It still said insert</p> <p>5 here.</p> <p>6 Q Oh, so it still said "insert here."</p> <p>7 A (Witness nods head.)</p> <p>8 Q Okay. And, so, he said that wasn't</p> <p>9 typical.</p> <p>10 Have you ever seen one -- well, let me</p> <p>11 just go back. Why did he show that to you?</p> <p>12 A He didn't.</p> <p>13 Q Oh.</p> <p>14 A He didn't show it to me. I -- I was --</p> <p>15 it came to me, and I forwarded it to him to ask</p> <p>16 what happened here; how could this happen.</p> <p>17 Q Okay. And what was his response?</p> <p>18 A That it was just a one-off blip.</p> <p>19 Q So besides that letter that still had</p> <p>20 the mistaken highlights included, before today,</p> <p>21 you'd never seen another one as it was sent out?</p> <p>22 A No.</p> <p>23 Q Okay. And if I were to -- the one that</p> <p>24 we just looked at that simply said, you know,</p> <p>25 insufficient evidence in -- in the highlighted</p>	Page 288 Page	<p>1 what I mean.</p> <p>2 Q Right. So it had, like, the</p> <p>3 highlighted text.</p> <p>4 A Yeah.</p> <p>5 Q So how did you receive that? Who sent</p> <p>6 it to you?</p> <p>7 A I can't remember who sent it to me. I</p> <p>8 can't remember. It came from outside of the</p> <p>9 department, but I can't remember who sent it to</p> <p>10 me.</p> <p>11 Q Could you find out?</p> <p>12 A I mean --</p> <p>13 Q Would it be possible to go into your</p> <p>14 email and find out?</p> <p>15 A I wouldn't even know what to search on.</p> <p>16 Q And then you --</p> <p>17 MR. MERRITT: Are you asking that that</p> <p>18 email -- are you making a request for that email</p> <p>19 to be produced?</p> <p>20 MS. O'GRADY: Yes, I am.</p> <p>21 MR. MERRITT: I'm just going to say a</p> <p>22 broader point. If after this deposition you have</p> <p>23 further document requests, you know, please send</p> <p>24 them along.</p> <p>25 I was also going to suggest based on</p>
Page 287 Page	<p>1 area of review recommendation reason, is that</p> <p>2 about what you expected them to look like, or is</p> <p>3 that less text than you expected --</p> <p>4 MR. MERRITT: Objection again to the</p> <p>5 extent you're talking -- you know, referring to</p> <p>6 her predecisional state of mind.</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q I can ask right now. You know, would</p> <p>9 you be surprised that the highlighted text, review</p> <p>10 recommendation reason for thousands of borrowers</p> <p>11 only includes one or two phrases?</p> <p>12 A Because I haven't seen those claims,</p> <p>13 I -- I can't tell you. I -- I haven't seen the</p> <p>14 applications. I don't know what the incoming</p> <p>15 looked like, so I can't answer that question.</p> <p>16 Q When the -- I think you said the -- the</p> <p>17 sample that you saw that had the mistaken</p> <p>18 allegation type and, you know, highlighted text</p> <p>19 still included, was that emailed to you?</p> <p>20 A I don't remember. And I don't know</p> <p>21 that it had the wrong allegation. It just -- it</p> <p>22 just didn't have that -- as best I remember, it</p> <p>23 just didn't have the justification in it. You</p> <p>24 know, it just had the fill in here. I mean, I</p> <p>25 know it doesn't say fill in here, but you know</p>	Page 289 Page	<p>1 some of the other ones that you review the</p> <p>2 Pratt -- the (indiscernible) record in the Pratt</p> <p>3 case, and it's possible some documents could be in</p> <p>4 there.</p> <p>5 MS. O'GRADY: Yes, there are some</p> <p>6 documents in there, and they should still be</p> <p>7 produced in this case.</p> <p>8 And that said, based on the lack of</p> <p>9 documents about some of these issues, we would</p> <p>10 like to keep this deposition open to the extent</p> <p>11 further documents are produced that involve</p> <p>12 Ms. Jones as a witness?</p> <p>13 MR. MERRITT: What do you mean keep it</p> <p>14 open?</p> <p>15 MS. O'GRADY: If we have to call her</p> <p>16 back as a witness to address documents that we</p> <p>17 don't have in our possession yet.</p> <p>18 MR. MERRITT: I think we have to</p> <p>19 consider any requests like that you're going to</p> <p>20 make at the appropriate time.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q Ms. Jones, I would like to --</p> <p>23 MS. O'GRADY: I'm going to mark -- I</p> <p>24 think this should be our last exhibit, and this is</p> <p>25 going to be Exhibit Number 20 of this deposition.</p>

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1 (Jones Deposition Exhibit 20 was marked
2 for identification and attached to the
3 transcript.)
4 MS. O'GRADY: The file name is ECF
5 number 146, Order denying settlement show cause.
6 BY MS. O'GRADY:
7 Q Do you have that open?
8 A I do.
9 Q Okay. And do you recognize this
10 filing --
11 A It doesn't look familiar --
12 Q -- or court order?
13 A -- to me.
14 Q Okay. I'll let you know this is a
15 court order in this case that is what ordered the
16 discovery. It's the genesis of your being here
17 today.
18 So on page 16 of this PDF, if you could
19 scroll there, I just want to use this to ask you
20 some questions about other individuals and their
21 roles if you wouldn't mind.
22 So are you on page 16?
23 A I am.
24 Q Okay. So bullet point one here, these
25 are the topics of discovery. The development and

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1 use of the form denial letters including the
2 submission, timeline of review, and disposition of
3 any request for reconsideration; and the form of
4 denial issued before this suit and under the
5 previous administration.
6 Who is the -- which individuals would
7 be the best people for us to ask about those
8 issues?
9 A Our Office of General Counsel is who
10 you should ask. All of those requests are handled
11 through our Office of General Counsel.
12 Q And when you say "all of those
13 requests," what do you mean?
14 A I mean, you know, request for
15 documents --
16 Q No, I -- no, I know that. I just want
17 to know the -- the topics. So who is closest to
18 the topic of the use and form of the denial
19 letters that we talked about? So those denial
20 letter forms A through D. You reviewed them and
21 signed off on them. Who else is the person
22 closest to that issue?
23 A I mean, Colleen Nevin is closest to
24 that issue.
25 Q Anyone else besides Colleen?

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1 A I -- I -- I have -- I have no idea -- I
2 have no idea who else works -- I don't know the
3 names of any of Colleen's staff except for one. I
4 know one staff person by name. So I think you'd
5 have to ask her.
6 Q Okay. And that's true for the
7 disposition of any request for reconsideration.
8 Is there anyone else besides Ms. Nevin that would
9 have knowledge of that topic?
10 A I don't even know what the disposition
11 of any request for reconsideration --
12 Q Oh, reconsideration is what we were
13 just talking about.
14 A Right. But I honestly don't know what
15 disposition of any request means.
16 Q Okay. Let's look at topic two. The
17 extent to which the difficulty of reviewing
18 borrower defense applications actually caused or
19 justified the Secretary's 18-month delay.
20 Who would be the person closest to that
21 question?
22 MR. MERRITT: I object to this line of
23 questioning. I mean, you have other --
24 interrogatories and other lines of asking
25 questions like this.

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1 MS. O'GRADY: I want to get a -- I want
2 to get a sense of Ms. Jones' understanding of what
3 her colleagues work on and do especially since we
4 talked a lot today about who has a policy-making
5 role and who doesn't.
6 MR. MERRITT: We've talked about that
7 and, you know, provided a lot of information about
8 that. So I think this particular request is
9 getting beyond the scope. I mean, her specific
10 knowledge of that as opposed to those topics in
11 general, like, who else would be involved.
12 MS. O'GRADY: I don't understand your
13 objection. It's the witness' personal knowledge
14 about exactly the scope of the discovery.
15 MR. MERRITT: I mean, it's somewhat
16 calling for a legal conclusion, I mean, to the
17 extent you're saying who has information relevant
18 to this.
19 I mean, you know, Diane, you've talked
20 about these topics. You can answer the question.
21 THE WITNESS: I mean, for -- for number
22 two, it would be our Office of General Counsel.
23 The attorneys that were involved in the Manriquez
24 case.
25 BY MS. O'GRADY:

Page 294 Page	<p>1 Q Okay. And what -- the difficulty of</p> <p>2 reviewing borrower defense applications, what does</p> <p>3 that phrase mean to you?</p> <p>4 MR. MERRITT: Objection: Speculative.</p> <p>5 MS. O'GRADY: I'm just asking?</p> <p>6 MR. MERRITT: You're asking her to</p> <p>7 interpret what the court said.</p> <p>8 MS. O'GRADY: No, I'm asking what she</p> <p>9 thinks it means. I don't want her to interpret</p> <p>10 the court's words. I just, you know . . .</p> <p>11 BY MS. O'GRADY:</p> <p>12 Q Difficulty of reviewing borrower</p> <p>13 defense applications.</p> <p>14 Are borrower defense applications, in</p> <p>15 your view, difficult to review?</p> <p>16 A I don't review borrower defense</p> <p>17 applications, so I don't know.</p> <p>18 Q Who would know?</p> <p>19 A Colleen Nevin reviews borrower defense</p> <p>20 applications.</p> <p>21 Q And regarding the 18-month delay in</p> <p>22 processing applications, would the secretary have</p> <p>23 knowledge about that in your -- in your view?</p> <p>24 A You know, again, that decision was made</p> <p>25 before I was involved in BD. That was made, you</p>	Page 296 Page	<p>1 please correct me if I assumed incorrectly.</p> <p>2 A Colleen Nevin and her team. I don't</p> <p>3 know if she reviews every single one, but her team</p> <p>4 does. Yeah, she and her team would be the only</p> <p>5 ones that would have knowledge of this.</p> <p>6 Q And is there anyone else in a</p> <p>7 policy-making role that would have any knowledge</p> <p>8 of that topic?</p> <p>9 A Not in a policy-making role, no.</p> <p>10 Q And what about the second question</p> <p>11 regarding the delay? Is there anyone else in a</p> <p>12 policy-making role that would have knowledge of</p> <p>13 that topic?</p> <p>14 A You know what, again, I wasn't involved</p> <p>15 in the decision so I don't know who was involved</p> <p>16 in making it. You'd have -- you'd have --</p> <p>17 Q What about carrying out the decision?</p> <p>18 A What do you -- what -- I mean, what do</p> <p>19 you mean carrying out --</p> <p>20 Q I understand the decision was made</p> <p>21 before your tenure, but the decision was in effect</p> <p>22 during your tenure.</p> <p>23 Is there anyone else involved in that</p> <p>24 decision being the status quo, that -- you know,</p> <p>25 this . . .</p>
Page 295 Page	<p>1 know, after the Manriquez case, so I don't know</p> <p>2 who was involved in making that decision, but</p> <p>3 that -- that delay was tied to the Manriquez case</p> <p>4 and which is why I've said, you know, the lawyers</p> <p>5 involved in the Manriquez case would be the ones,</p> <p>6 you know, closest to understanding that case. And</p> <p>7 it's a --</p> <p>8 Q Okay. And your understanding is that</p> <p>9 no one -- no one else besides the lawyers involved</p> <p>10 in the Calvillo Manriquez litigation would have</p> <p>11 any knowledge about the reason for that delay?</p> <p>12 A I'm telling you that I wasn't involved</p> <p>13 in that decision, but it makes sense to me that of</p> <p>14 course the lead -- the lawyers who were involved</p> <p>15 in the Manriquez case would have knowledge of --</p> <p>16 of that decision and -- and considerations around</p> <p>17 that decision.</p> <p>18 Q To the third point, The extent to which</p> <p>19 the Secretary has denied applications of students</p> <p>20 who have attended schools subject to findings of</p> <p>21 misconduct by the Secretary or any other state or</p> <p>22 federal body or agency, and the rationale</p> <p>23 underlying those denials.</p> <p>24 I'll assume you'll say Colleen Nevin.</p> <p>25 Is there anyone else besides Ms. Nevin? And</p>	Page 297 Page	<p>1 A Well, the decision had been made and</p> <p>2 others executed it. I mean --</p> <p>3 Q So who executed that decision?</p> <p>4 A Originally Jim Manning and ultimately</p> <p>5 Mark Brown.</p> <p>6 Q And when you say they executed that</p> <p>7 decision, what do you mean?</p> <p>8 A It means that the decision had been</p> <p>9 made to -- to -- to not issue any more final</p> <p>10 decisions to borrowers until the California court</p> <p>11 made its decision. So the -- what carrying it out</p> <p>12 means is not issuing decisions to students.</p> <p>13 Q And the directive to continue not</p> <p>14 issuing decisions to students came from Jim</p> <p>15 Manning and Mark Brown?</p> <p>16 MR. MERRITT: Objection. That's a</p> <p>17 mischaracterization of her testimony.</p> <p>18 MS. O'GRADY: Okay.</p> <p>19 BY MS. O'GRADY:</p> <p>20 Q Please correct the mischaracterization.</p> <p>21 A You -- you asked me who would carry out</p> <p>22 that direction.</p> <p>23 Q Right.</p> <p>24 A But -- but what you said back to me was</p> <p>25 that -- I think you said they gave the direction.</p>

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1 I don't know who gave the direction. Certainly it
 2 wasn't Mark Brown. He wasn't there then.
 3 Q But they carried out the direction?
 4 A Correct.
 5 Q Correct. Okay.
 6 And my apologies for the redundancy
 7 here. I just want to go back to the development
 8 and use of those form denial letters, and those
 9 are the form denial letters A through D that we've
 10 been discussing that you reviewed.
 11 Who else was involved in their
 12 development?
 13 A I think I mentioned this earlier. So I
 14 think -- I'm trying to picture the people around
 15 the table.
 16 Q Ms. Jones, I think you did testify to
 17 that, and I'm sure it's on the record. You don't
 18 need to repeat yourself there. I think we have
 19 that. Okay.
 20 Just give me one moment.
 21 MR. MERRITT: I just want to make one
 22 quick point about to the -- you mentioned keeping
 23 this deposition open because of potential
 24 documents coming in, just to state for the record,
 25 plaintiffs submitted document requests two weeks

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1 ago on November 6, so the responses to that, you
 2 know, aren't due and there would have been no
 3 obligation to produce any documents before this
 4 deposition. So, you know, you've had -- you've
 5 had seven hours today.
 6 BY MS. O'GRADY:
 7 Q I just -- Ms. Jones, I have one last
 8 point that I wanted to address. We've talked a
 9 lot today about the policy decisions or lack
 10 thereof around borrower defense.
 11 In your time at the Department of Ed,
 12 have -- would you say there have been policy
 13 decisions made regarding borrower defense?
 14 A We finalized the 2019 regulation. It
 15 would be hard to say that's not a policy decision.
 16 Q Besides that.
 17 A Sure. There have been policy decisions
 18 about the new methodology, the 2019 methodology,
 19 the development of the -- I mean, the methodology
 20 is a methodology. That's the policy.
 21 Q Okay. And in terms of granting or
 22 denying borrower defense, have there been any --
 23 step one, have there been any policy decisions?
 24 A Not to my knowledge.
 25 MS. O'GRADY: Okay. I think we're

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1 done.
 2 THE VIDEOGRAPHER: Okay. Shall we
 3 close out the record? No cross?
 4 THE WITNESS: I think the court
 5 reporter wanted me to stay on to give her some
 6 spellings.
 7 THE VIDEOGRAPHER: Yeah. I'll just
 8 close out the video record.
 9 MR. MERRITT: Yeah. No cross.
 10 THE VIDEOGRAPHER: Okay. We're now
 11 going off the record. The time is 22:41 UTC time.
 12 This concludes today's testimony given by
 13 Ms. Diane Jones.
 14 Thank you, and have a great weekend.
 15
 16
 17
 18 (Whereupon, the Remote Videotaped
 19 Deposition of DIANE AUER JONES ended at
 20 5:41 p.m. EST)
 21
 22
 23
 24
 25

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1
 2 REPORTER'S CERTIFICATE
 3 I, Dana C. Ryan, Certified Shorthand Reporter in
 4 and for the State of Maryland, hereby certify that
 5 the deponent was by me first duly sworn and the
 6 foregoing testimony was reported by me and was
 7 thereafter transcribed with computer-aided
 8 transcription; that the foregoing is a full,
 9 complete, and true record, to the best of my
 10 ability, of said proceedings.
 11 I further certify that I am not of counsel or
 12 attorney for either or any of the parties in the
 13 foregoing proceedings and caption named or in any
 14 way interested in the outcome of the cause in said
 15 caption.
 16 The dismantling, unsealing, or unbinding of the
 17 original transcript will render the reporter's
 18 certificate null and void.
 19 In witness whereof, I have hereunto set my hand
 20 this day: November 24, 2020.
 21 _____ Reading and Signing was requested.
 22 _____ Reading and Signing was waived.
 23 X _____ Reading and Signing was not requested.
 24 _____
 25 Dana C. Ryan, RPR, CRR

Diane Jones
November 20, 2020

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November 20, 2020

1 I have read the foregoing transcript of
2 my deposition given on November 20, 2020, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon
6 and/or list of corrections, if any, attached
7 on a separate sheet herewith.

8 I used the editing tools available in Adobe (including highlighting, comment
9 bubbles and strike outs) to note corrections on the transcript itself.

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Diane Auer Jones



DIANE AUER JONES

December 24, 2020

Subscribed and sworn to
before me this ____ day
of _____, 2020.

Notary Public

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:20:34 AM -05'00'
that was


 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:21:00 AM -05'00'
that was

Page: 36

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:22:03 AM -05'00'
spent time working



 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:22:23 AM -05'00'
spent time working

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:04:30 AM -05'00'
prior

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:22:44 AM -05'00'
prior


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 Number: 1 finding	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 1:29:35 PM -05'00'
 Number: 2 finding	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:23:08 AM -05'00'

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 Number: 1 2017	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 1:44:00 PM -05'00'
 Number: 2 2017	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:23:23 AM -05'00'
 Number: 3 limited	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 1:44:15 PM -05'00'
 Number: 4 limited	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:23:58 AM -05'00'

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 1:51:28 PM -05'00'
that


 Number: 2 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 1:51:34 PM -05'00'

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 6:32:06 PM -05'00'
stopped


 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:24:30 AM -05'00'
stopped

Page: 121

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:05:05 AM -05'00'
ensure the accuracy of




 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:24:53 AM -05'00'
ensure the accuracy of

Page: 127

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 6:40:31 PM -05'00'
pace


 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:25:05 AM -05'00'
pace

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 Number: 1 we	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 6:41:19 PM -05'00'
 Number: 2 for	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 6:42:00 PM -05'00'
 Number: 3 for	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:26:21 AM -05'00'

 Number: 1 Author: Diane.Jones Subject: Highlight Date: 12/21/2020 6:46:26 PM -05'00'
resolve


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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:29:05 AM -05'00'
evidence

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:11:22 AM -05'00'
evidence



Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:12:03 AM -05'00'
statutes of


Page: 169

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 7:07:34 PM -05'00'
get

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:13:00 AM -05'00'
get

Page: 184

 Number: 1	Author: Diane.Jones	Subject: Sticky Note	Date: 12/23/2020 8:29:48 AM -05'00'
<hr/>			
 Number: 2	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:13:34 AM -05'00'
<hr/>			


 Number: 1
it for

Author: Diane.Jones

Subject: Sticky Note

Date: 12/23/2020 8:30:37 AM -05'00'


Page: 190

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:30:49 AM -05'00'

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:31:01 AM -05'00'

Page: 193

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 7:21:17 PM -05'00'
letter

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:31:19 AM -05'00'
letter

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 7:24:57 PM -05'00'
clear

 Number: 2 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 7:24:39 PM -05'00'


 Number: 3 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 7:24:30 PM -05'00'


 Number: 4 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 7:24:46 PM -05'00'

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 Number: 1 decision	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 7:36:30 PM -05'00'
 Number: 2 decision	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:31:57 AM -05'00'

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 7:37:16 PM -05'00'
Department

 Number: 2 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 7:37:06 PM -05'00'

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 Number: 1 include	Author: Diane.Jones	Subject: Sticky Note	Date: 12/21/2020 7:43:30 PM -05'00'
 Number: 2	Author: Diane.Jones	Subject: Cross-Out	Date: 12/21/2020 7:43:18 PM -05'00'


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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 7:51:13 PM -05'00'
2016

 Number: 2 Author: Diane.Jones Subject: Cross-Out Date: 12/21/2020 7:51:01 PM -05'00'

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 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:39:04 AM -05'00'
but

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:38:51 AM -05'00'
but